

Business as usual in times of Politicisation?
Preferences of member states regarding EU labour migration policies

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Summary

What drives the positions taken by EU member states in the Council? Liberal Intergovernmentalism most prominently argues that governments enjoy the leeway of a 'permissive consensus' to represent the interests of strong domestic producer groups in the Council. Yet, in a Postfunctionalist Union, where citizens are no longer 'rationally ignorant' about their governments' decisions in Brussels, identity politics are expected to override issue-specific business interests. The key mechanism that brings us from Moravcsik's insulated 'client politics' to Postfunctionalist 'mass politics' is the phenomenon of politicisation.

EU labour migration policies targeting third country nationals is a policy field where both clientelist business interests and politicised mass public interests are likely to surface, clash, and influence policymakers. While business demands liberalised and harmonised labour migration policies, governments under public scrutiny and pressure from right-wing populist parties are concerned that meeting the employers' demands when legislating in Brussels will be costly in upcoming elections.

This dissertation poses the question whether and to what extent politicisation of the EU and of immigration moderates the responsiveness of government to issues-specific interests of employers or mass public interests when negotiating EU labour migration policies. Drawing on a time-consistent quantitative measurement of politicisation of the EU and immigration in four member states, I study the impact of politicisation on the state preferences regarding five draft directives on EU labour migration policies.

My research finds that the evidence for a moderating effect of politicisation on the responsiveness of governments is weak. Instead, whether governments respond to business or mass public interests is largely determined by the issue-specific dependence of employers on a common EU policy to attract labour migrants. If dependence is considered high, governments tend to represent employers' interests and harmonise labour migration policies. Yet, this dissertation shows that identity and sovereignty related concerns matter as well but manifest more strongly in governments' preferences when issue-specific dependence is low, because unilateral policies are considered more effective. Only against this background of an 'ignorant or sceptical business' does politicisation have at times a reinforcing effect upon the responsiveness of governments to the communitarian parts of their electorate.

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List of Abbreviations

AETIC	Asociación de Empresas de Electrónica, Tecnologías de la Información y Telecomunicaciones de España
AfD	Alternative für Deutschland
BCI	Industry / Business Climate Indicator
BDA	Bundesverband deutscher Arbeitgeber
BVMW	Bundesverband mittelständische Wirtschaft
CDA	Christen-Democratisch Appèl
CDU	Christlich Demokratische Union Deutschland
CEOE	Confederación Española de Organizaciones Empresariales
COAG	Coordinadora de Organizaciones de Agricultores y Ganaderos
CSU	Christlich-Soziale Union
D66	Democraten 66
DIHK	Deutsche Industrie- und Handelskammer
EU	Europäische Union
f.n.	footnote
FAZ	Frankfurter Allgemeine Zeitung
FDP	Freie Demokratische Partei
GDP	Gross Domestic Product
ICT	Intra-Corporate Transferee
KVP	Katholieke Volkspartij
LI	Liberal Intergovernmentalism
LTO	Land- en Tuinbouworganisatie Nederland
MKB	Koninklijke Vereniging MKB-Nederland
MS	member states
NGO	non-governmental organisation
OECD	Organisation for Economic Co-operation and Development
p.	page
PiS	Prawo i Sprawiedliwość
PO	Platforma Obywatelska
PvdA	Partij van de Arbeid

PVV	Partij voor de Vrijheid
SchwarzArbG	Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung
SER	Sociaal-Economische Raad,
SGB	Socialgesetzbuch
SPD	Sozialdemokratische Partei Deutschland
TAZ	Die Tageszeitung
TCN	third country national
TEC	Treaty Establishing the European Community
TFEU	Treaty on the Functioning of the European Union
UK	United Kingdom
US	United States
USSR	Union of Soviet Socialist Republics
VDMA	Verband Deutscher Maschinen- und Anlagenbau
VNO NCW	Verbond van Nederlandse Ondernemingen en Nederlands Christelijk Werkgeversverbond
VVD	Volkspartij voor Vrijheid en Democratie
WAV	Wet arbeid vreemdelingen

1. Introduction

1.1. Business as usual in EU Labour Migration Policies?

The failed referenda on the EU constitution, the public protests in the course of the Euro and Schengen Crises, the increasing electoral success of openly Eurosceptic parties in European and national elections and last but not least, the British decision to leave the European Union (EU), clearly demonstrate that the European public is no longer ‘rationally ignorant’ about happenings and decisions at the EU level. Instead, the Union “has become the object of controversial ‘mass politics’” (Grande & Hutter, 2016b, p. 4). The times when European integration and policy-making were insulated from public scrutiny and dominated by elite and organised business interest, as argued by Moravcsik’s Liberal Intergovernmentalism (Moravcsik, 1998), are seemingly gone.

These observations induced a growing body of literature, most prominently Postfunctionalism, to theorise the causes and drivers of this heightened public contestation (Börzel & Risse, 2008; Kriesi, 2009; Marks & Hooghe, 2009). The key mechanism that brings us from Moravcsik’s insulated ‘client politics’ to the Postfunctionalist ‘mass politics’ is politicisation – referring to the phenomenon that the EU is subject to debates and controversies in the broader public sphere (Statham & Trenz, 2012). This growing public scrutiny results in a ‘constraining dissensus’ that incentivises governments to prioritise the concerns of the public over issue-specific interests of business. Fearing for their electoral fortunes when making an ‘unpopular decision’ in Brussels, governments tend to adopt a sceptical stance towards further authority transfer to the EU – even more so if integration moves into policy areas of ‘core states powers’ that touch upon national sovereignty (Genschel & Jachtenfuchs, 2018). One of those policy fields is (labour) migration policies.

There is no doubt that European integration and immigration are intrinsically linked. The European project, enabling the free movement of goods, capital, services but also people, constitutes a shock to state sovereignty as member states lose to a great extent the control over who enters their state territory (Favell & Hansen, 2002, p. 585). Accordingly, both European integration and immigration can be easily framed as threatening national identity and sovereignty. Thus, populist right-wing movements and parties have little trouble in tying both issues into a tightly coherent political program, whereby the EU is to be blamed for an increase in in-migration. Hence, EU labour migration policies targeting third country nationals is a very

likely case for politicisation to unfold a moderating effect upon the responsiveness of governments.

Against the background of free movement of EU citizens and states' international obligations to asylum seekers and refugees, deciding over the entry and stay of third country nationals for the purpose of work was long considered the last bastions of the sovereign nation state (Lavenex, 2007). Nonetheless, under competitive pressure from established immigration countries such as the United States and Canada for the 'best and the brightest', business and member states increasingly acknowledge the necessity to harmonise and liberalise labour migration policies at the European level to strengthen the international visibility and attractiveness of the EU as an immigration destination for non-EU migrants.

Despite the growing contestation of both the EU and immigration in recent years, we observe a comeback of 'managed migration' both at the national as well as the European level, with governments seeking to attract non-EU citizens to European labour markets (Favell & Hansen, 2002; Menz, 2009a). After years of zero-migration and recruitment stops, organised business, facing labour shortages, push policy makers to facilitate access to foreign labour by liberalising labour migration regulations. Following a neoliberal paradigm, they frame labour migration as indispensable for economic growth, competitiveness and innovation (Lahav & Guiraudon, 2006; Menz, 2007, 2016). Hence, unlike legislations on asylum and border protection, labour migration policies raise obvious interests of business, as employers expect concentrated benefits from facilitated access to labour forces from third countries. As a consequence, the impact of employers' organisations on the design of migration policies increased (Menz, 2009a), leading to an "utilitarian, selective and economically-oriented approach" towards immigration (Carrera, 2007).

Thus, the harmonisation of EU labour migration policies targeting third country nationals is an ideal policy field to examine the dilemma of governments when business and mass public interests clash; while employers push for facilitated admission rules for foreign labour and often also for harmonised regulations at the European level, governments fear for their electoral success when following the employers' demands in Brussels, due to an increasing public contestation of both European integration and immigration at home.

1.2. Theoretical Puzzle

These empirical and theoretical challenges pose several questions: Whose interests do member states represent when negotiating policies at the European level? Is it, as long assumed and theorised, the interests of strong domestic economic interest groups? Or does an increasing public contestation of European integration restrain member states from responding to business interests and harmonise policies according to functional interdependence? If so, do the policy positions of member states then increasingly reflect concerns related to national identity and sovereignty rather than issue-specific economic interests? Hence, is Moravcsik's pluralist understanding of preference formation still valid in an increasingly politicised EU?

Against this backdrop, this dissertation sets out to investigate the preference formation of EU member states regarding EU labour migration policies targeting third country nationals. It thereby goes to the heart of one of the big theoretical debates in the literature on European integration. In the scholarly literature on European policy-making, Moravcsik's Liberal Intergovernmentalism (Moravcsik, 1998) most prominently argues that governments enjoy the leeway of the 'permissive consensus': "in the shadow of a rationally ignorant public" (Hix, 2018, p. 1600), resulting from a generally low salience of EU policy-making at the domestic level, governments represent the interests of strong domestic producer groups at the European level. Hence, the 'Client Politics Mode' expects governments to be responsive to issue-specific interests of employers. Whether a member state supports the harmonisation of policies at the EU level relates to the issue-specific functional dependence; if a member state has attractive and effective unilateral policies at hand to meet the demands of domestic business interests, the government will be hesitant to harmonise policies at the European level. If issue-specific dependence is perceived as strong because employers are dependent on a European concerted effort to attract migrants, the government supports harmonisation and liberalisation at the EU level.

At the same time, the increasing public opposition to the EU, fuelled by recent crises, induced a growing body of scholarly literature to theorise the causes and consequences of this contestation. Scholars observe that due to the authority transfer to the EU in almost all policy fields since the Maastricht Treaty, European integration and policy-making is increasingly publicly politicised, meaning that it is highly visible in the public sphere and contested among the wider citizenry (de Wilde & Zürn, 2012; Grande & Hutter, 2016b; Marks & Hooghe, 2009; Statham & Trenz, 2012). This politicisation is deeply rooted in a new political cleavage emanating from globalisation, which pits losers and winners of globalisation against each other.

Populist right-wing parties are considered crucial actors to drive politicisation by framing European integration as threatening national identity and sovereignty. Hence, politicisation is considered to be driven mostly by cultural-identitarian rather than socio-economic concerns of the public. EU decision-making is no longer an exclusively elite-driven process that enjoys public ‘permissive consensus’ (Lindberg & Scheingold, 1970). Rather, it faces a ‘constraining dissensus’ (Grande & Kriesi, 2015; Marks & Hooghe, 2009) and mass interests influence governments’ positions just as well or even outdo economic interests of employer and business organisations (Marks & Hooghe, 2009). Hence, politicisation is expected to impose a constraint on policy-makers during EU negotiations, which limits their capacity to represent the interests of strong producer groups (Grande & Hutter, 2016b). In an increasingly politicised EU, Postfunctionalists claim “to see a downward pressure on the level and scope of integration (Marks & Hooghe, 2009, p. 21) and “a mismatch of functionally efficient and politically feasible solutions” (Marks & Hooghe, 2009, p. 23). Thus, if politicisation is high during negotiations in the Council of the European Union (hereinafter referred to as ‘Council’), we expect state preferences to follow the interests of their more communitarian-minded electorate rather than the functional, issue-specific interests of employers (Kleine & Pollack, 2018, p. 1495). Accordingly, governments are inclined to oppose or limit harmonisation and restrict admission conditions and rights for migrants.

Like European integration, also immigration is a highly sovereignty- and identity sensitive policy field. It is therefore not surprising that immigration experienced high levels of politicisation (Geddes & Scholten, 2015; Morales, Pilet, & Ruedin, 2015; van der Brug, D’Amato, Berkhout, & Ruedin, 2015). Accordingly, the scholarly literature expects policy-makers to be more responsive to anti-immigrant public demands in times of high public politicisation of immigration, even more so if authority in this field is supposed to be transferred to the European level (Givens & Luedtke, 2004, 2005; Hoeglinger, 2016; Lahav & Guiraudon, 2006; Morales et al., 2015). It renders policy-decisions to be highly contested on two dimensions: first, to what extent policies should be harmonised at the EU level (the polity-dimension) and second, to what extent labour markets should be opened up for third country nationals (the policy-dimension). Thus, combining two polarising and salient issues - European integration and migration - “few aspects of European governance should have the same mobilising potential as European migration policy” (de Wilde, Leupold, & Schmidtke, 2016, p. 16). However, also labour migration is considered to be a policy field that is predominantly shaped by business interests, both at the national (Freeman, 1995) and the European level (Menz, 2009b). Hence, the policy field of labour migration targeting third country nationals,

subject of both pressure from business and right-wing populist forces, lends itself as the ideal policy field to study the responsiveness of governments to either mass public interests or issue-specific business interests

Against this theoretical and empirical backdrop, I investigate in the following chapters the question *whether and to what extent politicisation of EU and immigration moderates the responsiveness of EU governments to issue-specific employer interests and interests of the mass public when formulating their policy position regarding EU labour migration policies.*

1.3. Contribution

This dissertation brings theoretical, methodological and empirical contributions to the academic literature on EU policy-making: First and foremost, the contribution of this dissertation is theoretical: the literature on politicisation mostly theorises and studies the causes and drivers of politicisation, rather than its consequences for policy-making at the European level and for the future path of European integration in general. By drawing on literature in the traditions of both Postfunctionalism and Liberal Intergovernmentalism, this dissertation formulates expectations for the moderating effect of politicisation upon the responsiveness of governments to the interests of a more communitarian-minded public as well as the issue-specific interests of organised business.

Accordingly, on the empirical side, this study systematically tests the Postfunctionalist challenge against the expectations of Moravcsik's pluralist understanding of preference formation in the Council's day-to-day policy-making. It is indispensable to examine whether the long-discussed phenomenon of politicisation has actual political consequences for policy makers, the policy-making process and eventually for the future path of European integration. Furthermore, despite the fact that European integration and immigration are intrinsically linked, the particularities of the Europeanization of labour migration policies targeting third country nationals received only scant attention in the scholarly literature on immigration policy-making and even less in both aforementioned theoretical schools of European integration. The employers' interests in and their impact on the harmonisation of EU labour migration policies and the consequences of an increased politicisation of immigration for national and EU policy-making are understudied. However, this closer coupling of two highly sovereignty and identity-sensitive issues, European integration and immigration, "and its consequences for the politicisation, certainly merit closer attention in future research" (Hoeglinger, 2016, p. 59).

Hence, I contribute on the one hand to the literature on immigration policy-making by adding a European dimension to the research objective, and, on the other hand, to the theories of European integration by studying the closer coupling of European integration and immigration, as the latter is an issue central to the future of the former (Favell & Hansen, 2002, p. 581).

On the methodological side, this dissertation makes a two-fold contribution: First, while most studies on EU responsiveness have focused on the governmental voting behaviour in the Council or how governments sell their decision and policy position to the public, I investigate the initial policy position that governments represent and defend during the negotiations (Wrátil, 2018, p. 53). To do so, I draw on a fruitful, but underused source of governments' policy positions: the minutes of Council negotiations. It allows us to systematically extract the policy positions of governments with regard to the policy content of directives as well as the preferred level of harmonisation. Second, by following Rauh (2016) and Boomgaarden et al. (2010), I measure the politicisation of immigration and politicisation of EU quantitatively by drawing on frequency analysis of mass media and data on public opinion towards EU and immigration at the national level of four member states across a time period of 15 years. It provides a truly time-consistent assessment of politicisation of immigration and the EU among the wider citizenry at the national level. The quantitative measurement of politicisation enables us to make statements about the degree of politicisation that goes beyond anecdotal evidence of periodical strong or weak public salience or contestation of issues. It allows us to investigate whether politicisation has a moderating effect on the responsiveness of governments.

1.4. Research Design

Hence, the research design of this dissertation consists of two parts: In order to examine the moderating effect of politicisation, as a first step of my research project, I develop two indices on the national level of four member states that capture the moderating variables politicisation of immigration and the politicisation of the EU quantitatively. I operationalise politicisation along its two main components: salience and polarisation. I measure *salience* of EU as the monthly number of articles with reference to the EU or EU institutions expressed as the share of the overall monthly articles in one daily quality newspaper per member state. The same is applied to issues of immigration. Using Eurobarometer data on public opinion towards the EU and immigration, I measure *polarisation* as the squared average deviation and kurtosis (DiMaggio, Evans, & Bryson, 1996; Down & Wilson, 2008; Rauh, 2016). Eventually I create two composite additive indices, one for the politicisation of immigration and one for the

politicisation of the EU, which include the components salience and polarisation, by z-standardise the three components based on the mean and standard deviation.

Whether and how the variation in the level of politicisation of the EU and immigration has consequences for the preference formation of member states regarding EU labour migration policies is subject of the qualitative second part of my research project. I examine the preference formation process of governments of selected member states regarding five EU labour migration initiatives. The choice of countries that I study “go beyond the usual suspects” of ‘older immigration countries’ in North Western Europe. I also look at the experiences of ‘new’ immigration countries of the Eastern and Southern Europe (Geddes & Scholten, 2016, p. 19). Even though this will increase the contending and constraining factors, it is important to widen the geographical focus “if genuine elements of novelty in European immigration politics and policy are to be properly captured” (Geddes & Scholten, 2016, p. 19f.). My main research focuses on Germany and the Netherlands, but I include Poland and Spain as minor case studies. The countries differ in their immigration history and whether the EU and immigration are politicised according to a cultural-identitarian or a socio-economic logic (Kriesi, 2016, p. 44).

I examine the responsiveness of governments in their policy position to certain policy proposals of the European Commission (hereafter referred to as ‘Commission’) in the field of labour migration. The chosen policy sub-cases raise obvious interests of business and employers and were subject of strong lobbying activities. In addition, the proposals vary regarding the group of immigrants they target, such as high or low skilled migrants, regular or irregular labour migrants, short or long-term migration. Under study are the Blue Card Directive, proposed in 2007, targeting highly skilled regular labour migrants; the Directive on Sanctions for employers of irregular migrants (hereafter referred to as Employer Sanction Directive), proposed in 2007, targeting low-skilled, illegal employment of irregular migrants; the Seasonal Workers Directive, proposed in 2010, targeting low skilled, temporary and regular migration; the Directive on Intra-Corporate Transferees (ICT), proposed in 2010, targeting high skilled, temporary and regular migration and the Revision of the Blue Card Directive, as proposed in 2016.

1.5. Chapter Outline

In Chapter 2 I outline my theoretical framework. I mainly rely on the insights of two strands of scholarly literature: On the one hand, approaches in the rational institutionalist tradition of

preference formation that focus mostly on the impact of (economic) interest groups, particular the Liberal Intergovernmentalism (Moravcsik, 1998). On the other hand, I draw on theoretical insights of the Postfunctionalist Theory of European Integration (Marks & Hooghe, 2009). It expects that in an increasingly politicised EU, Moravcsik's pluralist account of policy-making loses its explanatory power, as governments are unable to ignore the Eurosceptic parts of the electorate. Accordingly, we would expect the responsiveness of governments to mass public or employer interests to vary according to the degree of politicisation of the EU and immigration at the time of the negotiations. Chapter 3 describes first, the rationale behind the choice of the policy field of labour migration policies targeting third country nationals to study the Postfunctionalist challenge of Liberal Intergovernmentalism. Second, I explain the selection of policy proposals and countries under study. Third, I outline the research design, which consists of a quantitative descriptive part and qualitative case analyses.

Chapter 4 is the first main country case study on Germany. The politicisation of the EU and immigration is driven by a cultural-identitarian logic. Hence, we would expect politicisation to constrain member states in representing the interests of employers and instead respond to the mass public interests. And indeed, German governments predominantly sought to restrict the admission conditions of third country nationals, increase national discretion and decrease the overall harmonisation of EU labour migration policies. To a great extent this is related to sovereignty concerns of policy-makers, which are reinforced in times of strong politicisation. However, the hesitation to cede authority to the European level can also be attributed to the reluctance of employers' that fear for their influence on the national policy design and their competitive advantage to attract talents. Thus, both Liberal Intergovernmentalism as well as Postfunctionalism help to explain the German policy positions. More precisely, it seems that the employers' sceptical stance towards harmonisation (deriving from a weak issue-specific dependence on EU policies to attract labour migrants) provides the German government the leeway to act according to the 'Mass Politics Mode' at the EU level and to serve the interests of the public.

Chapter 5 comprises the second main country case study of the Netherlands. In the Netherlands contestation to the EU and immigration are driven by cultural-identitarian concerns. Surprisingly, contrary to the Postfunctionalist expectations, my findings suggest that communitarian concerns related to national sovereignty and identity do not surface in the Dutch policy positions at all. In contrast to Germany, in most cases the Dutch government strongly encouraged the liberalisation and harmonisation of labour migration policies at the EU level. It

thereby followed closely the interests of employers throughout all negotiations of legal labour migration policies, irrespective of the level of politicisation and the success of national right wing populist parties at the time of the negotiations. What explains the difference to the German case is that Dutch employers and policy-makers perceive themselves to be more strongly dependent on a concerted European effort to increase the attractiveness of the Netherlands as an immigration country relative to other big players in the competition for talents such as the US and Canada. The Dutch government only negotiated more national discretion (and therefore less harmonisation) whenever it sought to prevent harmonised provisions that are more restrictive than national admission schemes. Contrary to Postfunctionalist expectations, politicisation has had no moderating effect on the responsiveness of the Dutch government. Instead, the Dutch preference formation corresponds strongly with ‘Client Politics Mode’ and reflects the greater Dutch dependence on harmonised EU policies. Hence, confirming Moravcsik’s expectations, ‘employer interests trump mass public interests when both come into play’.

Chapter 6, a minor case study on Spain, finds that the EU and immigration are predominantly contested according to a socio-economic distributional logic. As expected by the literature, there is no evidence for a constraining and moderating effect of politicisation upon the responsiveness of Spanish governments. Compared to countries with a cultural-identitarian logic of politicisation, we seem relatively more references to socio-economic concerns such as social dumping and exploitation of migrant workers, and less identity-related concerns. As a ‘recent host country’, Spain shows an increasing issue-specific dependence on a concerted European effort to attract economic migrants. Even though employers’ organisations pay only scant attention to legislative process at the EU level, the Spanish governments seek to download liberal immigration policies from the European to the national level and to increase the international visibility by integrating into a EU-wide labour migration scheme. It is enabled to do so and follow the needs of the economy more broadly, it appears, because of the lack of a cultural-identitarian contestation of the EU. Hence, issue-specific dependence on harmonised labour migration policies and the absence of identity politics seem to explain the policy positions of the Spanish government. Accordingly, we observe ‘Client Politics without Clients’.

Chapter 7, the second minor case study on Poland, states that Polish employers only recently started “developing an appetite” (Menz, 2009b, p. 198) for labour migration management in general, and in particular for its harmonisation at the European level. Moreover, in a system with only weak corporatist structures, the influence of employers is considered to be weak.

Unilateral labour migration policies that target citizens of ‘culturally similar’ neighbouring countries are considered to sufficiently meet the Poland’s growing demand for mostly low-skilled labour migrants. At the same time, the EU and immigration are increasingly politicised along cultural-identitarian lines. As a result, identity- and sovereignty concerns reflect very strongly in the government’s policy position, irrespective of the level of politicisation. Hence, the Polish case study confirms the hunch that weak issue-specific dependence provides governments the leeway to follow mass public interests at the EU level.

Chapter 8 concludes the dissertation by comparing the responsiveness of governments across countries. According to the theoretical framework of the thesis, we would expect the responsiveness of governments to mass public or employer interests to vary according to the degree of politicisation of the EU and immigration at the time of the negotiations. However, the findings suggest that major differences in the negotiation positions can be observed between member states, rather than within member states. While Germany mostly sought to restrict admission criteria and limit harmonisation, the opposite is the case for the Netherlands. The negotiation positions of Spain are closer to the liberal and European Dutch positions, while Poland’s restrictive stance is similar to that of Germany. That the policy positions are clustered according to member states rather than the level of politicisation hints already at a weak moderating effect of politicisation on the responsiveness of governments. Instead, the findings suggest that the policy positions predominantly reflect the issue-specific dependence of member state on common EU policies.

1.6. Mass Politics in the Shadow of an ‘Ignorant Business’

The optimistic lens of Moravcsik’s Liberal Intergovernmentalism draws a picture of a functionally efficient EU, whereby member states represent the interests of the strongest economic interest groups and decide to cede authority to the European level when functionally necessary. The Postfunctionalist instead expect to see less integration and harmonisation, because governments ‘have to look over their shoulders’ and respond to the sceptical attitudes of their public in times of strong politicisation. However, the case studies suggest that even in this highly sovereignty and identity sensitive field of EU labour migration policies, the evidence for a moderating effect of politicisation is very weak. Independent of the level of politicisation, if the issue-specific dependence on a concerted effort is perceived as high, because unilateral policies are not considered sufficient to attract labour migrants, governments will broadly follow the interests of employers and agree to harmonise and liberalise admission schemes at

the EU level. Nevertheless, this does not imply that mass politics are irrelevant. Yet, it appears that it is not high levels of politicisation but primarily the ‘shadow of an ignorant business’ (deriving from low issue-specific dependence) that incentivises governments to serve the sovereignty concerns of the communitarian parts of their electorate. Hence, the findings seem to suggest that in a Postfunctionalist Union governments are inclined to follow cultural-identitarian concerns more readily and strongly if business is ignorant or sceptical of EU harmonisation.

2. The Theoretical Puzzle: Issue-Specific Economic Interests or Mass Public Interests?

How can we explain the policy preferences of EU member states both in general, and in the context of EU labour migration policies? As this dissertation sets out to test the theoretical expectations of the Postfunctionalist Theory of European Integration against the long established theoretical and empirical observations of Moravcsik's Liberal Intergovernmentalism, I rely mostly on approaches situated in those two strands of scholarly literature, dealing both with EU integration and policy-making as well as immigration. In response to the above mentioned research gaps, this chapter reviews previous research in both traditions and derives testable predictions about the responsiveness of member states to issue-specific economic interests or mass public interests, when negotiating the harmonisation of EU labour migration policies in the Council.

The first part of the theoretical chapter offers an overview of the relevant approaches in the tradition of the Liberal Intergovernmentalism, depicting EU integration and policy-making as largely elite-driven. Strong domestic interest groups expect benefits or costs from a policy change and therefore have the incentive to mobilise politically. The interests of the strongest domestic interest groups are represented by governments in the Council. Moreover, the chapter draws on insights presented by political economy approaches to immigration policy-making, which parallel Moravcsik's understanding of a pluralist policy-making process and stress mostly the impact of economic interest groups on governments' positions regarding immigration policies at the European level (Menz, 2007, 2011, 2016) and the national level (Freeman, 1995). Taken together, the 'Client Politics Mode' predicts that member states respond mostly to the issue-specific interests of domestic employers' organisations. Governments therefore seek to liberalise and harmonise labour migration policies at the EU level if the functional interdependence is perceived as significant.

The second part of the theoretical chapter draws on theoretical insights of the Postfunctionalist Theory of European Integration, which challenges the pluralist understanding of the 'Client Politics Mode'. It argues that in an increasingly politicised EU, electoral considerations increasingly impact preferences of decision-makers. Closely related to the latter school is the academic literature on the subject of politicisation, which studies drivers, mobilisers and - to a lesser extent - consequences of increased politicisation of the EU. In the literature on

immigration policy-making are only a few studies dealing with the politicisation of immigration and its effects on state preferences regarding national immigration policies (Givens & Luedtke, 2005; Morales, Pilet, & Ruedin, 2015) and EU immigration policies (Givens & Luedtke, 2004). Even though the Postfunctionalist branch of literature lacks clear and testable predictions about the consequences of politicisation, collectively, these studies sketch a constraining role for politicisation. Hence, the ‘Mass Politics Mode’ expects that the governmental preferences to be responsive to mass public interests of the public if politicisation of both the EU and immigration is high. Accordingly, the government will oppose or water down harmonisation, demand discretionary power over admission decisions and restrict admission conditions and rights of migrants.

2.1. Liberal Intergovernmentalism and Client Politics

2.1.1. European Integration in the shadow of a rationally ignorant public

The most prominent school of thought to explain preference formation of member states regarding European integration is Moravcsik’s ‘baseline theory’ (Schimmelfennig, 2004, p. 93) of European integration. It assumes that the central actors of European Integration are governments of member states and their driving force is effective socio-economic problem-solving. Liberal Intergovernmentalism derives its theoretical roots from the assumptions of two schools: the theory of international relations and ‘Rational Choice Theory’. The former assumes that nation states are the central actors in international politics and they are “in the absence of a centralized authority making and enforcing political decisions” (Schimmelfennig, 2004, p. 76). ‘Rational Choice Theory’ claims that states are rational actors who, based on their preferences, choose the option that brings them the greatest benefit. National preferences are defined as „an ordered and weighted set of values placed on future substantive outcomes“ (Moravcsik, 1998, p. 24). This set of preferences is regarded as exogenous to international negotiations.

In order to analyse and understand the process of European integration and the decision of European nation states to pool and delegate national sovereignty in favour of a supranational institution, Moravcsik (1998, p. 24) proposes a three-stage model. Each stage employs a distinct theory: At the domestic stage, the liberal theory of state preferences explains the ‘demand’ for European integration and supranational governance in a certain policy field, claiming that national preferences are determined by organised interests, which reflect issue-specific

functional interdependence (Hix, 2018, p. 1597; Moravcsik, 1998). At the international level - the second stage of Moravcsik's model - member states negotiate the exact arrangement of the integration step and the distribution of the gains and costs that are expected from the cooperation. The bargaining theory hypothesises that the outcome of the negotiations derives from the „asymmetric interdependence” meaning that „those who gained the most economically from integration compromised the most on the margin to realize it, whereas those who gained the least or for whom the costs of adaptation were highest imposed conditions“ (Moravcsik, 1998, p. 3). At last, at the supranational level, the 'Functional Theory of institutional Choice' argues that member states choose to delegate or pool authority at the supranational level in order to credibly commit to the agreement reached at the second stage.

Preference formation

The subsequent section presents a more detailed account of the first stage of Moravcsik's model, explaining and positioning “the aggregation of state interests at the national level as the invariable starting point” (Kleine & Pollack, 2018, p. 3), as this stage is central to the dissertation's purpose to explain preference formation of member states. Moravcsik claims that state preferences towards a European integration step or a certain policy at the European level are formed through shifting pressure and demands from domestic social groups, because international cooperation and agreements create domestic winners and losers, which vary depending on the respective policy area and country (Kleine & Pollack, 2018, p. 4; Moravcsik, 1998, p. 488). He differentiates between diffuse and specific interests, while claiming that the latter dominate the preferences of governments. Diffuse interests of the mass public “are articulated either via interest group politics or via the standard ‘transmission belt’ mechanisms of domestic politics: party competition, national parliament elections, and post-election government formation” (Hix, 2018, p. 1598). Yet, he goes on arguing that democratic representation is always biased in favour of one group over another. Those that expect to benefit or lose the most from a policy change at the European level, have the greatest incentive to mobilise in order to influence the governmental policy position. Mobilisation is furthermore facilitated if the benefits (or costs) of a policy change are concentrated in a specific interest group, while the costs (or benefits respectively) diffuse. Hence, the “more intense, certain, and institutionally represented and organized” (Moravcsik, 1998, p. 36) interests are, the “more difficult for any government to ignore their demands when weighting them against broader regulatory and fiscal objectives” (Kleine & Pollack, 2018, p. 4).

Hence, Moravcsik concludes that specific and well organised interests trump the diffuse interests of, for instance, trade unions, environmental groups or consumers. He therefore claims that “when political representation is biased in favour of particularistic groups, they tend to ‘capture’ government institutions and employ them for their ends alone, systematically passing on the costs and risks to others. The precise policy of governments depends on which domestic groups are represented” (Moravcsik, 1997, p. 530). Primarily, member states’ preferences are biased towards the specific interests of producers. Said interests in turn are shaped by international trade and cooperation and the consequent interdependencies and externalities (Hix, 2018, p. 1597). Secondary to the specific interests of producers, broader macroeconomic preferences of the governmental coalition also have influence on the preference formation (Moravcsik, 1998, p. 447f.).

Liberal Intergovernmentalism and Mass Public Interests

A common and recent critique of the Liberal Intergovernmentalism is that by focusing primarily on economic or producer interests, it neglects the diffuse interests of the broader public (Börzel & Risse, 2008; Kleine & Pollack, 2018; Naurin, 2018). However, mass public interests are not entirely irrelevant for Moravcsik’s approach, as he assumes that specific well-organised interest groups can only capture governments if the topic under discussion is of low salience or minor importance to the voters. Hence, governments and governed form a ‘permissive consensus’, meaning that voters are either “rationally ignorant” (Hix, 2018, p. 1599) about policy changes at the EU level, because EU decision-making is of low salience at the national level and voters are not encouraged to sanction their governments in the upcoming elections for decisions made in Brussels, or they are content to trust their government to represent their interests. In turn, however, if issues are salient and mass political preferences conflict with producer interests, governments will represent the preferences of the median voter rather than organised economic interests (Hix, 2018, p. 1596). Hence, the Liberal Intergovernmentalism can also theorise governments as gatekeepers for preferences of the electorate (Zaun, 2018). Nevertheless, Liberal Intergovernmentalism mainly “attributes salience and political mobilization to the certainty and distribution of (economic) integration gains” (Kleine & Pollack, 2018, p. 1498). Hence, Moravcsik points to (objective) economic, rather than or (subjective) identity-related anxieties.

In general, however, Liberal Intergovernmentalism considers the low-salience mode of the permissive consensus to prevail. Hence, based on this body of literature we can anticipate that governments are captured by specific interests of strong economic interest groups, which reflect

their issue-specific functional interdependence. This means that “governments with attractive and effective unilateral policies tend to be sceptical of co-operation, while governments able to achieve policy goals only by altering the pattern of externalities imposed by the policies of foreign government policy tend to favour it” (Moravcsik & Nicolaidis, 1999, p. 61).

2.1.2. Political Economy of Immigration Policies

To date, labour migration policies in general and in particular the harmonisation of labour migration policies at the EU level have received only scant attention in the academic literature on both immigration and European integration, for one reason because until the late 2000s, there was not much to explain about EU labour migration policies (Geddes & Niemann, 2015, p. 530). At first glance, the EU’s Area of Freedom, Security and Justice, seems to be an unlikely policy-field for Moravcsik’s pluralist account of preference formation, due to its distance from commercial interests of economic interest group politics (Schimmelfennig, 2018, p. 1585). Accordingly, most theoretical and empirical accounts, which bring immigration and European integration together, explain and conceptualise the control-oriented aspects of EU’s immigration policy. Most influential are the ‘venue shopping approaches’ focusing on EU legislation on family reunification and asylum (Geddes & Niemann, 2015, p. 530). In this tradition, most prominently Guiraudon (2000) argues that in the EU’s intergovernmental setting of the 1990s and 2000s member states sought to restrict immigration by harmonising rules at the European ‘venue’, mainly because it allowed them to circumvent domestic constraints exerted by Courts or pro-immigrant-groups. However, these approaches fall short of explaining more recent trends in EU migration policies. Since the Commission’s Green Book on immigration in 2005, several legislations have been adopted that do not primarily seek to control immigration in the sense of curbing immigration, but seek to harmonise and facilitate labour migration to the EU from third countries (Roos, 2013a).

As research on EU labour migration policies is scarce in general, there also remains a paucity of theoretical and empirical accounts in the tradition of the Liberal Intergovernmentalism. Despite the fact that “lobbying by employers is seen as a crucial driving force of policy change, both on the national and the European level” (Laubenthal, 2008, p. 4), little attention has been paid to the impact of domestic economic interest groups on their governments’ preferences and ultimately on EU labour migration policies. Labour migration policies is a sub-field of EU’s Area of Freedom, Security and Justice that has the potential to spark issue-specific interests of business and business organisations. Therefore, scholars increasingly suggest to analyse labour

migration policies through the lens of Moravcsik's approach, as it "is important to analyse national structures and preferences in order to better understand EU-level policies" (Cerna, 2013, p. 3) in the area of (labour) migration policies; The suggestion comes also because labour migration is the least Europeanised migration policy field, where national prerogatives continue to play a key role (Hampshire, 2016). Before turning to political economy literature on EU labour migration policies, the following section presents a prominent theoretical account on the determinants of *national* labour migration policies and the role of employers' interests, which can lend plausible theoretical insights for the domestic process of preference formation regarding policies at the EU level.

National immigration politics and 'client politics'

Gary Freeman (1995) established the most influential political economy approach to national immigration policy. It seeks to explain the often observed 'public opinion-policy gap', which means that immigration policies tend to be more liberal than what the restrictive demands of the public would suggest. Consistent with Moravcsik's rational-choice and pluralist conception of domestic politics, Freeman argues that "immigration tends to produce concentrated benefits and diffuse costs, giving those who benefit from immigration greater incentives to organize than persons who bear its costs" (Freeman, 1995, p. 885). The beneficiaries of immigration are primarily well-organised employers, but also pro-migrant groups, whose liberal interests dominate the government's preferences with regard to national immigration policies. In contrast, the diffuse bearer of the costs are deemed to pursue restrictionist interest, which are, however, not well articulated, rarely organised and therefore too slow to "mobilise and crystallize" (Freeman, 1995, p. 884). Freeman even claims that voters are often "rationally ignorant" or indifferent on issues of immigration (Freeman, 1995, p. 883). He refers to this mode of policy-making as 'Client Politics', according to which "small and well-organized groups intensely interested in a policy develop close working relationships with those officials responsible for it. Their interactions take place largely out of public view and with little outside interference. Client politics is strongly oriented toward expansive immigration policies" (Freeman, 1995, p. 886).

EU labour migration policies and business interests

Along these lines, one of the most elaborated explanations of migration policies within and to a certain extend also at the European level is the political economy approach developed by Menz (2007, 2009b, 2011, 2016). He sees largely economic and labour market needs as drivers

behind the rediscovery of ‘managed migration’ in neoliberal competition states and at the European level. Employers are faced off against a general ‘securitization’ of migration policies across the EU, which directly links immigration to concerns such as terrorism and crime with rather restrictive consequences. Therefore, employers try to establish another notion of a security concern which affects the national economy: the “fears of being ‘outgunned’ in a global battle for brains” (Menz, 2009b, p. 6). Hence, in neoliberal competition states, the producing class adopts an active stance with regard to immigration and sways policy makers successfully to liberalise admission schemes. Producers make a rhetorical link between economic competitiveness and liberalised economic migration policies, the latter providing the required human resources necessary to ensure the former. Hence, “human resources matter greatly and migrants are welcome, as long as they promise to contribute to the prerogatives of a business-friendly national economic growth strategy. For this reason it becomes possible for employer associations in particular to shape economic migration policy more fully than during the era of the recruitment stop” (Menz, 2009a, p. 317f.). As a result, business and employers increasingly “co-manage migration policy design” (Menz, 2009a, p. 317f.).

Menz also observes that “the flipside of newly liberalised economic migration policies is more restrictive practices towards unsolicited migration flows, characterized as constituting an economic drain and a potential political menace” (Menz, 2009a, p. 318). The outcome of a policy-making process that is primarily shaped by the needs of employers and the labour market are policies that yield ‘categories’ of migrants, such as high or low-skilled workers, family migrants and refugees, as is also reflected in the newly developed labour migration policies at the EU level (Carrera, 2007, p. 2; Friðriksdóttir, 2016; Huysmans, 2006, p. 117). This utilitarian approach to immigration policy-making, is according to Guiraudon (1998) de-politicising the decision of membership by passing it over to technocratic experts, which “reproduces functionalist imaginations of political community” (Huysmans, 2006, p. 117). Nevertheless, Boswell (2014) argues that employers also have economic interests in illegally hiring irregular migrants. In particular small- and medium-sized enterprises often rely on cheap and flexible labour to remain competitive in an increasingly international competitive environment. Hence, Freeman’s pluralist account therefore also offers a plausible explanation why to a certain degree countries tolerate irregular migration (Boswell, 2014, p. 50).

Employers’ associations are not expected to lobby simply for more liberal immigration policies, but the labour they are demanding depends on the specific production system they are based in. The European labour markets are still so fragmented and structurally different that the positions

of European business associations are often too general for the rather national or sector specific interests of domestic interest groups representing the lowest common denominator. This is why national employers' associations are expected to lobby for their interests at the domestic level, hence, they approach their national governments (Caviedes, 2008; Menz, 2007). This understanding parallels Moravcsik's three-step model of preference formation, whereby domestic interests approach their national governments, which in turn represent the business interests at the international level. Caviedes (2010, p. 202) goes further by arguing that many interest groups oppose European or international efforts with regard to labour migration in general, as they are "often already entrenched in the existing domestic decision-making process, so there is less incentive for them to open up a new policy-making arena where they would risk being crowded out by new actors or possibly excluded entirely" (Caviedes, 2010, p. 202).

Hence, what we can derive from the body of literature on (EU) immigration policy-making so far is that governments are highly responsive to the interests of employers and employers' organisations for two reasons: first, (labour) migration policies are considered to be 'off the radar' of the general public, but attract the attention of certain constituencies with concentrated and issue-specific interests in the matter, namely, employers. Second, given the intensifying global competition (in general and) for talents and workers in particular, the impact of domestic employers on the design of labour migration policies increases. Hence, the 'rational ignorance' of the public in immigration policies gives governments the manoeuvrability to represent the growing and mostly liberal business interests in form of facilitated access to labour migrants from third countries.

2.1.3. Expectations of the 'Client Politics Mode'

Even though Liberal Intergovernmentalism is considered as one of the 'grand theories of European Integration', none of the literature reviewed above dealing with EU labour migration policies explicitly refers to Moravcsik's theoretical model and applies it to explain the recent harmonisation of EU labour migration policies. Nevertheless, the literature on migration policies also offers prominent pluralist approaches of policy-making, first and foremost Freeman's mode of 'Client Politics'. It parallels Moravcsik's understanding of the preference formation of member states with regard to EU policies as described in the first step of Liberal Intergovernmentalism's three-stage model. Hence, both strands of scholarly literature argue that the process of governmental preference formation is elite-dominated and shaped away from a 'rationally ignorant' public eye. Being 'off the public radar' gives way to a preference

formation process that is mainly informed by strong domestic interest groups, which expect to benefit from a policy change and therefore have the incentive to mobilise politically. Taken together, if we follow these pluralist lines of argument and assume that employers most strongly impact governmental preference regarding both national immigration policy-making and EU policy-making, we would expect the same to be the case (or even more so) for state preferences regarding the harmonisation of labour migration policies at the European level. However, governments do not only have to decide on the preferred content of the policy, but also the preferred level of implementation. Whether employers and governments seek an implementation of these economic interests at the national or the European level is, according to the Liberal Intergovernmentalism, contingent on whether they perceive themselves to be functionally dependent on a concerted European effort to attract labour migration. This, in turn, depends on whether governments have effective unilateral measures at hand to satisfy the demands of employers nationally.

Hence, the ‘Client Politics Mode’ expects that *governments are responsive to issue-specific interests of employers (Expectation 1)*. Whether or not governments support or oppose harmonisation depends on the perceived issue specific dependence on a common EU policy in the policy field in question. Hence, *if issue-specific dependence is perceived as strong, because for example employers are dependent on a European concerted effort to attract migrants, the government supports harmonisation and liberalisation (Expectation 1.1)*. In turn, *if, issue-specific dependence is perceived as weak, because employers fear to lose political influence, fear for increased competition for migrants or for restrictive EU provisions, the government seeks to limit harmonisation (and liberalisation) (Expectation 1.2)*.

2.2. Postfunctionalist Theory of European Integration and Mass Public Politics

2.2.1. European Integration in times of the ‘constraining dissensus’

The evidence of an increasingly contested EU among the public in most EU member states, has put Moravcsik’s Liberal Intergovernmentalism to the test as “it is clear that a more politicized and mobilized EU will be – and already is – very different from the one depicted in Choice, and it is of utmost importance to understand the causes and consequences of this shift” (Kleine & Pollack, 2018, p. 1499). It begs the question whether under these conditions Moravcsik’s pluralist account of preference formation still holds true; whether member states still enjoy the leeway of the ‘permissive consensus’ to respond to the interests of domestic business behind

closed doors without risking high electoral sanctions at home; and whether member states are still able to agree on functionally efficient policies at the EU level.

By capturing the causes and anticipating the consequences of an increased public politicisation of the EU since the Maastricht Treaties, the Postfunctionalist Theory of European Integration, put forward by Hooghe and Marks (2009) answers this puzzle with a ‘pessimistic’ theoretical perspective and outlook on integration. It poses the most recent and fundamental theoretical challenge to the predictions formulated by the Liberal Intergovernmentalism (de Wilde & Zürn, 2012; Grande & Hutter, 2016b; Marks & Hooghe, 2009; Statham & Trenz, 2012). In particular the first step of Moravcsik’s three-stage-model, the pluralist understanding of state preferences, is put to a test (Kleine & Pollack, 2018, p. 5; Marks & Hooghe, 2009, p. 11). As it deals mostly with specific interests of producer groups, Liberal Intergovernmentalism is criticised for neglecting the impact and role of diffuse interests of a politicized public (Börzel & Risse, 2008).

Postfunctionalism posits that “as more issues shifted to the European level, elite decision making would eventually give way to a process of politicisation in which European issues would engage mass publics” (Marks & Hooghe, 2009, p. 6). Hence, the basic assumption is that the deepening and widening of European integration to areas that touch upon core areas of state sovereignty and national identity, such as migration, security and taxation, results in an increased awareness and contestation - hence, politicisation - of the EU among the public of the member states. Politicisation in turn is central for shifting Liberal Intergovernmentalism’s insulated ‘Client Politics Mode’ to the Postfunctionalist ‘Mass Politics Mode’. It forces governments to “look over their shoulders when negotiating European issue” (Marks & Hooghe, 2009, p. 5). What they see is a public that is not necessarily motivated by economic preferences, but more likely by ethnicity or communal identity (Hooghe & Marks, 2019). This political potential for the mobilisation of the EU along cultural-identitarian rather than socio-economic lines stems from “the tension between the increasing scope and depth of European integration, on the one hand, and stable national identities, on the other” (Kriesi, 2009, p. 221). This tension offers a political potential for political entrepreneurs of the populist right to politicise the EU and mobilise the electorate. Consequently, European integration becomes a question of identity and “the sector-specific political-economic rationality central to LI is being superseded by identity and ideology as the main sources of member states’ preferences” (Naurin, 2018, p. 3).

The remaining part of this subchapter is divided into four sections, and lays out the Postfunctionalist line of argument in greater detail. While this dissertation seeks to study the *effects* of politicisation of European integration and immigration, it is still of importance to shed

light on the country- or region-specific *causes* of politicisation. The chapter builds on cleavage theory. It argues that the Politicisation of and opposition to the EU and immigration are deeply rooted in a new political cleavage emanating from the process of globalisation, which gives rise to economic and identity-related anxieties in the electorate. The second section argues that these diffuse anxieties create structural potentials that are subsequently politicised and mobilised along the line of national identity and sovereignty by ‘New Right’ parties. Postfunctionalism continues to argue that the resultant salience of EU and immigration puts mainstream parties and governments under pressure to take mass public interests into account when deciding on further integration steps and policies at the European level. It eventually leads “to a downward pressure on the level and scope of integration” (Marks & Hooghe, 2009, p. 21). The fourth section draws on recent insights of related academic literature focusing on the political consequences of an increased politicisation for the responsiveness of governments to the preferences of the public.

Structural potential for identity-based politicisation of EU and immigration

Before I outline the expected consequences of an identity-based politicisation and resistance towards the EU, it is crucial to understand why in North Western Europe (but not in other regions of the EU) European integration is primarily politicised in terms of identity rather than socio-economic issues. Therefore it is decisive to understand that European integration is not just another issue on the political agenda, but it is part and parcel of the process of globalisation (or denationalisation), which brought about a new political cleavage that pits winners and supporters of globalisation against the losers and opponents of globalisation. A growing body of literature seeks to map the rising societal and political conflict in Western Europe around the benefits and costs of denationalisation in economic and identity-related terms, which fundamentally transformed national conflict structures and eventually political competition (de Wilde et al., 2016; Hooghe, Marks, & Wilson, 2004; Kriesi et al., 2012, 2008). A variety of concepts and terms in the scholarly literature seek to describe this cleavage: demarcation vs. integration (Kriesi et al., 2006), cosmopolitanism vs. communitarianism (Zürn, 2014) or green/alternative/libertarian (GAL) vs. traditionalism/ authority/nationalism (TAN) (Marks & Hooghe, 2009, p. 16), to name just a few.

In order to understand how a new political conflict emerges, “it is crucial to focus both on the transformation in the electorate (the demand side of electoral competition) and on the kind of strategies political parties adopt to position themselves with regard to these new potentials (the supply side of politics)” (Kriesi et al., 2006, p. 923). For the sake of clarity, I will first outline

the socio-structural component (the demand-side), before turning to the organisational component (the supply-side). However, it is important to keep in mind that both are intimately interlinked and feed into each other as “on the one hand, parties position themselves strategically with respect to new political potentials, which are created by the new structural conflicts, on the other hand, it is the very articulation of the new conflicts by political parties that structures the political space” (Kriesi et al., 2006, p. 923)

Until the end of World War II, the political structure of North Western Europe was considered to be structured along two cleavages: First, the socio-economic cleavage, based on class. It constitutes the traditional left-right division, dealing with social protection by the state and the regularisation of the market; Second, the cultural cleavage, mostly defined by the religious conflict between Catholics and Protestants. After the World War II, the structural transformation of the endogenous ‘silent revolution’ (Inglehart, 1990), which was rooted in “processes of increasing affluence, secularization, deindustrialization, tertiarization, expansion of tertiary education, feminization of the work force and occupational upgrading” (Kriesi, 2016, p. 37) brought about a value change. The latter found its expression in the ‘new movements’ of the late 1960s, which were mostly situated in the increasingly expanding middle-class. They reinvigorated the class cleavage in the name of social justice and gave the cultural cleavage a new meaning by introducing ‘new politics’ to the agenda, encompassing peace, environmental, human rights and women’s movements. Hence, the cultural cleavage was now defined by a divide between those supporting cultural liberal positions, and those defending traditional or authoritarian values such as traditional family values, a strong army and Christian religion. The political answer to this structural potential was the emerging ‘new left’, such as the Green parties or the transformation of the social democratic parties to serve the interests of the new middle-class (Hutter & Kriesi, 2019a, p. 13).

The tension between the functional benefits of European integration and the desire for self-rule, as postulated by Postfunctionalism, is “part of a broader breakdown of national barriers giving rise to mass immigration and intensified economic competition” (Marks & Hooghe, 2009, p. 13): the process of globalisation, or rather, denationalisation (Kriesi, 2009). After the endogenous ‘silent revolution’ in the 1960s, the literature identifies globalisation as another, albeit exogenous revolution, that triggers a structural transformation of the national conflict structure (Kriesi, 2009). Globalisation brings about opportunities and threats that are unequally distributed across members of a society; since the 1980s, it resulted in a renewed transformation of cleavage structures, pitting losers and winners of globalization against each other (Grande &

Kriesi, 2015). The winners, the cosmopolitans, are most likely people with high qualifications working in sectors open to international competition. They hold libertarian values and are expected to support the opening up of national boundaries, international integration and immigration. The communitarians are considered to lose out in the increasingly competitive environment. They “include the patriots who identify with the national community, the economic sectors which have traditionally been protected by the nation-state and which find themselves increasingly exposed to foreign competition, as well as all those who lack the qualifications and the cultural competence to meet the economic and cultural challenge of a globalizing world” (Kriesi, 2009, p. 222). They are expected to hold traditional, nationalistic values and prefer protectionist’s measures, maintenance of national boundaries and independence. This integration-demarcation cleavage has a socio-economic and cultural dimension. The former is reinvigorating and reinforcing the classic conflict between pro-state positions, seeking to protect and defend the welfare state, while the pro-market positions favour liberalisation and enhancing economic competitiveness in a globalised world (Kriesi et al., 2006, p. 924). On the cultural dimension, Kriesi et al. (2006) expect an increasing ‘ethnicization of politics’. It manifests itself in opposition to cultural liberalism and in defending traditions, taking on ethnic or nationalist character, and which is inter alia “characterized by an opposition to the process of European integration and by restrictive positions with regard to immigration” (Kriesi et al., 2006, p. 924).

Before looking more closely at the demand-side, however, it is crucial for the following thesis and the understanding of the politicisation of European integration and immigration to note that the two social transformations, the silent revolution and globalisation, played out differently across Europe. The above described processes apply mostly to North Western European member states such as Germany and the Netherlands. The ‘new movements’ of the late 1960s had no or only limited effect on the structural conflict of societies in Southern or Central Eastern Europe¹, as most states were still under authoritarian or communist rule at that time. Hence, the societal value change (demand-side) and especially the political answer in the form of new or transformed parties (supply-side) was constrained. At the time when the process of globalisation started to unfold and transform the societal foundations in North Western Europe, countries in the South West and Central Eastern Europe had only recently overthrown their

¹ The region-specific conflict structures and the consequences for the Politicisation of the EU and immigration will be discussed in greater detail in the respective country case studies below.

authoritarian and communist regimes. European integration was therefore mostly perceived as a positive, modernizing and democratizing process (Hutter, Kriesi, & Vidal, 2018, p. 15). Still, it came with the very opposite effects for the domestic conflict structure: for instance, in Spain the legacy of the authoritarian regime discredited any development of a ‘new right’. Coupled with the absence of a ‘new left’ such as a green party, European integration, if at all, was mainly criticised along socio-economic terms from the (economic) left. In Poland, the legacy of the communist regime instead rendered any fundamental socio-economic criticism of neoliberal reforms and the EU pro-market stance impossible. Hence, Euroscepticism is more similar to the cultural-identitarian opposition in North Western Europe.

The politicisation and mobilisation of the new structural potential by the ‘New Right’

This previous section has argued that opposition to European integration is rooted in the newly emerged globalisation cleavage, which has an economic and a cultural dimension. The Postfunctionalists assume that the “identification with imagined communities and ideological convictions concerning national sovereignty may be equally, if not more, important as sources of policy preferences than political-economic calculations” (Naurin, 2018, p. 1536). To understand why European integration (and also immigration) in North Western Europe is mainly integrated into the cultural cleavage, rather than the economic left-right cleavage, the scholarly literature points to the supply-side of politics (Kriesi et al., 2006, p. 950), which will be presented in the following section.

As mentioned before, the socio-structural demand-side and the organisational supply-side are closely interlinked. Objective (primarily economic) or subjective (identity-related) anxieties triggered by the process of denationalisation among the voters tend to be inchoate. Political entrepreneurs are decisive in giving certain policy objects, such as European integration and immigration, a meaning, and construct them along the lines of either identity or socio-economic issues (Marks & Hooghe, 2009). Hence, whether and how the structural potential of the globalisation conflict on the demand-side materialises, depends on whether political entrepreneurs decide to exploit and politicise the demand-side and therefore transfer the issue to the mass electoral arena. The reason why we see mostly identity-based politicisation in North Western Europe is because on the supply-side certain political entrepreneurs are enabled and others are hindered to mobilise the structural potential resulting from denationalisation among the electorate and translate them into political power.

In general, mainstream parties were mostly supportive of European integration. This pro-EU

consensus of centre-left and centre-right parties did not have any electoral consequences as long as European integration was not salient in the public (Hooghe & Marks, 2017, p. 14). However, with an increased deepening and widening of the European integration process, the EU became ever more prominent to the public. Eventually, it revealed the underlying dilemma that mainstream parties are facing with regard to European integration: partisan positions on the cultural cleavage fail to connect to the traditional socio-economic party positions (Kriesi et al., 2006). While for instance centre-left parties support ideas of solidarity and cultural liberalism promoted by a supranational project like the EU, on the socio-economic dimension they are advised to oppose the European market integration, which undermines social security. In contrast, voters of conservative parties demand a strong position regarding cultural identity and national sovereignty; however, in order to achieve market integration and implement neoliberal ideas they are willing to pool or delegate sovereignty at the European level. Therefore, “politicians face a thorny and often unresolvable dilemma as some of their ideological core concerns speak in favour of certain aspects of European integration, while others lead them to adopt a sceptical stance. As a result, parties have to cope with ambivalent attitudes as well as unclear, cross-cutting lines of conflict” (Hoeglinger, 2016, p. 58). Mainstream parties were incentivised to de-emphasise and therefore de-politicise the issue to “retain the current dimensional competition” (de Vries & Hobolt, 2012, p. 263).

While the ‘silent revolution’ found its answer in the ‘New Left’ parties such as the Greens, the shock of globalisation and European integration unfolded a political potential among the ‘globalisation losers’ at the conservative pole of the cultural dimension. The latter was not adequately addressed by mainstream parties before. This void was subsequently mobilised by the ‘New Right’ parties. The latter became the new working-class parties in North Western Europe, which were either newly established, such as the Front National in France, or which arose out of conservative mainstream parties (Hutter & Kriesi, 2019a, p. 13; Kriesi, 2016, p. 37). Accordingly, it is right wing populist parties that set the tone on cultural-identitarian issues. Alternative-green parties occupy the opposite extreme pole of the cultural cleavage. Both offer distinctive and non-ambivalent profiles on issues related to culture and identity (rather than economic issues) and in particular on issues of EU and immigration, as “they tie these issues into a tightly coherent worldview; they consider them as intrinsic to their programs; and, correspondingly, they give these issues great salience” (Hooghe & Marks, 2017, p. 15). In turn, “mainstream parties have been compelled to compete on issues that lie far from their programmatic core” (Hooghe & Marks, 2017, p. 111), which threatens to divide their parties internally and alienate parts of their electoral base.

Politicisation: From ‘permissive consensus’ to ‘constraining dissensus’

The last section demonstrated that the cultural rather than socio-economic dimension of the globalisation cleavage increasingly prevails in North Western Europe and polarises the electorate and politics into integrationists and demarcationists. Even though globalisation also resulted in an increasing success of Green parties, Postfunctionalism argues that it is political entrepreneurs on the conservative pole of the cultural dimension that are most successful in mobilising voters. Accordingly, they also have the greatest impact on mainstream parties, the government, and therefore state preferences. “The basis of their success lies in their appeal to identity and their exploitation of anxieties about losing one’s identity in a denationalizing world” (Kriesi, 2009, p. 224). Hence, under conditions of strong politicisation, the elite are constrained to deviate from their relatively cosmopolitan values and move towards the more communitarian values of the public, as the latter are otherwise easily mobilised by right wing populist parties (de Wilde, Junk, & Palmtag, 2014; Marks & Hooghe, 2009; Risse, 2004).

As a result, Postfunctionalists posit, the Liberal Intergovernmentalism’s ‘permissive consensus’, resulting from the insulated policy-making “in the shadow of a rationally ignorant public” (Hix, 2018, p. 1600), has been replaced by a ‘constraining dissensus’. The key mechanism behind it is politicisation. The more identity-driven preferences of the public, mobilised by mostly ‘New Right’ parties, are “made consequential through party politics and elections, rather than through inside lobbying by specifically affected interest groups” (Naurin, 2018, p. 1536). It pressures governments to consider mass public interests. Postfunctionalism claims “to see a downward pressure on the level and scope of integration (Marks & Hooghe, 2009, p. 21) and “a mismatch of functionally efficient and politically feasible solutions” (Marks & Hooghe, 2009, p. 23). However, Postfunctionalism still lacks clear predictions about the political consequences of an increasingly politicised EU. Whether and to what extent politicisation has practical implications for the preference formation process of member states, negotiations at the EU level and the path of European integration in general is very much so understudied (Bressanelli, Koop, & Reh, 2020; de Wilde et al., 2016; Genschel & Jachtenfuchs, 2016, p. 11; Kleine & Pollack, 2018; Zürn, 2016).

Policy Responsiveness in EU policy-making

In recent years the academic literature on policy responsiveness, examining whether policy-makers respond to public preferences when deciding on legislative acts, has been expanded and adopted to EU policy-making in the European institutions, such as the Council, the European

Parliament or in the Commission (de Wilde & Rauh, 2019; Zhelyazkova, Bølstad, & Meijers, 2019). The ‘standard model’ of national policy responsiveness, which conceptualises public opinion “as a ‘thermostat’ that consistently corrects direction and output of government policy” (de Wilde & Rauh, 2019, p. 1738) has been criticised of falling short to grasp the complexity of multi-level policy-making in the EU. Unravelling such complexity requires a thorough study of the casual mechanisms linking the ‘policy demand’ at the national level to the ‘policy output’ at the European level (de Wilde & Rauh, 2019; Zhelyazkova et al., 2019).

One important challenge in the context of the EU that “hampers the straightforward application of the systemic model to EU policy-making emerges from the politicization of European integration” (de Wilde & Rauh, 2019, p. 1749). While in general politicisation of the EU has increased gradually, the intensity of it varied depending on the time, member state and issue area under discussion. Hence, the potential for individual policies to be politicised varies immensely. Accordingly, it is difficult for policy makers to assess which policy negotiated at the EU level will resonate amongst the domestic constituency, will increase the potential for politicisation and therefore carries the risk to be electorally decisive (Hobolt & Wratil, 2020; Schneider, 2019). Wratil (2018) argues that the electorate and therefore also the representatives of governments have a stable and therefore reliable position on the ‘left-right’ dimension² of policy-making, hence the content of the policy. In contrast, the electorate’s interests in the polity-dimension (pro or anti integration) is highly variable over time (Wratil, 2018, p. 53). Accordingly, representatives “take current increases in salience as a signal of potentially high salience at the next election, and respond sporadically when such increases occur” (Wratil, 2018, p. 53).

Rauh’s (2016) study supports this hunch. He argues that not only the politicisation of the EU at the time of the negotiations matters, but also the salience of the issues under discussion at the time of the negotiations. He shows that an increased politicisation of the EU and high public salience of consumer policies induces the European Commission to respond to the interests of the broader public by implementing consumer friendly policies and rights, rather than following the demands of business. Even though Commissioners lack a direct accountability chain to European citizens (unlike the Council or the member of the Parliament) the Commission exercises its ability to make “a particular effort to win the public for Europe through the content

² Wratil (2018, p. 56) subsumes as ‘left-right’ issues both classical economic and the left-libertarian versus right-authoritarian elements.

of its initiatives when the European integration process and its policies come under public scrutiny” (Rauh, 2016, p. 70).

In a similar vein, de Wilde and Rauh (2019, p. 1740f.) advocate that “a convincing account of responsiveness in EU policy-making should thus be able to factor in the various trade-offs that policy-makers face against the background of differentiated politicization of European integration”. More importantly, however, EU politicisation is not simply a ‘moderating variable’ which strengthens or weakens the response to the public. There also exists a problem in that the one-dimensional model of policy responsiveness falls short of grasping the complexity of multi-level policy-making. In the context of European integration, national representatives do not only face the challenge of responding to the public’s preferred content of a policy, e.g. restrictiveness of labour migration policies, but also of whether or not the public prefers this measure to be taken at the European level in the first place. In that case, policy-makers face both policy- as well as polity-contestation (de Wilde & Rauh, 2019).

Furthermore, scholars expect to see responsiveness to communitarian or specifically Eurosceptic positions of the electorate in particular on legislative acts that seek to deepen or widen European integration, because “if acts establish EU activities in new areas, set up new supranational agencies, or enforce the harmonization of rules, opposing such acts can be interpreted by the public as a general stance against ‘more integration’ or more ‘authority’ of the supranational institutions” (Hagemann, Hobolt, & Wratil, 2017, p. 12). Justice and Home Affairs, and more specifically labour migration, is a policy field where EU competencies are not well-established yet. Hence, if we follow the line of argument of Hagemann et al. (2017), the likelihood for member states to respond to communitarian attitudes of the public is high, even more so as it combines two sovereignty and identity-sensitive policy fields.

Hence, the literature assumes an “anticipatory representation” (Mansbridge, 2003), that “stems from the very ‘chance’ of being held accountable” (Wratil, 2018, p. 55). Governments respond to the ‘public mood’ at home when decision-making (in Brussels) is salient to the domestic public, because policy-makers fear that unpopular decision will be sanctioned in the upcoming election (de Wilde & Rauh, 2019; Hobolt & Wratil, 2020; Wratil, 2018). Taken together, the literature on policy responsiveness in the EU supports the Postfunctionalist notion that in times of strong politicisation, representatives are more likely to respond to the preferences of their constituencies, when negotiating policies at the European level.

2.2.2. Politicisation of Immigration

Similar to the Postfunctionalist criticism of Liberal Intergovernmentalism, the literature on immigration policy-making also observes a growing politicisation of immigration and increasingly questions Freeman's pluralist client politics mode (Breunig & Luedtke, 2008; Hoeglenger, 2016; Morales et al., 2015). While a "debate over labor migration policy reform that is argued purely in terms of economy (or better yet for employers, not argued at all) stands a better chance of being resolved in favour of liberations" (Caviedes, 2010, p. 15), politicisation brings mass public interests into play. As a consequence, immigration policies risk taking a restrictive turn at the national (Morales et al., 2015) and the European level (Givens & Luedtke, 2004; Mayer, 2011), as policy-makers have to take into account anti-immigrant concerns of the public.

The remainder of this subchapter draws on literature on immigration policy-making. Again, it starts out with the newly emerging globalisation cleavage, arguing that also the increasing opposition to immigration is rooted in the new cleavage and primarily integrated into the cultural dimension. Immigration is therefore politicised and mobilised by the same actors as European integration. The chapter continues to build on related literature, giving more detailed predictions about the political consequences of politicisation for the policy responsiveness of governments at the national and European level. It supports the notion that under conditions of strong politicisation of immigration, governments are more responsive to anti-immigrant public demands.

Immigration and globalisation

Only a relatively small body of literature in the Postfunctionalist tradition examines the political consequences of an increasing politicisation of immigration. However, there is a vast consensus among scholars that the growing public concern about immigration and its politicisation among the public in North Western Europe has the same roots as the opposition to European integration: it is inherent in the transformation of national conflict structures induced by globalisation (Hampshire, 2016; Kriesi et al., 2006, p. 950). The abolition of border controls in the EU, increasing intra-EU mobility of EU citizens and rapid immigration from third countries to the member states are the most evident manifestations of globalisation at the domestic level.

Therefore, European integration and immigration are closely interlinked and are both perceived as a threat by "those who resent cultural intermixing and the erosion of national values, by those who must compete with immigrants for housing and jobs, and, more generally, by those who

seek cultural or economic shelter in the rights of citizenship” (Hooghe & Marks, 2017, p. 2). Right wing populist parties that depict the EU as “an elite conspiracy to foist globalisation and multiculturalism on ‘the people’” (Hampshire, 2016, p. 544f.), mobilise ‘globalisation losers’ also on issues of immigration. However, Hoeglinger (2016) posits in his empirical study of issue-salience in election campaigns of six Western European member states that it is not only parties at the extreme pole of the cultural dimension that mobilise on issues of both EU and immigration. Also culturally conservative mainstream parties do so. Moreover, he illustrates that the position of a party on the economic left–right axis is less conclusive for a party’s emphasis on the EU and immigration if controlled for extreme left parties. It supports the hunch that both issues are part and parcel of the cultural dimension of the new cleavage, rather than the socio-economic one.

On matters that link the two key issues of the cultural dimension, namely European integration and immigration, we should expect an even greater potential for politicisation and subsequently also a greater potential to impact state preferences. It is expected by the scholarly literature that under conditions of increased politicisation, policy makers should be more responsive to anti-immigrant public demands (Hatton, 2017). Therefore, Lahav and Guiraudon (2006, p. 212) postulate that the increasing politicisation of immigration in the public and in party politics “requires us to revisit Gary Freeman’s persuasive client politics model”. The hypothesis that immigration policies are primarily dominated by organised economic interest groups only works if the matter remains elite-dominated. If, however, public debate and contestation of the issue increases “ignoring public preferences will bear greater electoral risks for elected politicians” (Morales et al., 2015, p. 1510).

National immigration policies and policy responsiveness

Systematic research on the consequences of an increased politicisation of immigration for the policy responsiveness of governments towards public interests is still scarce. Speaking within a normative debate of whether politicisation of immigration is desirable, Guiraudon (1998) argues that the politicisation of issues of immigration will open up the debate to the larger public. Going beyond clientelistic policy-making can “transform immigration and asylum into symbols that expand materialist utilitarian question of economic costs and benefits immediately into wider public debates about political legitimacy, national identity, crisis of the welfare system, etc.” (Huysmans, 2006, p. 119f.). Guiraudon therefore objects to Freeman’s view that the beneficiaries of immigration outweigh the cost-bearers in their ability to mobilise politically. Instead, she argues “that there are non-cost-bearers who will oppose immigrant

rights on symbolic grounds, which is one reason why an expanded scope of debate will not result in more rights for aliens” (Guiraudon, 1998, p. 289f.). Hence, the non-cost bearers, for example extreme right parties and politicians, intervene in the balance between the benefiter of migration (primarily business) and the cost bearers, such as the unemployed. As a result, she expects anti-immigrant interests prevalent in parts of the public to impact and restrict immigration policies more strongly than expected by Freeman.

Hampshire (2016, p. 544) expects the politicisation of immigration to have consequences not only for national migration policies, but also for the level and scope of European integration. He argues that in light of increasing public concerns regarding immigration, coupled with growing Euroscepticism, national governments sought to reaffirm their authority in the only recently communitarised policy area. He anticipates member states to be less supportive of harmonising and liberalising migration policies at the EU level (Hampshire, 2016, p. 545). Accordingly, “policies directed towards controlling and excluding, rather than enabling, immigration to Europe” fared best at the EU level (Hampshire, 2016, p. 549).

There is a paucity of empirical studies on the effects of politicisation of immigration on state preferences. Morales et al. (2015) examine the impact of politicisation of immigration on national immigration law, focusing on its effect on the congruence between public opinion and immigration policy output. They seek to explain the often discussed empirical puzzle that national immigration policies tend to be more liberal than one might expect when considering the rather restrictive interests of the public (Breunig & Luedtke, 2008, p. 125; Freeman, 1995). The authors expect that this gap can be explained by low levels of politicisation of immigration. Only if politicisation is high, national policies are more likely to match with restrictive public demands. Morales et al. (2015) do not develop a single index for politicisation but rather look at three different aspects that are strongly associated with politicisation of immigration: first, the intensity of the public debate on immigration in the media, second, the strength and success of anti-immigration parties and third, the level of mobilisation by anti-immigration movements. In their comparative study of seven EU member states across the time period from 1995 to 2010, however, the results are mixed. None of the three factors can explain variance of the public opinion – policy gap across countries alone. Yet, in the countries where a considerable congruence between (a relatively negative) public opinion on immigration and national immigration policies exists, the UK and Ireland, both news media coverage is high and anti-immigrant social movements strong. Hence, the authors conclude that “the joint pressure of

multiple forms of politicisation [...] seems to induce policy congruence in the area of immigration” (Morales et al., 2015).

The most elaborated approach studying national resistance to the harmonization of immigration policies at the EU level is brought forward by Givens and Luedtke (2004). By adopting an intergovernmental approach, the authors posit that the preferences of member states during the negotiations are determined through domestic politics. Along the lines of Moravcsik’s (1998) and Freeman’s (1995) pluralist understanding of policy-making, the authors argue that in the case of the low conflict mode of ‘Client Politics’ those societal groups that expect to benefit most from the harmonisation of immigration policies have the greatest impact on the government’s stance at the European level. Hence, we can expect liberal and harmonised immigration policies. However, in the field of immigration certain issues, such as asylum, citizenship or third country nationals, carry a high salience, go beyond client politics and bring the broader electorate into play. Salience, defined as “the level of attention paid to, or awareness of, the immigration issue” has the potential to “politicize an issue and override client politics by mobilizing large electorates against certain areas of immigration policy harmonization” (Givens & Luedtke, 2004, p. 149f.). The authors conclude that if political salience is high, governments will either block harmonization altogether or aim at restrictive harmonization. The latter option is preferred if national immigration law is relatively liberal and protected by institutions and humanitarian interest groups (Givens & Luedtke, 2004; Lahav & Luedtke, 2013; Luedtke, 2011). However, the authors focus on the policy outcome at the European level and not the policy preferences that member states represent at the start of or during the negotiations.

Taken together, these studies support the notion that the politicisation of immigration has a restrictive effect on the admission criteria of national and European immigration policies and to certain a extent also their harmonisation at the EU level. Governments take into account potential electoral risks when negotiating legislation with regard to immigration. As the interests of the broader public are considered to be more anti-immigrant than those of the elite, the latter tend to take on a restrictive stance towards immigration of all kind. Accordingly, governments are hampered from follow the interests of employers.

2.2.3. Expectations of the ‘Mass Politics Mode’

“The postfunctionalist challenge is arguably still more empirical than theoretical, since it has yet to define clear, testable predictions about the political consequences of the observed change in political cleavages” (Kleine & Pollack, 2018, p. 5).

As mentioned before, most literature in the field focuses on the causes and drivers of politicisation of immigration and the EU and less on its consequences for state preferences and eventually the policy-making process. Nevertheless, understanding the causes and drivers is of importance in order to anticipate the consequences of politicisation for the preference formation of governments in the Council.

Three important and interrelated notions emerge from the studies discussed in this subchapter: First, opposition to both the EU and immigration is rooted in the newly emerging globalisation cleavage and its cultural dimension. The process of globalisation triggers objective (primarily economic) or subjective (identity-related) anxieties among ‘globalisation losers’. Second, political entrepreneurs on the conservative pole of the cultural cleavage mobilise this political potential among the electorate by giving these anxieties meaning. Unlike mainstream parties, they offer a distinctive and non-ambivalent profile that frames the EU and immigration as threatening national identity and sovereignty. Thereby, they transfer the issues to the mass electoral arena by increasing the salience and contestation around the matter. Third, under public scrutiny, mainstream parties are under pressure to respond to communitarian interests prevailing in parts of the public, rather than the issue-specific interests of domestic economic interest groups, as they otherwise fear of future electoral sanctions. It results in more restrictive immigration policies and scepticism towards the harmonisation of policies at the EU level. Hence, politicisation is recognised as the key mechanism that turns ‘Client Politics’ into ‘Mass Politics’

According to the idea of “anticipatory representation” (Mansbridge, 2003), governments fear that potentially ‘unpopular’ decisions in Brussels could become known to the public at home, because certain actors, such as the media but also challenger parties, have an incentive to disseminate the government’s potentially unpopular decisions. This fear is stronger when the issues under discussion are salient or politicised at the domestic level at the time of the negotiations (de Wilde & Rauh, 2019; Hobolt & Wratil, 2020; Wratil, 2018). Hence, as both the politicisation of immigration and European integration are rooted in the cultural dimension of the globalisation cleavage and as both are issues are contested and mobilised by the same actors, I assume that governments show ‘anticipatory representation’ when one or both of the issues are politicised domestically. The idea is that if immigration is highly salient and contested

at the national level, governments will anticipate that the public will also be (made) aware of the governmental negotiation positions on immigration policies in Brussels. In turn, if European integration is politicised, governments will be wary to harmonise and liberalise policies in a sovereignty sensitive field as immigration. The moderating effect of politicisation should be even stronger when both are politicised simultaneously.

Taken together, following the Postfunctionalist line of argument, the ‘Mass Politics Mode’ expects that *governmental preferences are more responsive to mass public interests, if politicisation of the EU and immigration are high (Expectation 2)*. Accordingly, governments will oppose or water down harmonisation, demand discretionary power over admission decisions and restrict admission conditions and rights of migrants.

2.3. Conclusion: Gaps and Contributions

This dissertation makes three key contributions to the academic literature on EU policy-making: First and foremost, it sets out to systematically study the political consequences of politicisation for the preference formation of member states. Sparked by the increasing contestation of European integration and immigration, a growing body of literature studies the phenomenon of politicisation. While it is widely established that “something like Politicisation has occurred since the mid-1980s” (Schmitter, 2009, p. 211f.), scholars are mostly engaged with understanding the causes, drivers and different manifestations of politicisation. Despite the undisputed significance of politicisation for the future of the EU, there remains a paucity of evidence on the political consequences of the phenomenon. The widespread consensus in the literature that politicisation necessarily constrains further integration is increasingly questioned (Bressanelli et al., 2020; Schimmelfennig, 2020). Also the ability of member states to agree on integration steps during the double crises in the past decade despite unprecedented levels of politicisation and success of Eurosceptic and anti-immigrant parties in most European member states leaves the Postfunctionalist argument puzzled (Jabko & Luhman, 2019).

To date, only few studies sought to define clear and testable predictions about the consequences of politicisation, and have systematically tested them empirically (de Wilde et al., 2016; Grande & Hutter, 2016a, p. 16; Hooghe & Marks, 2017, p. 126; Kleine & Pollack, 2018; Moravcsik, 2018; Zürn, 2016). Only recently, the concept of politicisation entered the scholarly literature on policy responsiveness. Yet, studies mostly focus on whether and how governments signal responsiveness to their constituencies in the light of politicisation, neglecting the actual

representation of mass public interests during the negotiations (Hobolt & Wratil, 2020; Wratil, 2018).

Second, the scholarly literature emphasises the need to study and understand the dynamics of linking two highly sovereignty and identity-sensitive topics. Following the distinction between the cultural and economic dimension of the globalization cleavage, not only the politicisation of European Integration but also immigration is running along the cultural dimension³ (de Wilde et al., 2016; Leuffen, Rittberger, & Schimmelfennig, 2013).

As de Wilde et al. (2016, p. 16) put it:

“If those who contest migration are the same as those who contest European governance and they do so in similar ways, the politicisation of European governance is likely to ‘survive’ as long as migration is a contested issue in European societies. However, this linkage begs more research on the politicisation of European governance of migration”

Labour migration is a policy field where the competence at the EU level is not well-established yet, and the EU’s authority is still contested. Hence, it carries a high potential for politicisation along national identity and sovereignty, as it links the two key issues of the globalisation cleavage - European integration and immigration (Favell & Hansen, 2002; Hoeglenger, 2016). By focusing on EU labour migration policies, this dissertation contributes to a better understanding of the dynamics between the politicisation of the EU and the politicisation of immigration. In addition, it offers some insights into EU policy-making on labour migration policies in general, and the governments preferences in specific, as this subfield of EU immigration policies has received only scant attention in the academic literature on both migration and European integration,

As the Postfunctionalist Theory poses the most recent challenge to Moravcsik’s ‘grand theory of European integration’, it is inevitable to test the expectations of both approaches against each other (Moravcsik, 2018, p. 3). Hence, the third and main importance and originality of this dissertation is that it systematically tests the Postfunctionalist challenge against the expectations of Moravcsik’s Liberal Intergovernmentalism, by asking about the consequences of

³ This assumption is also supported by studies of Luedtke (2005, 2011) and Ivarsflaten (2005), studying citizens’ concerns and resistance against immigration at the micro-level. The former argues that a strong national identity correlates strongly with opposing EU harmonization in the policy field of immigration, “because the proposed supranationalisation of immigration control clashes with historically rooted national identities” (Luedtke, 2005, p. 85). The latter, in a similar vein, argues that the fact that the public in Western Europe prefers mainly restrictive immigration and asylum policies “can in large part be attributed to these widespread strong beliefs in the virtue of preserving the uniqueness and specificity of the national community – that is, unity of language, religion and tradition” (Ivarsflaten, 2005, p. 37).

politicisation for both the responsiveness of governments to mass public interests *and* business interests. If governments increasingly represent communitarian mass public interests, does this necessarily mean less representation of business interests? Or are the latter accommodated under different terms? While Justice and Home Affairs is considered a policy field that is distant from Moravcsik's economic interest group politics (Schimmelfennig, 2018, p. 1585), labour migration is a subfield that increasingly raises strong interests of business seeking to fill labour shortages at home. Hence, by being subject of both lobbying efforts of employers and public debates and controversies in the broader public sphere, the harmonisation of labour migration policies is the ideal policy field to examine the Postfunctionalist challenge of Moravcsik's theory of preference formation.

3. Research Objects and Research Design

The empirical chapters of this dissertation aim at testing the Postfunctionalist challenge against the expectations of Moravcsik's Liberal Intergovernmentalism by looking at the preference formation of governments in four EU member states. Hence, it examines the moderating effect of politicisation on the responsiveness of governments to the interests of the mass public and issue-specific employer interests when negotiating EU labour migration policies. Having discussed what I seek to study in the last chapter, I now turn to the question of how to study the moderating effect of politicisation.

My research design consists of two parts: a descriptive quantitative part and an in-depth qualitative part. The former entails the development of two indices that capture the moderating variables politicisation of the EU and politicisation of Immigration quantitatively by combining frequency analysis of mass media and data on public opinion towards EU and immigration. The qualitative second part examines by means of in-depth country case analyses the moderating effect of politicisation in four EU member states (Germany, Netherlands, Spain, and Poland) regarding five EU labour migration directives. The following subchapter justifies the rationale behind the choice of research objects, before outlining the research methods, operationalization, measurement and the data collection process.

3.1. Rationale for the Choice of Research Objects

“All research involves defining the population for which the study is to be conducted and selecting a sample from this population” (Przeworski & Teune, 1970, p. 31).

Before I outline my research design in greater detail below, I will justify in the following section my selection of countries and policies under study. This dissertation looks at four country case studies: Germany, the Netherlands, Spain and Poland. I study the preference formation of the relevant governments regarding five draft proposals in the field of labour migration.

3.1.1. Rationale for the Choice of the Policy Field and Selection of EU Directives

3.1.1.1. The Policy Field

In order to test the Postfunctionalist argument against the expectations of Moravcsik's Liberal Intergovernmentalism, and examine whether under conditions of politicisation member states are indeed more responsive to mass public interests rather than issue-specific employer

interests, we require a subject of study where the expected ‘clash’ between both interests is likely to occur. Labour migration from third countries lends itself as an ideal policy field for two reasons:

First, it combines two main issues of the globalisation cleavage that run along the cultural dimension and are highly sensitive to national sovereignty and identity: European integration and immigration. Migration within and to the EU “has become an issue central to the future of Europe; perhaps the central issue” (Favell & Hansen, 2002, p. 581); both EU and immigration are therefore intrinsically linked to each other and carry a high potential to be publicly politicised. Moreover, unlike intra-EU mobility and asylum policies, labour migration from third countries is a policy subfield of immigration policies where EU competencies are still contested and not well developed. As Hagemann et al. claim (2017, p. 12). “if acts establish EU activities in new areas, set up new supranational agencies, or enforce the harmonization of rules, opposing such acts can be interpreted by the public as a general stance against ‘more integration’ or more ‘authority’ of the supranational institutions”. The contested EU authority in the field therefore adds to the potential of politicisation to have an effect on the responsiveness of member states to mass public interests.

Second, as outlined in the theoretical part of this chapter, labour migration policies are also the most likely policy subfield of immigration to capture the interest of non-governmental economic actors. Unlike asylum, labour migration policies produce concentrated benefits on the side of business. The latter therefore has a strong incentive to politically mobilise and influence the preference formation process of their governments to their advantage. As a result, EU labour migration policies is the most likely policy field for issue-specific business interests and communitarian mass public interests to occur and sway policy-makers simultaneously.

A brief historical perspective on EU labour migration policies

Fundamental to the EU’s migration regime in general and therefore also for this dissertation’s analysis is the distinction between the cross-border mobility of EU citizens on the one hand, and the immigration of third country nationals from outside the EU on the other hand. In the course of European integration, both groups experienced different treatment under EU law (Geddes & Scholten, 2016, p. 146; Gsir, 2013). In the early 1990s, with the establishment of the Schengen regime, its four freedoms and its incorporation into the EU acquis with the Amsterdam treaty, the mobility of EU citizens across borders, their subsequent settlement and work was fundamentally liberalised. The free movement of people constituted “a radical shock to the nation-state’s pretence to control and govern migration through its exclusive border

controls and its inclusive citizenship and welfare rights” (Favell & Hansen, 2002, p. 585). In tandem with the liberalisation of intra-EU mobility, the EU stepped up the control of extra-EU mobility and borders. The functional pressure of the Single Market, emanating from the abolition of internal borders, coupled with an increasing inflow of asylum seekers from ex-Yugoslavia beginning of the 1990s, demanded from European member states to coordinate efforts in the area of immigration, including border protection, visa and asylum⁴ (Roos, 2013b).

Heads of governments agreed that issue of migration should be handled at the European level, however under unanimity and with regulations of non-binding character, which is why issues of migration have been integrated in the intergovernmental third pillar of Justice and Home Affairs. Unanimity rules and non-binding regulations, however, hamper decision-making and undermine credible commitments (Peers, 2016). Therefore, the actual policy output was limited to only one single joint action and six non-binding resolutions (Roos, 2013b, p. 52) in the time after Maastricht. It was not until the Amsterdam Treaty came into force in 1999 that decision making in the field of migration entered the phase of legally binding cooperation (Geddes & Niemann, 2015, p. 529; Geddes & Scholten, 2016, p. 146; Roos, 2013b). The so-called Tampere Program that member states agreed upon in 1999 initiated many of the subsequent developments in this field. This five year road map laid down the political guidelines in the field of Justice and Home Affairs, with an emphasis on asylum and migration policies (Fellmer, 2013, p. 27).

Subsequently, a greater dynamic also evolved in the policy sub-field of labour migration, which was considered “the missing element for the establishment of a truly common immigration policy in the EU” (Carrera & Formisano, 2005, p. 3). However, in contrast to the harmonisation of migration control, border protection and asylum (whose necessity can be derived from the abolition of the internal border controls), the ‘added value’ of harmonising the management of labour migration at the EU level was not self-evident (Boswell, 2005). Moreover, against the background of free movement of EU citizens, deciding over the entry and stay of third country nationals was long considered the last bastions of the sovereign nation state (Lavenex, 2007). In addition, at that time, employers and governments only slowly developed an appetite for facilitating labour migration as a means to combat growing labour shortages.

⁴ A milestone was the Dublin Convention in 1990, ratified as an international agreement by the member states in 1997, which provided that asylum claims have to be processed in the first country of entry (Geddes & Scholten, 2016, p. 153).

Empowered by the Tampere-Program, the Commission proposed in 2001 its first draft proposal for a directive on the conditions of entry and residence of labour migrants - also referred to as the Labour Migration Directive. It sought to harmonise the diverging admission conditions of EU member states across different ‘categories’ of labour migrants (be they highly qualified, seasonal or temporary workers, employed or self-employed) in one piece of legislation. However, due to vehement resistance of certain member states, in particular Germany and Austria, which did not want to give up sovereignty in this field, the horizontal labour migration directive of the Commission failed (Friðriksdóttir, 2016, p. 86; Menz, 2009b, p. 114; Roos, 2013a, p. 70).

Therefore, the Commission published a Green Paper on an EU Approach to Managing Economic Migration in 2005 to foster a debate among EU institutions, member states and stakeholders. In addition, the Commission started an external consultation process to obtain the opinion of different actors in the field even before actually proposing any directive. While NGOs and labour unions feared that a segmented scheme would create first and second-class immigrants, business interest groups followed a utilitarian approach, supporting the idea of having different directives and policies for different target groups, especially prioritizing a directive for highly qualified workers. The employers’ opinion was also supported by most of the member states. The outcome of the consultation was a Policy Plan on Legal Migration in 2005, suggesting a sectoral approach (Friðriksdóttir, 2016, p. 91; Roos, 2013a). Only then did the EU’s legislative activity in the area of labour migration of third country nationals slowly unfold and several directives were proposed and adopted (Roos, 2013a). The basis for the adoption of those directives is Article 79 of the Treaty on the Functioning of the European Union (TFEU) (the former Article 63 of the Treaty Establishing the European Community (TEC)) (Friðriksdóttir, 2016).

3.1.1.2. The Policy Proposals

The chosen policy subcases (see Table 1 below) vary regarding the ‘target groups’ of immigration policies: high and low skilled labour migrants, legal and irregular labour migrants, short-term and long-term migration. This selection criterion is of importance, because it is often discussed in the literature that different ‘groups of migrants’ experience different levels of contestation in the public, depending e.g. on their level of educational qualification. By including different ‘groups of migrants’, we can control and examine whether it is actually the level of politicisation that moderates the responsiveness of governments and not certain

characteristics of the migrants targeted by the Commission's proposal. Another selection criterion is to ensure variation in the moderating variable politicisation of immigration and the EU by scattering the cases across the investigation period.⁵ Four of the proposals under study have been adopted, while the negotiations of the reform of the Blue Card Directive are still ongoing or stalled.

Table 1: Selection of policy sub-cases

Draft directives	Date of proposal	Policy area	Policy tool	Target group
Employer Sanction Directive	May 2007	Exit	Sanctions against employers	Illegally employed irregular migrants
Blue Card Directive	October 2007	Legal entry and stay	Work permits	Highly skilled labour migrants
Seasonal Workers Directive	July 2010	Legal entry and stay	Work permits	Low skilled labour migrants, short term employment
Intra-Corporate Transfer Directive	July 2010	Legal entry and stay	Work permits	Highly skilled labour migrants, short term employment
Revision of the Blue Card Directive	June 2016	Legal entry and stay	Work permits	Highly skilled labour migrants

The Employer Sanction Directive⁶

The Employer Sanction Directive is the only directive under study that does not seek to attract labour migrants but seeks to control and restrain the employment of irregular migrants. With the proposal, the Commission sought to fight the illegal employment of irregular migrants from non-EU countries, by harmonizing the enforcement and sanction mechanisms for employers and strengthening the rights of irregular migrants in employment vis-à-vis the employer. I chose to include this directive in the study for two reasons: First, it is the only directive that deals with controlling (irregular) migration, but that at the same time - as the name suggests – raises obvious issue-specific interests of employers. Yet, the costs and benefits involved for employers are fundamentally different compared to those dealing with legal migration.

⁵ For this reason, the final selection of cases was done after the data collection and measurement of the indices for politicisation was finalised, as outlined below.

⁶ The Directive was adopted in March 2009 as 'Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third country nationals' (Directive 2009/52/EC, 2009).

Employers would not benefit from the directive in the form of facilitated and flexible access to labour migrants from third countries. Instead, the directive generates concentrated costs for employers, in the form of sanctions and obligations. Employers therefore have an incentive to lobby their government to influence the negotiations and decrease the involved costs by either preventing the directive or mitigating the sanctions and control-mechanisms. It is of interest to see whether governments represent the interests of employers to an equal extent when employers cannot lure policy makers with arguments of economic growth and competitiveness. Second, it is likely that the effect of politicisation on the preferences of member states is following a different logic. One could expect that high levels of politicisation, for example, do not hamper the willingness of member states to cede authority, but instead that governments are using the option of restrictive harmonisation for “reassuring the electorate that they are pulling out all the stops to control illegal migration through European cooperation”, as suggested by Boswell (2014, p. 66).

The Blue Card Directive⁷

The Blue Card Directive has been proposed in October 2007 (European Commission, 2007b), with the intention to “establishing a fast-track admission procedure (for highly skilled workers) and by granting them equal social and economic rights with nationals of the host Member State in a number of areas” (European Commission, 2007b, p. 14). Hence, the Commission sought to attract high skilled labour migration to the EU by facilitating and harmonising rules for entrance and residence, offering favourable rights and benefits for high skilled workers and their families as well as intra-EU mobility. Hence, it targets highly skilled regular economic migration.

The Seasonal Workers Directive⁸

The intention of the Commission was to harmonise seasonal migration to the EU from third countries, in order to “respond to the needs of Member States for a source of labour to fill the low skill, seasonal, and, typically, precarious, jobs, that are not attractive to EU residents and citizens” (Olsson & Fudge, 2014, p. 440). The Commission also noted that a large proportion of seasonal workers especially in agriculture were irregular migrants. Hence, the directive was

⁷ The Directive was adopted in March 2009 as ‘Council Directive on the conditions of entry and residence of third country nationals for the purposes of highly qualified employment’ (Directive 2009/50/EC, 2009)

⁸ The Directive was adopted in February 2014 as ‘Directive 2014/36/EU of the European Parliament and of the Council on the conditions of entry and stay of third country nationals for the purpose of employment as seasonal workers’ (Directive 2014/36/EU, 2014).

seen as a tool to combat irregular migration to the EU, also by introducing a system that promotes circular migration. With the proposal (European Commission, 2010a), introduced in July 2010, the Commission sought to regulate the conditions under which third country nationals can enter and stay at the territory of an EU member state to work as a seasonal worker. Furthermore, it defines the labour rights and protection workers enjoy when working as seasonal workers under the directive. Hence, it targets low skilled, temporary and regular migration to the EU.

The Intra-Corporate Transfer (ICT) Directive⁹

The proposal (European Commission, 2010b), submitted by the Commission in July 2010, sought to facilitate the process for multinational companies to assign and transfer qualified and non-EU employees from outside the EU temporarily to subsidiaries and branches of the same undertaking located in one of the EU member states. The proposal laid down the suggested conditions for entrance and residence of ICTs and their families from third countries for a period of more than 3 months. According to Cecilia Malmström (2011), the current “plethora of overlapping national regulations, cumbersome application processes and piles of paperwork” hamper multinational companies in quickly transferring their specialists and experts, and therefore also knowledge and innovation between European member states. By offering a harmonised, clear and specific scheme that facilitates an efficient and speedy relocation of skills both to the EU as well as within the EU, the Commission sought to respond to the challenges of companies and employers to ‘react rapidly to new challenges, to provide specialist knowledge or skills that are not available locally’ (Council, 2010a, p. 5). Hence, the Commission considers ICTs as ‘temporary workers’ that “meet specific short-term needs’ and “fill the posts that would otherwise be left vacant, since no substitute could be found to occupy a post requiring such a specific knowledge” (Council, 2010a, p. 14).

Revision of the Blue Card Directive

Only six years after the adoption of the Blue Card Directive, the Commission concluded in its report on the application of the Directive that the regulations are not effective in attracting highly qualified workers from third countries to the member states of the European Union. The numbers of highly skilled migrants using the Blue Card scheme are low, in some member states

⁹ The Directive was adopted in May 2014 as ‘Directive 2014/66/EU of the European Parliament and of the Council on the conditions of entry and residence of third country nationals in the framework of an intra-corporate transfer’ (Directive 2014/66/EU, 2014).

non-existent, and more than 90 per cent of the permits have been issued by one member state, Germany. The majority of highly qualified workers have been admitted under the national schemes that still exist in parallel to the Blue Card scheme (Farcy, 2016). After four months of public consultation of stakeholders, the Commission therefore published a new proposal (European Commission, 2016) in June 2016, seeking to eliminate the shortcomings of the directive adopted in 2009 (Farcy, 2016). The Commission tried to revive some of the ideas that were already part of the proposal of the first Blue Card but did not make it through the negotiations and into the actual text of the directive. The Commission sought to include beneficiaries of international protection and skilled labour migrants (without higher education but professional experience) into the scope of the directive. Moreover, it aimed at full (rather than minimum or optional) harmonisation.

3.1.2. Rationale for the Choice of Member States

The main case studies are on the preference formation of the German and Dutch governments. Both member states already have a relatively long immigration history, as well as a sizeable migration population and politicised public debates about immigration (Triandafyllidou & Gropas, 2007, p. 363). According to the literature on the globalisation cleavage, whether European integration and immigration are politicised according to a cultural-identitarian or a socio-economic distributional logic depends on the predominant underlying conflict structure of the respective member state. The constraining effect of politicisation that incentivises governments to respond to mass public interests rather than issue-specific business interests is considered to prevail under the cultural-identitarian logic. In Germany and the Netherlands, like in other North Western European countries, European integration and immigration are politicised along cultural-identitarian lines. Hence, in times of strong politicisation, governments are expected to be limited to follow the issue-specific interests of business. Moreover, both countries are corporatist, or ‘coordinated market economies’, in which social partners such as employers’ organisations or trade unions enjoy institutionalised forms of dialogue with the respective government and are involved in policy formation (Caviedes, 2010, p. 6; Menz, 2009b, p. 88).

However, Germany and the Netherlands were chosen because they differ in two respects: first, in the Netherlands ‘New Right’ parties like Lijst Pim Fortuyn and Geert Wilders’ Party for Freedom (PVV) have been electorally successful since the early 2000s. In contrast, the German party system is only recently characterized by the emergence of the populist right wing party

Alternative für Deutschland (AfD), which experienced rapid growth during the years of the EU's multiple-crises. Current research in the tradition of the Postfunctionalist Theory is certain that right wing populist parties play an important role in driving politicisation. However, the literature is wary to conclude that the mere presence or strength of these challenger parties explains the levels of politicisation (Dolezal & Hellström, 2016; Grande, Schwarzbözl, & Fatke, 2018; Marks & Hooghe, 2009). It also begs the question whether the existence or success of a populist right wing party at the domestic level is necessary for politicisation to unfold its moderating effect on the preference formation process of governments. One could argue that member states only fear for electoral sanctions if a right-wing populist party alerts the electorate about a government's decision at the EU level and competes with the mainstream parties in the upcoming elections. Second, Germany and the Netherlands were chosen from the population of North Western European member states because they differ in the size of the economy and labour market. Smaller member states with an open economy such as the Netherlands are more likely to be dependent on harmonised EU efforts to achieve their policy goals. By integrating into an EU-wide economic area, smaller countries seek to profit from 'economies of scale effects', which posits that "due to the expectation of high marginal returns, incentives for investment and migration increase" (König, 2015, p. 504). In contrast, Germany, as the largest and most powerful economy in the EU, is less dependent on EU policies.

The dissertation also includes empirical research on Spain and Poland in the form of minor case studies. In doing so, this research can go beyond the "usual suspects" of 'older immigration countries' in North Western Europe and also look at the experiences of 'new' immigration countries of East and Southern Europe (Geddes & Scholten, 2016, p. 20). Even though this increases the contending and constraining factors, it is important to widen the geographical focus "if genuine elements of novelty in European immigration politics and policy are to be properly captured" (Geddes & Scholten, 2016, p. 19f.). While Poland is still considered an emigration country rather than an immigration country (Hoeglinger, 2016; Kriesi, 2016; van der Brug et al., 2015), Spain, as a recent host, transitioned from emigration to immigration in the early 1990s and rapidly emerged as the EU's key destination country (Kriesi, 2016; Maas, 2010). However, both countries do not only differ from Germany and Netherlands in their migration experience, but also in their underlying political conflict structures, due to fundamentally different historical developments after World War II. In most Southern and Central Eastern European member states the 'new movements' of the late 1960s had no or only limited effects on the structural conflict of their societies, as most states were still under authoritarian or communist rule at that time. Hence, the societal value change (demand-side)

and especially the political answer in the form of new or transformed parties (supply-side) were constrained. At the time when the process of globalisation started to unfold and transform the societal foundations in North Western Europe, countries in the South and Central Eastern Europe had only recently overthrown (or were about to overthrow) their authoritarian and communist regimes. European integration was therefore mostly perceived as a positive, modernizing and democratizing process (Hutter et al., 2018, p. 15). Spain¹⁰ was chosen among the Southern European member states, because the cultural-identitarian dimension is the least developed¹¹. Hence, the politicisation of the EU and of immigration is not considered to have a constraining effect on the government when negotiating new EU integration steps or the harmonisation of policies. In Central and Eastern European member states, the opposition to the EU and immigration are similar to the cultural-identitarian logic in North Western Europe. In Poland¹², the legacy of the communist regime rendered any fundamental socio-economic criticism of neoliberal reforms and the EU pro-market stance impossible. Cultural issues, such as religion, dominate and divide the Polish political conflict structure and party system. Increasingly, issues of European integration and immigration are included. In times of strong politicisation, we would expect a strong constraining effect on governments, which would limit harmonisation and restrict immigration. Poland was chosen among the Central and Eastern European member states, because it is part of the politically influential Visegrad countries, of which it has the strongest economy and exhibits the most severe labour shortages. The literature on economic corporatism is inconclusive about the degree of corporatist structure in Spain. While Jahn (2016) attests Spain a high level of corporatism, Siaroff (1999) concludes that the degree of corporatism is relatively low. Poland shows only weak corporatist arrangements (Jahn, 2016).

¹⁰ The legacy of the authoritarian regime discredited until recently any development of a 'New Right' and European integration, if at all, was mainly criticised along socio-economic terms from the left (Kriesi, 2016). Hence, in the time period covered by this research, Spain did not have a successful right wing Populist Party in the time period covered by this research. However, the Spanish right wing populist party Vox was founded in 2013 and had its first electoral success at the regional level in 2018 and subsequently at the national level in 2019 (Vidal & Sánchez-Vítores, 2019b, p. 94)

¹¹ In contrast, in Italy right wing populist parties, in particular Lega Nord, are electorally successful since the 1990s on the regional, national and European level.

¹² In Poland populist right wing parties are not only electoral successful but are also in government. From 2005 to 2007, the Law and Justice Party (PiS), the populist Self-Defence Party and the nationalist-clerical League of Polish Families formed a populist coalition government. Since 2015, PiS is again the ruling party, "whose stances often display Euroscepticism, [but] has never questioned Poland's EU membership during election campaigns, even though it has advocated maintaining more national sovereignty within the EU structure" (Sałek & Sztajdel, 2019, p. 205).

Table 2: Selection of Country Cases

Member state	Underlying logic of Politicisation	Immigration history	Existence of ‘New Right’ populist party
Germany	Cultural-identitarian	Old immigration country	recently (successful in national elections since 2017)
Netherlands	Cultural-identitarian	Old immigration country	Established (successful in national elections since 2002)
Spain	Socio-economic	Recent host country	Not existent (not successful in national elections until 2018)
Poland	Cultural-identitarian	Emigration country in transition	Established (successful in national elections and in government)

3.2. Research Design

The research design consists of two parts. In order to make a statement about the moderating effect of politicisation on the responsiveness of governments to mass public interests and issue-specific business interests, we need a clearer picture of this phenomenon. More specifically, we must assess whether the phenomenon exists, and if so, how does it vary across time and across member states. As a first step, the moderating variables politicisation of immigration and politicisation of the EU are operationalized and measured quantitatively for Germany, the Netherlands, Spain, and Poland. The second part, the qualitative in-depth case analysis, studies the preference formation process of the selected member states with regard to five policy proposals in the field of labour migration to assess whether or not (and how) the moderating variables affect the responsiveness of governments.

3.2.1. Descriptive Statistics: Quantitative measurement of Politicisation

The remainder of this subchapter outlines the conceptualisation, operationalization and measurement of politicisation. To be able to make a statement about the effect of politicisation, it is necessary to look at subcases where we observe a variation in the degree of politicisation. Similar to Rauh (2016), this dissertation suggests a time-consistent operationalization and measurement of politicisation along the two main components of politicisation: salience and polarisation. The measurement goes beyond anecdotal evidence of periodical strong or weak public debates about European issues or immigration and allows us to make a statement that the politicisation was relatively stronger at *time a* compared to *time b* in *country x*.

Conceptualisation and Operationalisation

As outlined above, politicisation of the EU is considered the key mechanism to turn the ‘permissive consensus’ into a ‘constraining dissensus’, forcing political elites to “look over their shoulders when negotiating European issues” (Marks & Hooghe, 2009, p. 5). However, different understandings exist of what exactly politicisation entails, in what political sphere it manifests itself and how to measure it (de Wilde, 2011; de Wilde et al., 2016). Zürn (2016, p. 167) offers a wide understanding of politicisation, arguing that in general, it “means the demand for, or the act of, transporting an issue or an institution into the field or sphere of politics – making previously unpolitical matters political”. Depending on what understanding of ‘political’ we apply, politicisation can mean two things. First, if we consider politics as “ability to make collectively binding decisions” (Zürn, 2016, p. 167) then politicisation means that issues are moved from economic, legal, administrative or technocratic function systems into the political sphere, where they are then objects of public choice. According to this understanding, a topic is for instance politicised if it is put to a vote in parliament. Second, if we understand political as “public debates about the right course in handling a collective problem” (Zürn, 2016, p. 167), then an issue is only politicised if it resonates in the wider citizenry. Hence, there is disagreement in the scholarly literature in what political sphere politicisation manifests itself (Hurrelmann, Gora, & Wagner, 2015), e.g. in party politics, national or European election campaigns (Hoeglinger, 2016; Rauh, 2016), the media landscape (Rauh, 2016) or the general public (Hurrelmann et al., 2015). Since this dissertation is looking more closely at the responsiveness of governments to the public, my working definition of politicisation is closer to the second understanding that defines politicisation as “an increase in polarization of opinions, interests or values and the extent to which they are publicly advanced towards policy formulation within the EU” (de Wilde, 2011, p. 560). The literature on politicisation of the EU widely agrees on salience and polarisation as the main components of politicisation (Grande et al., 2018; Hutter & Kriesi, 2019b), while others use a three-dimensional conceptualisation, adding ‘actor expansion’ as a third component (Grande & Hutter, 2016b, 2016a; Rauh, 2016).

In the literature on politicisation of immigration, we lack conceptual consistency. Different concepts, operationalisation and measurements of politicisation are used (Givens & Luedtke, 2004; Hoeglinger, 2016; Morales et al., 2015; van der Brug et al., 2015). Findings are thus hardly comparable. For instance, Givens and Luedtke (2004) only look at salience, which is, however, not based on a continuous measurement of salience in the public. Instead they apply

a binary variable for salience, drawing on “established empirical research in the EU politics literature that has demonstrated how certain immigration-related issue areas, such as political asylum and illegal immigration, have achieved a high public and media profile as law-and-order and national security problems” (Givens & Luedtke, 2004, p. 152). Morales et al. (2015) do not develop a single index for politicisation but rather look at three different aspects that are strongly associated with politicisation of immigration. Namely, first, the intensity of the public debate on immigration in the media, second, the strength and success of anti-immigration parties and third, the level of mobilisation by anti-immigration movements¹³. Van der Brug et al. (2015), using a political claims analysis of newspaper articles to investigate the politicisation of immigration as a dependent variable, conceptualise politicisation along two separate dimensions: salience and polarisation.

As the literature on immigration and the EU most widely agrees on salience and polarisation as the key components, I work with the conceptualisation of van der Brug et al. (2015, p. 17): “an issue is only fully politicised when it is both contested (polarised) and salient”. Hence, in line with the scholarly literature, I conceptualise politicisation as a multi-faceted process, entailing both the public visibility of an issue (salience) and the polarisation of public opinion regarding an issue. Similar to Rauh (2016), I will develop time-consistent, continuous indicators that capture the moderating variables politicisation of immigration and politicisation of the EU.

Salience

Salience is operationalised as the extent to which the EU (or immigration respectively) are publicly debated in mass media (Mayer, 2011; van der Brug et al., 2015) and is measured by a frequency analysis of newspaper articles. Mass media is understood as the most important channel through which citizens can follow the path of European integration and through which EU and policy related topics and different positions are communicated to the public by political actors (Statham & Trenz, 2012). At the same time, journalists choose to report on those topics that are of interest for the public and therefore already carry public salience (Leupold, 2016; Rauh, 2016). If policy issues “are not contested in public – i.e. reflected in the public debates that unfold in mass media – we would not speak of politicisation” (de Wilde & Lord, 2016, p.

¹³ Their measure is biased as it only captures the restrictive, anti-immigration pole of public polarisation. Furthermore, the authors measure the impact of the three components on the policy outputs separately rather than understanding them as integral components of politicisation. However, they argue that probably the joint pressure of more than just one of the three aspects can explain responsiveness of governments to restrictive public demands.

149). Therefore, the analysis of public debates on EU and immigration newspaper coverage is an indispensable source to study politicisation.

Similar to Rauh¹⁴ (2016), Boomgaarden et al. (2010) and Leopold (2016), I measure salience of EU as the monthly number of articles with reference to the EU or EU institutions expressed as the share of the overall monthly articles in one daily quality newspaper per member state. This measurement is suited for a within-country analysis, but “one should be careful when using this indicator for cross-country analysis because in some countries, newspapers just report more elaborately on politics” (van der Brug et al., 2015, p. 28). Using different newspaper databases (see Table 3 below), for each country the overall number of articles published by the newspaper per months was registered, as well as the monthly number of hits when the search string for the EU and EU institutions was applied. The same has been done for issues of immigration (see Annex I).

For the four countries and the time period under study, at least one quality newspaper is accessible from the time period late 1990s onwards until today: The Frankfurter Allgemeine Zeitung for Germany, the Spanish El Pais, NRC Handelsblad for the Netherlands and the Polish Gazeta Wyborgcza. It can be criticised that selecting only one newspaper per country might give a biased picture of politicisation, depending on the distinctive ideological orientation of the newspaper. However, the data in this dissertation is only used to retrieve salience and not tone or direction of the content. Hence, it can be assumed that one newspaper provides a good proxy for the general salience and the changes over time in the media landscape and the public of a country on the aggregate (see Figure 14 in Annex II for the salience of the EU and immigration in the German newspaper FAZ)¹⁵.

¹⁴ In contrast to Rauh (2016), this dissertation does not look at the effect of politicisation on the responsiveness of the European Commission, but its effect on the preference formation of single member states – hence this dissertation also requires a measurement of politicisation at the national level.

¹⁵ This is also supported by Boomgaarden et al. (2010), who show in their study that issue visibility between (quality) newspapers correlates strongly, suggesting that one newspaper per country can reflect general trends of visibility in other newspapers. To examine whether this assumption holds, data was also collected for a second German national newspaper in order to control for a bias in reporting. Besides the Frankfurter Allgemeine Zeitung (FAZ), which has a conservative political alignment, data was collected for the Tageszeitung (TAZ), which is left-wing. The results suggest a statistically strong correlation between the salience measures of both newspapers. There is a significant positive relationship of $r = 0.97$ (salience of Immigration) and $r = 0.88$ (salience of the EU) with a $p\text{-value} < 0.001$. Also covering a shorter time period, data was collected for a second Spanish (El Mundo) and Dutch newspaper (de Volkskrant); the correlation shows a similar strong positive relationship between the newspapers of one member state. Hence, drawing on just one newspaper per country provides a good proxy for the general salience and the changes over time in the overall national media landscape.

Table 3: Newspaper sample underlying the public issue salience indicators

Member State	Newspaper	Political Alignment¹⁶	Content accessed via
DE	Frankfurter Allgemeine Zeitung	Conservative	fazarchiv.faz.net
NL	NRC Handelsblad	Liberal	Lexis Nexis Database
ES	El Pais	Centre-left	Lexis Nexis Database
PL	Gazeta Wyborgcza	Centre-left	Lexis Nexis Database

Polarisation

The second component of politicisation is polarisation of opinion, as “politicisation increases with the degree to which opinions on European integration among the wider citizenry differ or even become polarised” (Rauh, 2016, p. 21). What is of importance is therefore not the opinion of the median voter, but to what degree the opinion of voters diverge, because “the more dispersed are attitudes, the more problematic it is to achieve consensus, not least because it creates electoral incentives for parties to locate at the extremes” (Down & Wilson, 2008, p. 27). The dispersion of opinion can be captured by measuring the variance in the distribution of opinions - the squared average deviation from the mean level of public opinion. However, the distribution is not enough to describe the polarisation of opinion. Also “the peakedness of the distribution must be examined to identify the full extent of public division on the EU” (Down & Wilson, 2008, p. 42). Therefore, I measure the bimodality of public opinion with kurtosis, which indicates whether “people with different positions cluster around separate camps, with locations between the two modal positions sparsely occupied” (DiMaggio et al., 1996, p. 694). Hence, the polarisation of opinion is captured with two measurements: distribution and bimodality.

In order to measure polarisation regarding the EU, I draw on survey items of the Eurobarometer survey. It is common in the literature in this field to use the ‘membership item’ as an indicator of public support for the EU¹⁷ (Hagemann et al., 2017; Hix, 2018; Rauh, 2016; Williams, 2018).

¹⁶ political alignment of newspapers is derived from Eurotopics (2019)

¹⁷ The wording of the Eurobarometer question is: ‘Generally speaking, do you think [your country’s] membership of the Common Market/European Community/ European Union is a ‘good thing’, a ‘bad thing’, ‘neither good nor bad’, ‘don’t know’.

Respondents are asked whether they consider EU membership as “a good thing, a bad thing, or neither good nor bad”. Unfortunately, the membership item was discontinued in 2012. Therefore I draw on the survey question whether respondents have a negative or positive picture of the EU¹⁸, which is available from 2000 to 2017 (Hix, 2018, p. 1601). Obtaining comparable data on public opinion on immigration to measure polarization is challenging (Boomgaarden & Vliegenthart, 2009; Morales et al., 2015). However, as commonly utilised by researchers in the field (Hatton, 2017; Morales et al., 2015; van der Brug et al., 2015), I rely on the European Social Survey (EES) that asks the respondents for their agreement/disagreement with the statement ‘Immigrants are generally good for the [country]’s economy’ (see Figure 15 and Figure 16 in Annex II for the component Variance and Kurtosis of public opinion on the EU and immigration for Germany).

Politicisation Indices

Eventually I create for each country under study two composite additive indices: one for the politicisation of immigration and one for the politicisation of the EU. I z-standardise the components salience (the share of monthly number of articles with reference to EU/immigration) and polarisation (the squared average deviation and kurtosis) based on the mean and standard deviation.

Measuring politicisation within the wider citizenry quantitatively by combining frequency analysis of newspapers and data on public opinion towards EU and immigration entails certain short-comings: Due to the time-consuming data collection of salience component and only limited access to public opinion data before 2002, I am constrained to the investigation period from 2002 to 2017. Hence, the indices allow us only to evaluate the relative degree of politicisation within the limited time period of the investigation period. It might be that both immigration and European integration were much less politicised in the years before and the long-term trend of politicisation might therefore be much stronger as now plotted in the graphs covering the time period from 2002 to 2017 or vice versa. Also, due to the z-standardisation of the single components of the indices, the latter allow us only to make statements regarding the degree of politicisation at a specific point in time relative to another given moment within the same member state. Hence, the indices cannot be interpreted in absolute, but only relative terms

¹⁸ The wording of the Eurobarometer question is: ‘In general, does the EU conjure up for you a very positive, fairly positive, neutral, fairly negative or very negative image?’

within countries. Furthermore, the degree of politicisation at a certain point of time cannot be compared across countries but is only suited for within-country over time analysis.

Nevertheless, those shortcomings do not affect the time-consistency of the indices within the member states and allows us to compare the degree of politicisation of both immigration and of the EU across this time. Hence, it permits us to make, for example, the statement that politicisation was relatively higher in Germany before the negotiations of the Blue Card Directive in 2007 than before the negotiations of the Seasonal Workers Directive in 2009. Therefore, measuring politicisation as outlined above enables us to make statements about the degree of politicisation that goes beyond anecdotal evidence of periodical strong or weak public salience of issues or its contestations. It provides a truly time-consistent assessment of politicisation of immigration and the EU among the wider citizenry and allows us to investigate whether variance in the degree of politicisation has a moderating effect on the responsiveness of governments.

3.2.2. Qualitative in-depth Case Analyses

Whether politicisation of the EU and of immigration, as measured above, has a moderating effect on the responsiveness of governments to either mass public interests or employer interests is examined in the second, qualitative part of this dissertation. In four in-depth qualitative country case analyses I investigate the responsiveness of governments regarding five draft proposals in the field of labour migration. In the remainder of this chapter I first explain how the dependent variable (the preferences of member states) are operationalized and assessed by means of content analysis, involving the coding of Council minutes. Second, the operationalization and measurement of the independent variable, the employers' interests, is outlined before I give a brief overview of how I will structure each country case study.

When governments or interest groups express their support or criticism regarding a policy proposal by the Commission, they relate and compare their policy position mostly to the proposal, but also to national policies already in place. However, the comparison to the Commission's proposal is more consistent across actors and member states. Therefore, in this dissertation the point of reference to assess the restrictiveness and preferred level of harmonisation of the policy positions of governments and employers is the Commission's policy proposal. Hence, I analyse whether the preferred direction of change expressed by the government during the negotiations corresponds with the preferred direction of change voiced by the employers.

Dependent Variable: Preferences of member states

The dependent variable of my research is the preferences of a member state regarding a policy proposal of the Commission. According to Moravcsik, “states [...] represent some subset of domestic society, on the basis of whose interests state officials define state preferences and act purposefully in world politics” and subsequently, “what states want is the primary determinant of what they do” (Moravcsik, 1997, pp. 518, 521). Accordingly, the preferences of member states can be extracted from the policy positions that governments express before and during the negotiations of a policy (Arregui & Thomson, 2014, p. 693).

Data Collection Strategy

I take governments’ negotiation positions as the dependent variable from the minutes of Council negotiations. Neither the voting behaviour of a member state once a proposal reaches the final stage of formal decision-making nor the actual policy outcome reflect the initial policy positions of single member states¹⁹. While a negative vote in the Council is a strong signal to the electorate or interest groups that their concerns and demands are heard, it does not necessarily mean that representatives also behaved accordingly, nor that they integrated the demands into their policy position and defended them during the negotiations (Arregui & Thomson, 2014; Bailer, Mattila, & Schneider, 2015; Hagemann et al., 2017). The vote is mostly inconsequential for the policy outcome in the context of qualified majority voting, because “the decision to register discontent is taken when the negotiations are over and the outcome is determined, and is best interpreted as a balancing act between incurring reputational costs among peers in the Council and signalling to domestic constituencies” (Naurin, 2018, p. 12). Hence, a negative vote is considered in the literature on responsiveness as a communicative or rhetorical form of responsiveness, similar to public commitments or media statements by member states’ representatives. Only few studies focus on behavioural forms of responsiveness, such as taking and defending policy positions that actually represent the interests of the electorate or interest groups during the negotiations, which are therefore also more consequential for the policy outcome (Schneider, 2019; Wratil, 2018). When studying the behavioural responsiveness of governments to either mass public interests or issue-specific business interests, it is therefore crucial to go beyond the voting behaviour of governments or the policy position they convey in

¹⁹ Member states vote in favour of a proposal around 98 per cent of the time, adhering to the informal norm of consensus (Hobolt & Wratil, 2020, p. 362; Hosli, Mattila, & Uriot, 2011, p. 1250; Naurin, 2018, p. 12).

the media and look at “the micro level of policy-making in the institutions and investigated the legislative behavior of national governments” (Wratil, 2018, p. 54).

Hence, to investigate whether governments respond in their policy preferences to mass public or employer interests, it requires us to look at the initial policy positions at the beginning of the negotiation process of a policy. A common data collection strategy to retrieve the policy position of governments is large scale interviews with participants of Council negotiations (Thomson, 2006). Research interviews as a primary source of preferences would, however, incur high costs to collect this data for four member states and five policy proposals and would involve the common shortcomings of interviews, such as post-dictive and subjective bias in reporting, that requires further verification through the consultation of other sources (Fellmer, 2013, p. 152; Sullivan & Selck, 2007, p. 1157f.).

A “so far under-used data resource” (Bailer, 2010, p. 752) are the Council negotiation minutes. To every proposed directive belongs a certain collection of documents²⁰ that entail protocols of e.g. council meetings, meetings of the Working Party on Migration and Expulsion or the Working Party on Asylum, where delegates of the member states bring forward their objections, ideas and arguments regarding certain proposed provisions or the draft directive as a whole. The positions of single member states are registered in the footnote of the Council minutes in a standardised and detailed way²¹. Therefore, I choose Council minutes as the primary source for retrieving member states’ policy positions (Fellmer, 2013, p. 152).

However, a shortcoming of this data collection strategy is that the minutes do not allow the interpretation of the importance that actors attach to certain provisions in comparison to others. Also, they do not give information on deals and agreements made by governments before or after the official negotiations (Thomson, 2006, p. 329). Therefore, to elicit case-specific knowledge, which may not be available through analysis of Council minutes and to improve the validity of my findings, I also examine other documents that reveal the policy position of member states with respect to a certain EU policy proposal, e.g. position papers of governments and ministries. Furthermore, for both the policy position of governments and employers’

²⁰ A complete list of all documents related to a proposed directive can be obtained on request from the Public Information Service of the General Secretariat of the Council of the European Union. Most documents are available online, if not, they can be requested.

²¹ Thomson (2006, p. 330), comparing the data on policy positions of member states retrieved from expert interviews and manual content analysis of Council minutes on two proposals, reports that “the information from experts and Council documentation is shown to be largely consistent”.

organisations, I include press coverage, which highlight the preferences sometimes more clearly. Case-related newspaper articles were searched via the Nexis Academic Database. In particular I consulted Agence Europe, Europolitics, Euractive and EUobserver, which are considered as independent sources of news about EU policy-making and which offer analysis and summaries of member states' positions towards certain EU proposals. Besides that, national newspapers are highly relevant to retrieve the policy position of governments. Furthermore, to back up the interpretation of the documents, I held semi-structured interviews with representatives of governments in Brussels preparing and leading the negotiations, or stakeholders of national organised interests of business and industry. Combining documents, press coverage and interviews as sources of analysis satisfies the data triangulation principle, which means that I use more than one source of data and method collection, contributing to the validation of the research and its findings (Yin, 2009, p. 115).

Measurement and Coding Strategy

As noted in the theoretical chapter, in the context of EU policy-making, “responsiveness in the Council should be assessed on two issue dimensions, as the EU’s policy-making space, at least from an a priori perspective, is arguably two-dimensional” (Wratil, 2018, p. 56): first, on the policy-dimension, governments have to take a position with regard to the content of the policy, which “connect to conflicts about left-right ideological issues, encompassing classical economic and newly emerging left-libertarian versus right-authoritarian elements” (Wratil, 2018, p. 56). Second, on the polity-dimension, member states have to take a position regarding the preferred level of harmonisation of national standards. Accordingly, I operationalize and measure the policy position of member states and employers regarding concrete policy proposals in the field of labour migration on both issue dimensions in the Council: restrictiveness (policy) and harmonisation (polity). As mentioned before, I take governments’ negotiation positions as the dependent variable primarily from the Council minutes. Using MAXQDA, I code the governments’ preferred changes (as brought forward in the Council minutes) regarding restrictiveness or level of harmonisation in comparison to a provision proposed in the Commission’s draft directive. The units of analysis are therefore the statements of member states attached to single provisions of a proposal that can be found in the footnotes of the Council minutes. Most comments of member states’ representatives made during negotiations are questions that seek to clarify certain provisions. Relevant for my research are, however, those statements that express support or seek to change provisions.

On the *policy-dimension*, I code the preferences of member states regarding the content of a directive. The number and quality of admission criteria that migrants need to fulfil and the rights that they enjoy are indicators for more or less restrictiveness (Roos, 2013b, p. 44ff.). I distinguish between, first, provisions concerning the scope of the directive and admission conditions and second, provisions defining the rights and benefits of migrants. If a member state demands to increase the number and strength of policy restrictions on the admission and employment of migrant workers, it seeks to increase the barriers for admission that therefore potentially curb migration and vice versa. These provisions include inter alia the scope of individuals eligible for immigration, salary thresholds, skills or educational requirements, working experience, labour market tests and self-sufficiency requirements (Ruhs, 2016, p. 437). If a government demands more favourable residence criteria and more rights granted to an immigrant, it seeks to render the immigration policies less restrictive and the destination country more attractive for migrants. These provisions include unemployment benefits, free choice of employment, social housing, equal pay, lengths of residence permit, access to citizenship and family reunion (Ruhs, 2016, p. 437). When assessing the proposed changes by member states as restricting or liberalising the Commission's proposal, I followed mainly the coding criteria of de Haas et al. (2014, p. 16) (see Table 4 below). The codes attributed to statements of governments are binary: restricting (-1) or liberalising (+1) the Commission's draft directive.

On the *polity-dimension*, I capture the member states' preferred changes regarding the harmonisation of national standards. Do member states seek to promote harmonisation, or retain national standard-setting? The discretion member states enjoy when implementing certain provisions of a directive has an impact on the harmonisation effect of a directive (Hartmann, 2016, p. 103). Hence, when coding the comments of government representatives during the negotiations, we must distinguish between statements that seek to widen or reduce the options left to national authorities when implementing a directive. One indicator for weak harmonisation and therefore vast discretion are for instance 'may-clauses' in the wording of a directive, which permits but does not require the implementation of a provision, while a 'shall-clause' decreases the discretion and increases harmonisation (Hartmann, 2016, p. 98). Other measures that increase harmonisation are the application of mutual recognition principles (Wrtil, 2018) or increasing the scope of a directive to areas that have not been covered before (for instance allowing recognised asylum seekers to apply for a Blue Card Directive). Besides the discretion made available for the implementation at the level of single provisions within a directive, the directive as a whole can determine the level of harmonisation. We can differentiate between full harmonisation, minimum harmonisation and optional harmonisation.

Full harmonisation would require member states to replace any national standards or admission schemes targeting the same group of immigrants with the EU directive. Optional harmonisation, instead, means that member states can keep the national admission schemes intact in parallel to the EU directive. The EU's Blue Card Directive for instance stipulates that '[t]his Directive shall be without prejudice to the right of the Member States to issue residence permits other than an EU Blue Card for any purpose of employment'. Minimum harmonisation is another type of harmonisation, as it was for instance requested by the Dutch delegation when they suggested that "member states may issue residence permits for the purpose of highly qualified employment on terms that are more favourable than those laid down by this Directive". I rank them as ordinal variables according to the degree of discretion they allow for member states. While full harmonisation allows the least discretion, minimum harmonisation allows the implementation of either more restrictive or more favourable provisions, and optional harmonisation involves the greatest discretion because national standards remain completely unaffected by the directive and member states have the freedom to decide whether to use the European scheme at all. Accordingly, to take these qualitative differences into account, I did not apply a binary code. Instead, requested changes to the discretion of single provisions within a directive are coded as (+1) for less discretion/more harmonisation and (-1) for more discretion/less harmonisation. For provisions that concern the harmonisation effect of the directive as a whole, I code a member state's request to apply optional instead of minimum harmonisation as (-2), or the request from optional instead of full harmonisation as (-4). Vice versa, requesting full instead of optional harmonisation was coded as (+4) (see Table 4 below).

I use the numerical codes to plot the policy positions of governments in a two-dimensional negotiations space (see Figure 13). The positions are calculated based on the coded comments of the respective negotiation teams during the negotiations and are relative to the Commission's proposal (intersection of the two axes). The horizontal axis reflects the position on the policy-dimension (restrictive vs. liberal position) and the vertical axis the position on the polity-dimension (nationalist or integrationist position). The positions are calculated based on the coded comments of the respective negotiation teams during the negotiations. While the values cannot be interpreted in absolute terms, it gives an idea about the governments' stance towards harmonising EU labour migration policies.

Table 4: Coding Strategy²²

Dimension	Coding criteria
Policy-dimension: restricting vs. liberalising immigration	<ul style="list-style-type: none"> - Quantity: Does the ms seek to restrict (res) or widen (lib) the pool of immigrants gaining migration rights? - Composition: Does the ms seek to raise/specify (lib) or lower/make more generic (res) the eligibility criteria for entry and stay of a particular migrant group? - Procedure: Does the ms seek to make specific procedures more (res) or less (lib) complicated for the target group? - Choice: Does the ms restrict (res) or widen (lib) the choices available to immigrants? - Control: Does the ms seek to increase (res) or relax (lib) the level of control on migrants at the border or within the territory? - Rights: does the ms seek to restrict (res) or broaden (lib) the rights the immigrants enjoy?
Polity-dimension: harmonisation vs. national standards	<p>Level of provisions:</p> <ul style="list-style-type: none"> - Options: Does the ms seek to widen (-1) or reduce (+1) the options left to national authorities when implementing the provision of a directive? - Flexibility: Does the ms seek to increase (-1) or decrease (+1) flexibility of a provision? - Obligation: Does a ms seek to give member states the option to implement a provision (-1) or not (+1)? <hr/> <p>Level of Directive: Does the ms request...</p> <ul style="list-style-type: none"> - full harmonisation instead of minimum harmonisation or minimum harmonisation instead of optional harmonisation (+2)? - full harmonisation instead of optional harmonisation (+4)? - optional harmonisation instead of minimum harmonisation or minimum harmonisation instead of full harmonisation (-2)? - optional harmonisation instead of full harmonisation (-4)?

Independent Variable: employer interests

According to the Liberal Intergovernmentalism, the determining force behind state preferences are the interests of the strongest national interest groups, which expect concentrated costs or benefits from a policy change at the EU level. These interest groups include not only employers' organisations, but also trade unions and non-governmental organisations. Nevertheless, this dissertation focuses only on the interests of employers, as aggregated by employers' organisations. In the past, trade unions were considered to be key actors behind national migration policies, adopting a sceptical if not restrictive stance. Commonly, trade unions were

²² Source: Author, partially adopted from de Haas et al. (2014, p. 16) and Wratil (2018).

“seen as wanting to protect the domestic labor market from immigration due to its potential for lowering wages and furnishing an alternative labor supply in the case of disputes” (Caviedes, 2008, p. 3). For instance, in the wake of the Oil Crisis in 1973, trade unions were strongly and successfully lobbying against further recruitment of foreign workers. However, in the last decades, trade unions changed their stance towards labour migration, adopting a neutral or positive position, acknowledging the need of labour migration to fill labour shortages. Moreover, with regard to immigration, both pro-migrant NGOs and trade unions are more involved in issues of integration of migrant workers, anti-racism and anti-discrimination at the work place (Caviedes, 2008, p. 5; Menz, 2007, 2009b, p. 88ff.; Roos, 2013b, p. 37f.). The directives discussed in this dissertation, however, focus mostly on admission of workers. Hence, neither trade unions nor pro-immigrant groups figure pro-actively as policy entrepreneurs on issues of labour migration (Caviedes, 2010, p. 29). Hence, employers are the key actors behind labour migration policy change.

Data collection

The interests of employers are not as systematically documented as the member states’ policy positions in the Council minutes. Hence, I have to draw on a broad range of sources²³. I extract the positions from press releases of industry, employers’ organisations and business-oriented expert bodies, as they “offer particularly well-crystallized depictions of employer preferences” (Caviedes, 2008, p. 4). Furthermore, I rely on statements of employers and employers’ organisations in newspapers. In some cases, the Commission launches public consultations before the negotiations of a proposal, asking governments, ministries and stakeholders to bring forward their opinions on certain policy issues. These statements can be found online on the website of the Commission. The extent to which employers’ organisations publish and communicate their policy positions varies strongly between member states. Therefore, semi-structured interviews with employers’ organisations are a crucial source to complement the document analysis.

Structure of case analysis

The following section sets out the structure of the analyses more clearly in order to provide for better guidance in reading. The first part of a country case study outlines the relevant contextual

²³ As most of the original documents are written in German, Spanish, Dutch or Polish language, I use my own translation, when I cite them directly in this dissertation. I do not indicate this for each source individually. In the reference list at the end of this dissertation, I name both the original as well as the translated title of the documents.

factors for the subsequent analysis of the preference formation regarding EU labour migration policies. I give a brief overview of the country's experience with immigration and immigration policies. Subsequently, I sketch out the particularities of the independent variables 'employers' interests' (including the perceived dependence on a common EU policy and statistics on labour shortages reported by employers²⁴) and 'mass public interests' (whether opposition to the EU and immigration is present and follows a cultural-identitarian or socio-economic logic). Thereafter I discuss the country's politicisation indices and to what extent they mirror public debates and contestation at the domestic level.

I proceed with the second part of the case study that analyses the moderating effect of politicisation on the relationship between the independent variables employers' interests and mass public interests on the one hand and the preference formation of the German governments with regard to five EU labour migration policies on the other. For every sub-case I give background information on the national policies in place that are relevant for the proposal under discussion. I then assess the strengths of the mediating variables politicisation of the EU and politicisation of Immigration, measured with the indices as developed above. I therefore compare the level of politicisation in the 12 months before the Commission published the proposal. By lagging the moderating variables, I reflect causal ordering, in which governments first observe politicisation and subsequently react to it by responding to either mass public interests or interests of employers (Hagemann et al., 2017; Wratil, 2018). I consider politicisation to be strong if the index is above the country's mean, and low if it is below the country's mean (Hobolt & Wratil, 2020). If the index for the EU suggests strong politicisation, while that for immigration low politicisation (or vice versa), I will categorise it as medium strong politicisation. I will complement the analysis of the indices with background information on what explains high or low politicisation of the issues in the particular member state at the domestic level.

Subsequently, I analyse the employer interests towards the directive under discussion both on the policy as well as the polity-dimension. Which parts of the proposal are supported or opposed by employers' organisation and with what reasoning? As a next step, I will then analyse the policy positions of the member state towards the EU proposal, keeping the theoretical

²⁴ In order to measure sectoral labour shortages, often employers' perceptions of labour shortage is used (Doudeijns & Dumont, 2003, p. 10). Asking managerial staff what limits their production, one possible answer of the Business and Consumer Survey (European Commission, 2020) is shortage of labour. It offers data in the sectors: manufacturing industry (Question 8, F3), services (Question 7, F3) and construction (Question 2, F4). The

expectations outlined above in mind. I compare the position of the government to the policy proposal: does it advocate for more liberal or more restrictive content and does it prefer strict or flexible regulations or no regulations at the EU level at all? In the analytical interim conclusion of the sub-case study, I assess whether the governmental policy positions mirror the interests of the employers ('Client Politics Mode') or mass public interests ('Mass Politics Mode').

4. Case Study: Germany

The case study on Germany seeks to analyse how and to what extent politicisation of the EU and immigration moderates the representation of employer or mass public interests by the German governments in Council negotiations on the harmonisation of labour migration policies.

The first part of the chapter will outline the relevant contextual factors for the subsequent analysis of German preference formation regarding EU labour migration policies. I will give a brief overview of the German experience with immigration and immigration policies. Subsequently, I will sketch out the particularities of the independent variables ‘employers’ interests’ and ‘mass public interests’ in Germany. I claim that due to the considerable size and strength of the German economy, German employers and policy-makers are generally less dependent on a concerted European effort to attract migrants from third countries. The political conflict structure in Germany suggests that both immigration and European integration run along the same cultural-identitarian dimension of the globalisation cleavage and are mobilised along the lines of sovereignty and identity. Hence, politicisation and Euroscepticism are mostly driven by cultural-identitarian, rather than socio-economic considerations. Thereafter I discuss the politicisation indices for Germany and to what extent they reflect public debates and contestation at the domestic level.

I will proceed with the second part of the case study that analyses the moderating effect of politicisation on the relationship between the independent variables employers’ interests and mass public interests and the preference formation of the German governments with regard to five EU labour migration policies.

4.1. German immigration history: self-perception and reality

Immigration to (West) Germany since World War II was mostly characterised by the recruitment of guest workers in the 1960s and subsequent chain migration of family members, the immigration of ethnic German ‘Spätaussiedler’ from the countries of the former Soviet Union after the end of the Cold War, and the arrival of refugees and asylum-seekers in the early 1990s and 2010s (Fellmer & Kolb, 2009, pp. 127–129). With around 700.000 foreigners²⁵ living

²⁵ Foreign population, within the meaning of Art. 116 (1) of the Basic Law for the Federal Republic, includes all persons that do not hold German citizenship.

in West Germany in the beginning of the 1960s and four million in 1974, the number of foreign nationals rose continuously during the post-war period. This trend continues until today; between 2005 and 2015, around 15 million of Germany's 80 million inhabitants had a migration background²⁶, before increasing to around 20 million in 2018 (Statistisches Bundesamt, 2005, 2010, 2015, 2018). Despite the growing immigrant population in Germany, the country has long wrestled to accept the notion of being a country of immigration.

The German Leitmotif: Not a country of Immigration

Until the turn of the century, the employment of foreigners was considered and intended by German politicians as a transitional solution for labour shortages at the German labour market. Hence, migration to Germany for reasons of employment were not designed to be of a long-term or even permanent nature (Bade, 2001). The post-war economic boom ('Wirtschaftswunder') led to a high demand of the German industry and agriculture for mostly unqualified, hard manual work. As a result, Germany, like many other Western European countries, recruited large numbers of labour migrants in the course of the so-called 'guest workers programs' in the 1960s, mainly from Italy, Greece, Turkey and Yugoslavia. Contrary to the interests of employers, which demanded long-term employment of foreigners, Germany abandoned its guest worker program in 1973, mainly due to the economic slowdown and mass unemployment following the 'Oil Crisis' in the mid-70s (Bade, 2001; Castles, 2006; Geddes & Scholten, 2016, p. 75; Menz, 2007, p. 18). Much to the surprise of policy makers, many of the guest workers chose to stay in Germany and did not return to their countries of origin as intended by the temporary character of the programme²⁷. With an "eagerness to close and historicize the guest worker episode" (Joppke, 1999, p. 63), the German government officially adopted the German mantra, that Germany is not a country of immigration, in 1977, despite the fact that at this time already four million migrants lived in Germany (Geddes & Scholten, 2016, p. 75; Joppke, 1999). In the following decades, this mantra has been compulsively reiterated by subsequent governments, "elevating the no-immigration maxim to a first principle of public policy and national self-definition" (Joppke, 1999, p. 62)²⁸, which illustrates the ambivalent,

²⁶ According to the definition of the Federal Statistical Office, a person has a migration background when the person themselves or at least one parent does not possess German citizenship by birth (Statistisches Bundesamt, 2018, p. 4)

²⁷ Of the around 14 million guest workers that came for work, around three million stayed, the largest group, 30 per cent of them, were Turkish citizens.

²⁸ Germany is not the only country that denied being a country of immigration, but the only one whose policy-makers felt the urge to reiterate this denial officially and compulsively. Joppke (1999) states that this can be derived from the German division after the World War II and the dispersion of ethnic German diaspora in the communist east. Hence, expressed in the preamble to the Basic Law: 'The entire German people remains asked to complete the unity and freedom of Germany in free self-

and hesitant attitude of German politicians and the general public towards immigration (Fellmer & Kolb, 2009, pp. 127–129; Foltete-Paris, 2017; Geddes & Scholten, 2016, p. 75).

While the statement obviously did not match with the de-facto reality, until the early 2000s German policy-makers made every effort to make it come true ex-post; they implemented a strict recruitment ban to prevent future labour migration to the Germany labour market until the early 2000s (Green, 2013, p. 339; Laubenthal, 2014, p. 477). Subsequently, the only means to enter the German labour market were recruitment schemes for temporary, seasonal workers. These entry schemes, based on bilateral treaties with Southern and Eastern European countries, were adopted in the late 1980s, following pressure exerted by German employers, which were facing labour shortages in certain sectors after the recruitment ban in 1973 (Joppke, 1999, p. 77). Though, the major form of immigration to Germany was chain migration of family members of former guest workers, which was backed by the German legal system that upheld the rights of settled foreigners and interpreted them expansively (Joppke, 1999, p. 69). Besides the intake of German resettlers ('Spätaussiedler') of German ethnicity after the fall of the wall, increasing numbers of refugees and asylum seekers mostly from ex-Yugoslavia fled to Germany at beginning of the 1990s. Later, numbers dropped following the government's 'asylum-compromise' that restricted the German asylum legislations in 1993 (Joppke, 1999, p. 93). Subsequently, the emphasis of German immigration politics shifted away from economic labour market needs to other forms of immigration, such as asylum, family reunion and citizenship (Green, 2005, p. 209). Therefore, "domestic-security concerns, rather than the logic of client politics, drove the government's foreigner policy" (Joppke, 1999, p. 79) with regard to labour migration recruitment since the German 'Anwerberstopp'. Hence, the German no-immigration mantra also silenced employers in their demand for a more liberal labour migration policy approach²⁹. Due to their unsuccessful campaigns in the 1980s to relaunch a guest worker programme, employers' organisations restrained themselves from intensive lobbying (Foltete-Paris, 2017, p. 153; Joppke, 1999, p. 77; Menz, 2009b, pp. 175–176).

determination.' Accordingly, the "Federal Republic defined itself as a vicarious, incomplete nation-state, home for all Germans in the communist diaspora" and consequently, "opening the national community to foreigners would have posed the risk of a redefinition of national identity, and of diluting the Federal Republic's historical obligation to its dispersed and repressed co-ethnics in the East" (Joppke, 1999, p. 63).

²⁹ In addition, besides the lack of immigration policies, the denial of its immigration reality also meant that Germany, by 2004, lacked decisive integration policies, as it "had adopted few of the policies that are common in countries with a similar immigration dimension, such as integrated labour-market access and residence policies, an inclusive citizenship regime and anti-discrimination legislation" (Green, 2005, p. 193).

An incremental paradigm change towards liberalising labour migration policies

By the end of the 1990s, despite relatively high levels of unemployment, the creeping demographic change in German society was increasingly noticeable at the labour market in the form of labour shortages of both high and low skilled workers in certain sectors. Increasingly, public discussion on immigration shifted slowly towards the potentially positive contribution of labour migration for German society and economic growth (Caviedes, 2010, p. 61; Fellmer & Kolb, 2009, p. 129).

As political thinking regarding labour migration was dominated for decades by the omnipresent leitmotiv ‘Germany is not an immigration country’, policy-makers found it difficult to follow the growing demands of employers to initiate a paradigm change towards a more active and liberal labour migration management (Laubenthal, 2008). But, with the turn of the century, the revived lobbying attempts of employers³⁰, in combination with an emerging discussion about labour market aspects of demographic transformation, induced a political discussion about migration that “could be described as a search for a realistic and pragmatic approach to questions of migration and integration” (Fellmer & Kolb, 2009, p. 129). Accordingly, immigration was at this time highly politicised, “charged and subject to at times intense political debate” (Geddes & Scholten, 2016, p. 81). But, it initiated a slow and incremental change of the national immigration framework and the lobbying efforts of employers’ organisations began to bare first fruits in 2000 (Fellmer & Kolb, 2009, p. 129; Green, 2013, p. 342).

The red-green government under chancellor Schröder launched a temporary labour recruitment scheme for highly skilled migrants, targeted at specialists from the information technology sector to combat severe labour shortages (the so-called ‘Green Card’ initiative)³¹(Foltete-Paris, 2017, p. 109; Laubenthal, 2012, p. 17). However, the Green Card did not offer family reunion or prospects of obtaining long-term residency. Accordingly, of the foreseen 200,000 ICT specialists only 5,000 followed the offer (Castles, 2006, p. 749). In the same year, the Federal Interior Minister Otto Schily appointed the ‘Independent Commission on Immigration’, also referred to as Süssmuth-Commission, chaired by the former Bundestag president Rita Süssmuth and composed of academics, politicians of all parties, legal experts, representatives of trade

³⁰ At the same time, a change in the leadership of the association of German Industry (BDI) led to a turn in the perception and lobbying strategy of the employers’ organisation (BDA), which envisaged afresh a more liberal labour migration approach (Menz, 2007, p. 18).

³¹ Schröder justified his move towards an active labour migration management by saying that “we must make sure that in these times of globalization we don’t suffer from a lack of cosmopolitanism... There’s a huge amount of international competition for the best people and German would be making a big mistake if it didn’t take part” (Schröder cited in Hollifield, 2004, p. 3).

unions and employers. Very much in line with the interests of German employers' organisations, the Commission's first report in 2001 suggested a liberal reform of the German immigration system. It included a yearly quota that allows up to 40,000 new labour migrants and a supply-driven points-based-system, inspired by the Canadian immigration scheme (Caviedes, 2010, p. 61; Cerna, 2016, p. 115; Green, 2005, p. 198). The employer association Bundesvereinigung Deutscher Arbeitgeber (BDA) lobbied strongly for a more "demand oriented managed migration" and fewer bureaucratic hurdles to strengthen the position of the German labour market in the global "competition for the best brains" (BDA, 2002).

Based on the Commission's recommendations, the 'Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of EU citizens and Foreigners' (German: Zuwanderungsgesetz) was adopted in 2004 (Green, 2013, p. 339). Even though the final version was a watered-down compromise of the Commission's report, channels for highly skilled labour migration were introduced for the first time as a regular option instead of a temporary exception (Cerna, 2016, p. 117; Laubenthal, 2012, p. 17). While it did not include the points-based system, it did represent the demands of employers and business for high skilled labour³².

The law carried a high discursive relevance for the public discourse about migration and a changing German self-perception as an active and modern immigration country. It constituted a first step towards the acceptance of and commitment to labour migration and integration efforts, first and foremost, by calling migration by its name and labelling it 'immigration law' instead of 'foreigners' law' (German: Ausländergesetz) (Fellmer, 2013, p. 317; Laubenthal, 2012, p. 17).

Resistance to EU harmonisation

Since the re-discovery of managed migration, German migration policy is now following mainly two objectives:

"maintaining the already long-established policy of reducing the inflow of unwanted migration, that is, of asylum-seekers, refugees and undocumented migrants, while at the same time entering the global competition in attracting highly skilled workers and specialists. While the first objective is also strongly reflected in German migration policy on the EU level, the second

³² Eligible to apply were certain highly skilled migrants, such as scientists, teachers, and employees with special professional skills earning a yearly minimum salary of 84,600 Euro as well as entrepreneurs with an investment plan of at least one million Euros, which expects to create at least 10 new jobs. Also, foreign graduates of German universities were granted the permission to stay in Germany for another year to search for a job (Laubenthal, 2012; Menz, 2016, p. 335).

remains attached to the nation state, as the German position is to maintain labour migration as field of exclusively national competence” (Prümm & Alscher, 2007, p. 74).

Hence, the quote by Prümm and Alscher suggests that Germany was eager to harmonise policies at the European level that pledged to control and possibly also reduce immigration of certain migrant groups (Laubenthal, 2014). However, the immediate necessity and benefits of harmonising labour migration policies seeking to attract migrants were not as straightforward. Therefore, Germany tended to oppose substantial harmonisation. Examining the drivers of the German hesitation is *inter alia* the purpose of this case study.

The incremental paradigm change towards labour migration at the national level at the beginning of the 2000s coincided with initial contemplations at the European level to ‘Europeanise’ not only visa and asylum policies, but also labour migration schemes. Hence, the 2001 Commission proposal for a ‘horizontal’ labour migration scheme was tabled at a time when both German employers and policy makers had just initiated the delicate process of readjusting the national positions towards a more open approach regarding labour migration (Menz, 2009b, p. 187). Business and employers’ organisations were, after all, also sceptical; they feared that the EU initiative would undermine the newly won influence at the national level and threaten the initial lobbying success. Accordingly, at the beginning of the 2000s, “along with the Austrians, the German government was a driving force behind torpedoing the Commission proposal on labour migration by TCN” (Menz, 2009b, p. 186).

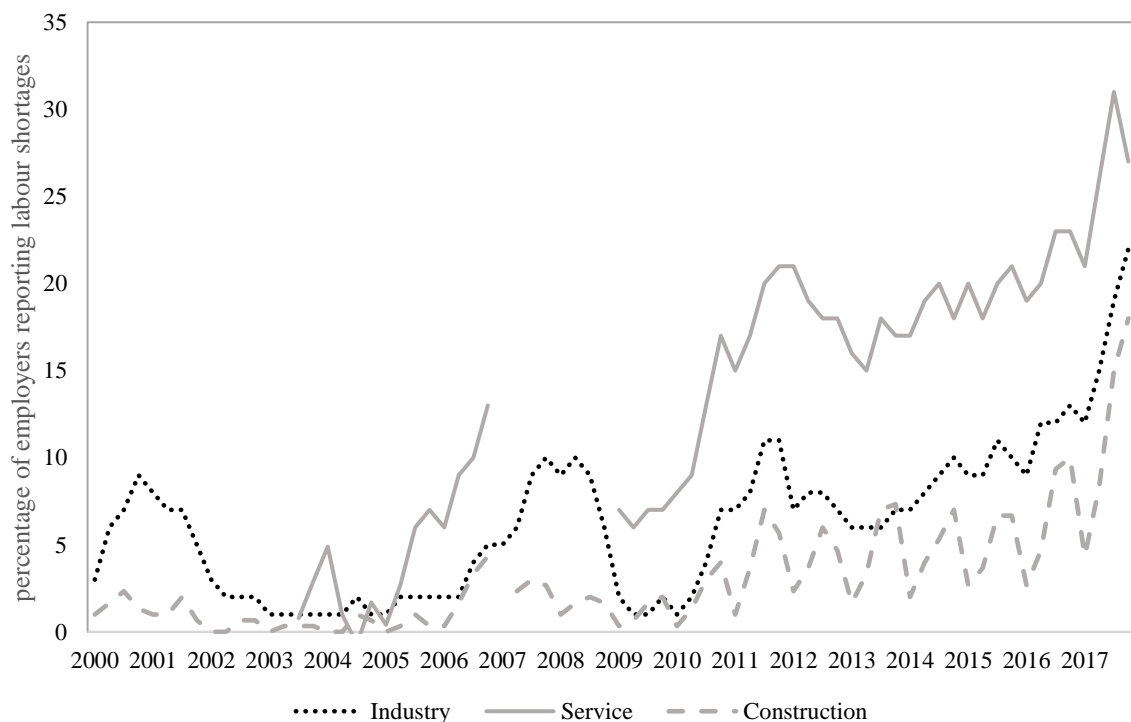
4.2. Independent and moderating variables

4.2.1. Independent Variable: Employers’ Interests

German employers claim that entering the global competition for talents and attracting (high) skilled labour migrants from third countries is crucial to counteracting demographic change and growing skills shortages. Therefore, by 2007, when the Blue Card Directive was proposed, German employers’ organisations had found their role as active promoters of liberal labour migration schemes. However, largely, German employers preferred the management of labour migration at the national, rather than the European level for several reasons. First, Germany, as the largest economy in the EU, accounting for over a fifth (20 per cent) of the EU’s GDP in 2007 (Eurostat, 2019), and as one of the largest exporting countries globally, is highly visible and attractive for potential labour migrants. Due to the size of its job market, Germany can offer a bigger variety of employment and career possibilities for potential employees than other EU

member states. Hence, compared to smaller or weaker economies in the EU, German business is less dependent on increasing its global visibility and attractiveness by integrating into an EU-wide labour migration scheme and labour market for third country nationals. Second, German employers and policy makers increasingly acknowledge that an attractive economy itself is not sufficient if national restrictive immigration schemes hinder employers from utilising the economic reputation to attract potential labour migrants. Policy changes at the national level suggested that German policy makers are increasingly willing to follow the demands of employers to liberalise labour migration. Therefore, to secure its newly won influence on the policy design of German migration management, German employers prefer decision-making regarding labour migration at the national level, fearing that European endeavours would undermine, hamper or even eliminate domestic policies and policy plans (Menz, 2011, p. 454). Third, because of legislative changes at the national level, German employers became less dependent on liberalising national labour migration policies via a European scheme. In contrast, by harmonising and liberalising EU labour migration policies, German employers feared increased exposure to competition from other member states for ‘the best and the brightest’ talents (Boswell, 2005, p. 20; Collett, 2008; Foltete-Paris, 2017, p. 82).

Figure 1: Germany: percentage of employers reporting labour shortages as limiting production



Source: own illustration based on the BCI data (European Commission, 2020)

Hence, due to the size, attractiveness and visibility of the German economy and the relatively liberal national immigration scheme, German employers have a relatively advantageous position to compete in the global competition for talents with classic immigration destinations such as the US and Canada. The expected benefits of harmonising labour migration policies are therefore low. In combination with the anticipated costs related to EU harmonisation, such as greater competition between EU member states and a decreasing influence on policy design, German employers in general did not see an added value of an EU labour migration scheme to reach the policy goal of attracting (high-) skilled labour migrants. Similarly, an interviewee explained the hesitant position of German employers towards the harmonisation of labour migration policies at the EU level, by saying that

“Germany can afford more than other countries. It is a very rich country, a very big country. They have a very big industry” (Interview Employer_NL).

However, this is a rather general assessment of the employers’ interests in and perceived dependency on common EU policies in the field of labour migration. Both preferences and perceived dependence vary depending on the directive and the ‘target group’ under discussion. For instance, dependency on concerted efforts is higher, when employers seek to facilitate intra-EU mobility, as in the case of the ICT Directive or when they want to ‘download’ more liberal migration policies, as in the case of the Seasonal Workers Directive.

4.2.2. Independent Variable: Conflict Structure and Mass Public Interests

As outlined in the theoretical chapter, the roots of politicisation and contestation of the EU and immigration originate from different national political conflict structures. They vary due to the region-specific impact of two societal transformations, triggering different structural potentials, which in turn were mobilised by newly emerging or adapting political parties. Hence, before studying the consequences of politicisation of European integration and immigration for the preference formation of member states, it is necessary to identify the drivers of politicisation at the national level.

Kriesi et al. (2006, 2008) argue that in Germany, like other North Western European member states, two fundamental societal transformations had a strong impact on the national conflict structure. The first structural transformation, the value change of the endogenous ‘silent revolution’, encompassing peace, environmental, and women’s movements, had a profound impact on the social foundations. Kriesi et al. (2006, p. 939) claim that in the 1970s the national conflict structure in Germany was two-dimensional. While the classic socio-economic left-right

dimension remained mostly unchanged, the issues of the ‘new social movements’ transformed mostly the cultural cleavage, subsequently stretching from supporters for cultural liberalism and environmental protection on the one pole to supporters for a strong army and a restrictive budgetary policy on the opposite pole. The demands of an expanding new middle-class were institutionalised in the German party system. It gave rise to a strong ‘New Left’ in the form of the German green party, but it also triggered the transformation of the Social Democratic Party (SPD) to a middle-class party.

The second structural transformation, prompted by the exogenous process of globalisation has “brought about an increasing awareness of the fragility of the sovereignty of the nation state and of national culture more generally” (Kriesi, 2016, p. 37). Accordingly, in Germany the meaning of the cultural dimension has changed since the 1990s. Issues revolving around globalisation found their way into the national conflict structure in Germany³³. Immigration, an increasingly salient issue, and later European integration were integrated into the cultural dimension and are located on its conservative end (Dolezal, 2008). Hence, the process of globalisation had a lasting impact on the national conflict structure. However, while the second transformation created diverse ‘globalisation losers’, their growing demands were not met in Germany by parties of the ‘New Right’ until recently. Due to Germany’s national-socialist legacy, voting for right wing, anti-immigrant parties was strongly stigmatised.

Hence, until very recently, the latent demand for a right-wing populist party did not manifest itself in the party system at the federal level, even though some challenger parties from the populist right tried to capitalise on this demand and repeatedly succeeded in several regional elections (Bremer & Schulte-Cloos, 2019, p. 93; Dolezal, 2008, p. 218). Among other things, their failure at the federal level can be attributed to the adaptation strategy of German mainstream parties, which to a certain extent absorbed the potential for right-wing populist parties (Dolezal, 2008, p. 233). In order to adjust to the new conflict structure and an increased salience of cultural-identitarian aspects related to globalisation, the SPD as well as the FDP altered their positions mostly on the cultural dimension in the course of the 1990s, taking on positions closer to the cultural conservative pole. Similarly, “the CDU/CSU moved further away from cultural liberalism and closer to a tough stance on immigration” (Kriesi et al., 2006, p. 940). In particular the cultural conservative Bavarian sister party Christlich-Soziale Union (CSU) of Merkel’s Christian Democratic Party (CDU) was able to satisfy the latent demands

³³ Central topics of the first transformation such as environmental protection, army support and culture moved to a more central position.

for a right-wing populist party. It was more willing to mobilise on issues of immigration and take on Eurosceptic stances than the CDU, which held more moderate positions (Bremer & Schulte-Cloos, 2019; Dolezal, 2008, pp. 219, 229).

The taboo to vote for a right-wing populist party was overcome by the German electorate when several economists founded the party AfD in the wake of the Euro Crisis. “Their ordo-liberal criticism of the common Euro currency and of the bailouts coupled with a professional and elitist party image (‘Professorenpartei’) lent a non-radical appearance to the party” (Bremer & Schulte-Cloos, 2019) and legitimised their position in the German party system. Once the initial inhabitation of German voters was overcome, the AfD developed quickly into a classic right-wing populist party with an anti-elitist and anti-immigration profile. During the years of the EU’s multiple crises, the AfD experienced rapid growth, successfully mobilising the latent demand for a ‘New Right’ party. This breakthrough “is nothing but an expression of the fact that the corresponding party systems are belatedly catching up with the general long-term trend” (Kriesi, 2016, p. 42), which was visible already before the crises in the German national conflict structure.

Hence, the structure of the German national political space is two-dimensional, with a socio-economic and a culture dimension. The two waves of political mobilisation, which raised mostly cultural issues, had a long-lasting imprint by changing the meaning of the cultural dimension. Recent developments are “characterized by the double impact of the challenges of European integration (perceived as a threat to the sovereign nation state) and immigration (perceived as a threat to the national identity)” (Hutter et al., 2018, p. 20). Therefore, in Germany, as typical for north western Europe, both immigration as well as European integration run along the cultural dimension. Both issues are mostly mobilised by the culturally conservative pole, which include not only challenger parties from the right, but also conservative mainstream right parties such as the CDU/CSU (Hoeglinger, 2016). Hence, both politicisation as well as the attested ‘anti-immigrant’ and ‘Eurosceptic’ sentiments of parts of the mass public in Germany are motivated by cultural-identitarian, rather than socio-economic concerns and manifest themselves along the lines of protecting national sovereignty and identity (Kriesi, 2009, p. 223).

Therefore, as immigration and the EU is politicised according to the cultural-identitarian logic in Germany, Postfunctionalism expects politicisation to unfold its full moderating potential, hindering policy makers from following the interests of employers. Instead, in times of strong politicisation communitarian interests are believed to surface in the policy-positions of the

government, because governments respond to Eurosceptic and anti-immigrant demands prevailing in parts of the German electorate.

4.2.3. Moderating Variable: Levels of Politicisation

According to my theoretical framework, politicisation is expected to moderate whether governments act according to the ‘Client Politics Mode’, representing the issue-specific interests of employers or the ‘mass public mode’, and are steered by communitarian interests of the ‘globalisation losers’.

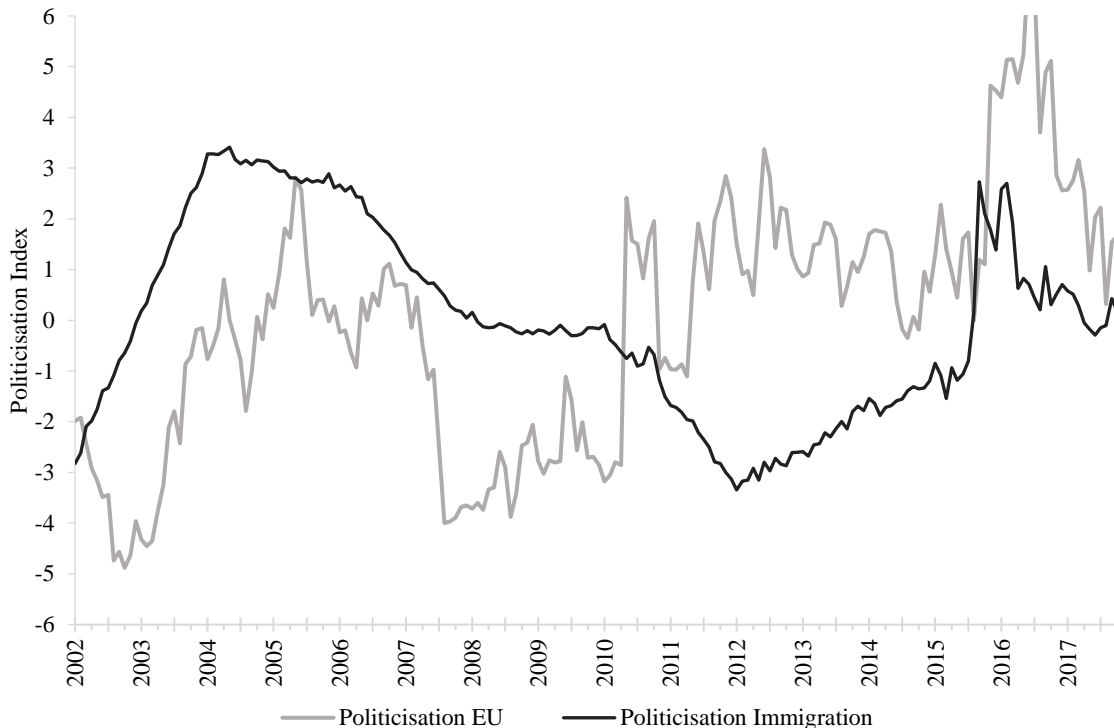
What do the composite politicisation indices³⁴, plotted in Figure 2, exhibit about the temporal nature and trends of politicisation of European integration and immigration among the wider citizenry in Germany? Across the investigation period, the composite indices for the politicisation of the EU in Germany shows a positive long-term trend, and therefore supports the assumptions of the Postfunctionalist Theory that European integration is increasingly politicised. However, it is also subject to short-term fluctuations. The graph reveals a markedly surge in the politicisation of the EU during 2004/2005, which reflects the cumulative effects of debates surrounding the eastern enlargement and European Parliament elections in 2004 and the failed referenda on the EU constitution in 2005. Another, less pronounced peak follows in 2006 and 2007 due to the accession of Romania and Bulgaria to the EU and Germany taking over the EU Presidency. The succeeding years are characterised by rather low levels of politicisation. The index illustrates clearly that politicisation of the EU increased dramatically with the onset of the Euro Crisis in 2010 and skyrocketed to unprecedented levels due to the Brexit referendum in 2016 and the Schengen Crisis from 2015 onwards.

Likewise, the index plotting the politicisation of immigration also shows varying levels of politicisation in Germany, starting with a steady increase in the level of politicisation at the beginning of the century, followed by a period of general high politicisation of immigration. It illustrates clearly that the delicate process of changing the national immigration paradigm was not only highly charged and intensely debated in the political arena, but also among the citizens. The graph reveals that from 2007 onwards, immigration was increasingly less politicised in the public and eventually dropped to the lowest level in 2012 before climbing steadily again.

³⁴ They fluctuate around their investigation period mean (indicated by 0 in the figure below) with a standard deviation of 1. The indices cannot be interpreted in absolute terms but give a relative answer to the question of whether politicisation was stronger e.g. in 2016 than in 2004. Hence, both indices provide a time-consistent measurement of the politicisation of European integration and immigration among the wider citizenry of Germany from January 2002 to December 2017. Positive values indicate strong politicisation, while negative values meant that politicisation is weak.

Naturally, the ‘long summer of migration’ in 2015 is not only reflected in the EU politicisation index, but also in a sudden leap in the politicisation of immigration.

Figure 2: Politicisation Indices for Germany



Source: own illustration and data (see chapter 3.2.1)

I expect that the effect of politicisation is strongest when both the EU *and* immigration are politicised simultaneously, and weakest in times when both are de-politicized and off the ‘public radar’. The proposals for the Employer Sanction Directive (May 2007) and the Revision of the Blue Card Directive (June 2016), were introduced by the Commission at a time that was preceded by months of relatively strong politicisation of both EU and immigration among the German public. Hence, in both sub-cases we would expect the government to act according the ‘mass public mode’ and serve communitarian-minded electorates. In contrast, the months before the introduction of the proposals for the Seasonal Workers Directive and the ICT Directive (both July 2010) were characterised by relatively low levels of politicisation. Therefore, the theoretical framework suggests the ‘client politics mode to persist and employers’ interests to reflect most strongly in the policy positions of the German government. The Blue Card Directive lies somewhere in between, as it was introduced by the Commission in October 2007 at a time when EU politicisation had just recently dropped from relatively high levels to low values, and while immigration was medium-high. Hence, we could expect neither

a ‘pure client politics mode’ nor a ‘pure mass politics mode’ to dominate the preference formation process of the German government.

4.3. The German policy preferences regarding EU labour migration directives

The aim of the following subsections is to examine to what extent politicisation moderates the responsiveness of the German government to either employers’ interests, following the ‘Client Politics Mode’, or the interests of the mass public when negotiating EU labour migration policies in the Council.

4.3.1. The Blue Card Directive, October 2007³⁵

The national context

At the time when the Commission published the Blue Card proposal, the German job market was relatively loose with an unemployment rate of 8,6 per cent and a job vacancy ratio of only 1.2 (Eurostat, 2020b, 2020a). But, with the economy experiencing steady growth from 2007 onwards, and despite recent efforts to liberalise channels for highly skilled third country nationals, employers reported severe labour shortages, in particular of engineers (Caviedes, 2010, p. 76). On the occasion of a cabinet meeting in Merseburg in August 2007 (only two months before the Commission introduced the proposal for the Blue Card Directive), the federal government demonstrated its willingness to re-discuss and revise immigration policies for highly skilled migrants in a more liberal and business-friendly way (Foltete-Paris, 2017, p. 109; Laubenthal, 2008, p. 2). It established a ministerial working group to develop an action plan for highly skilled migration. Even the option of introducing a points-based immigration system, long requested by employer associations, was taken into account by policy-makers of the government (BDA, 2007c, 2008a, p. 20; Menz, 2016, p. 335). As an ad hoc solution to the reports of labour shortages, the German government opened the labour market by abdicating the obligation of conducting labour market tests, among others, for third country nationals that graduated from a German university (BDA, 2007d) as well as graduates from German schools abroad (Laubenthal, 2012, p. 18). Hence, since the early 2000s, “legal developments in the field of labour migration show that German labour migration policies are currently a dynamic field,

³⁵ With the Blue Card Directive, the Commission sought to attract high skilled labour migrants to the EU, by facilitating and harmonising rules for entrance and residence, offering liberal rights and benefits for high skilled workers and their families as well as intra-EU mobility. It targets highly skilled regular economic migration.

and that since the year 2005 a certain liberalisation of German labour migration policies has taken place“ (Laubenthal, 2008, p. 3). Accordingly, prospects for further business-friendly reforms seemed promising.

Levels of Politicisation

EU politicisation witnessed a relatively stark drop in the 12 months before the proposal was introduced by the Commission in October 2007. Hence, EU politicisation was low. The politicisation of immigration was gradually declining, but still relatively high in the 12 months before the proposal was published. Therefore, overall, the politicisation was medium. The relatively strong politicisation of immigration can be attributed to the, at that time, ongoing domestic debate about the national immigration framework, and more specifically to the above-mentioned changes to the provision of the Immigration Act and the establishment of the ministerial working group on labour immigration in the course of summer 2007.

In addition, the negotiations of the Blue Card Directive and the government’s policy position were echoed relatively strongly in the national press, in part because “a number of high-level politicians were tempted by the sensitivity of the topic to voice concerns about the Directive publicly” (Mayer, 2017, p. 265) even before the proposal was published officially. For instance, Michael Glos from the CDU claimed “Germany could not take in large numbers of foreign workers just because it needs them at one particular moment” (Glos cited in Spiegel Online, 2007).

Employers’ Interests

Since the late 1990s, German employers’ organisations were lobbying intensively for an immigration scheme that is more open towards high skilled workers. With the economic situation in Germany improving throughout 2007 and 2008, the labour shortages at the German labour market became ever more prevalent (Caviedes, 2010, p. 76). Figure 1 above illustrates that at that time reported labour shortages in the service sector and industry were steadily increasing. The German Machinery and Plant Manufacturing Association (VDMA) reported a lack of 8000 to 9000 engineers and thousands of qualified workers more in 2007 (Europe Daily Bulletins, 2007d). The BDA stressed that due to demographic change the German labour market would have around 10 million workers less by 2050 (BDA, 2007f). By 2007, when the Blue Card Directive was proposed, German employers’ organisations had found their place as active promoters of liberal labour migration schemes at the national level. They were “well integrated

into a domestic reflection on immigration policy”, however, they “generally did not include a European scheme in their analysis” (Foltete-Paris, 2017, p. 158).

Hence, both small and big employers’ organisations hailed the debate at the EU level as a means to legitimise their national struggle for a more business-friendly immigration scheme, approving of the Commission’s overall idea that labour shortages should be addressed by relaxing labour migration policies (Caviedes, 2010, p. 76). At the same time, they were sceptical of how an EU level labour migration scheme could be a relevant solution (Foltete-Paris, 2017, p. 81f.) and criticised the proposal as a “not-well thought through legislative actionism at the European level” (BDA, 2007f). The BDA claimed that decisions and regulations regarding immigration should be located at the national level as an immigration system at the European level would be too general to fit to the diverse labour markets of the European member states (Agence France Presse, 2007b; BDA, 2007e; Spiegel Online, 2007). Hence, the BDA directed its main lobbying efforts towards preventing a single harmonised European immigration scheme which would leave national governments only with determining the yearly quota. The replacement of the national immigration schemes that are tailored to the diverse demands and characteristics of national labour markets, was fiercely opposed (BDA, 2007e; Interview Employer_DE). The BDA also feared that a policy at the EU level would undermine the newly won influence at the national level and the current prospects of a long-desired national points-based system, which has just recently gained some popularity among politicians of the German government (BDA, 2007c; Collett, 2008; Foltete-Paris, 2017, p. 109). Unlike the Blue Card, a points-based system would ensure a truly flexible, non-bureaucratic and ‘market-driven’ regulation of immigration, without burdening the German public welfare system (BDA, 2007a, p. 18, 2007f). In addition, the EU is not only competing with the rest of the world for the ‘best and the brightest’, but member states are also competing among each other. This reality was mostly neglected by the Commission’s proposal. Hence, a harmonised Blue Card Directive that does not allow more liberal national admission rules would jeopardise the competitive advantage of the German labour market in attracting high skilled labour from abroad vis-à-vis other EU member state (Boswell, 2005, p. 20; Collett, 2008; Foltete-Paris, 2017, p. 82).

Therefore, employers assessed the German dependence on a common EU policy as low. To attain their policy goal of attracting highly skilled labour migrants to the national labour market, unilateral solutions were considered more appropriate. With most efforts channelled towards the preservation of national immigration schemes, the BDA raised only few objections with respect to the proposal’s content. It merely showed its support for reducing the level of income

requirements for highly skilled migrants. The BDA was lobbying for a similar reduction at the national level, as it considered the income requirements of 86,000 Euro for highly skilled migrants in Germany as too high, especially in relation to the much lower thresholds in the Netherlands and the UK (BDA, 2007a, p. 18, 2007e, 2008b). But again, “employers invoke the Blue Card in the discourse largely as a means for critiquing national policy, rather than honestly pressing for a European solution” (Caviedes, 2010, p. 76).

Preferences of the German Government

Right after the proposal had been introduced by the Commission, the German government opposed the idea of a Blue Card Directive strongly (Agence France Presse, 2007b; Europe Daily Bulletins, 2007a). Most criticism was levelled against the definition and criteria of admission, as well as the question whether the EU admission scheme would replace or complement national policies. All inquiries of the German delegation during the negotiations were raised either to restrict the provisions of the Commission’s proposal or to prevent strong harmonisation by demanding optional harmonisation and by negotiating flexibility in the transposition of the directive’s provisions.

As neither employers nor the government “acknowledged the need to increase the competitiveness of the EU as a whole in attracting such migrants by means of a concerted effort” (Mayer, 2011, p. 248), the dependence of Germany as an economy on realising a harmonised solution at the EU level was considered to be low. This lack of enthusiasm on the part of employers increased the German leeway to respond to mass public interests instead.

Demanding optional harmonisation

Most efforts of the German government were invested in preventing the establishment of a harmonised European immigration scheme for highly skilled immigration that would substitute rather than complement national admission schemes (Kolb, 2017, p. 13; Roos, 2015). In this regard, the German negotiation team’s position corresponded with the demands of employers’ organisations. During the first hearing, the German delegation stressed that member states should be allowed to maintain national schemes for highly skilled third country nationals (Council, 2008a, p. 9, f.n. 21). The Commission made clear that the EU Blue Card would not replace national regulations, however, that all high skilled migrants that fulfil the criteria of the Blue Card Directive should also only be admitted through the Blue Card scheme (Council, 2008b, p. 7, f.n. 14). Hence, in that case only more favourable national admission schemes could remain in force. Only in the third revised proposal the Commission then also included

the wording that “member states may issue residence permits other than an EU Blue Card for any kind of employment on terms that are different than those laid down by this Directive” (Council, 2008c, p. 7). The revised draft was very much welcomed by Germany and the Netherlands, as well as the German BDA, which attributed the revision to its own initiative and lobbying efforts (BDA, 2008a, p. 132, 2009, p. 128).

Restricting scope and criteria of admission

Strong criticism was levelled by the German delegation against the definition of ‘highly skilled workers’ as well as the admission criteria proposed by the Commission that were much broader than those at the national level. Regarding the level of the income requirements for highly qualified immigrants, Germany did not follow the demands of German employers, which supported the Commission’s proposed salary threshold of ‘at least three times the minimum gross monthly wage as set by national law’ (amounting to a yearly income of around 40,000 Euro). Instead, the German delegation team demanded an increase of the threshold to at least twice the average gross monthly salary of the member state, which would then be closer to the yearly income requirements of 86,000 Euro established at the national level (Council, 2008a, p. 13, f.n. 31).

The government rejected the provision according to which member states would have to accept three years of professional experience as an equivalence to higher education, as then a German three-year vocational education would be sufficient (Stuttgarter Zeitung, 2008a). Throughout the negotiations the German delegation therefore insisted upon deleting any reference to professional experience that could substitute higher education qualifications, even when the Commission raised the minimum requirement for professional experience to at least five years in the following compromised versions of the proposal (Council, 2008b, p. 4, f.n. 6; Stuttgarter Zeitung, 2008a). Furthermore, in the first hearings, the German delegation demanded further admission requirements for highly skilled workers, such as “appropriate means of subsistence” (Council, 2008a, p. 12, f.n. 28).

The German delegation sought to achieve more discretion for national governments and authorities regarding admission decisions. For instance, Germany requested to add another clause, according to which member states would retain “the possibility not to grant Blue Cards in general, for certain professions or economic sectors” (Council, 2008b, p. 11, f.n. 31). Similarly, many other inquiries by the German government were closely related to the issue of preserving state sovereignty to control which persons are entering the territory as a Blue Card holder. The German government was keen to be reassured that applicants that fulfil the criteria

are not automatically accepted, that member states would retain the right to determine the volumes of admission and to reject a candidate, and that authorities would not have to give a reason for a rejection (Council, 2008b, p. 12f., 17, f.n. 32, 34, 48, 2008a, pp. 20, 22, f.n. 59, 66). Similarly, Germany sought to severely limit intra-EU mobility, for instance by requesting that Blue Card holders would have to re-submit an application in the second member state in which they would seek to take up a new job offer (Council, 2008a, p. 39, f.n. 124). Hence, the German delegation demanded full control over the decision of who to accept as a Blue Card holder to its territory.

Rights of the Blue Card holder and obligations of the member states

The negotiation team brought forward several demands seeking to limit the rights to be granted to a Blue Card holder and to reduce the member states' obligations vis-à-vis the (successful) applicants. For instance, the German delegation requested to delete the six-month deadline to grant residence permits for family members, as the German delegation did not want to favourably treat and facilitate family reunification for Blue Card holders compared to those falling under the Family Reunification Directive (Directive 2003/86/EC) (Council, 2008a, p. 32, f.n. 103, 2008b, p. 24, f.n. 75). Moreover, the German delegation held the view that the conditions for Blue Card holders to obtain an EC long-term residence status were too lax. Accordingly, it requested to extend the necessary time period of legal and continuous residence in the EU from five to six years and the required length of residence in the member state, where the Blue Card holder seeks to lodge the residence application, from two to three years (Council, 2008a, p. 34, f.n. 108, 2008d, p. 20, f.n. 44; Eisele, 2013, p. 13). In addition, in relation to Article 15, the German government was keen to limit the 'equality of treatment' of Blue Card holders compared to EU citizens, especially regarding the access to education, vocational training, study grants, tax benefits and social assistance (Council, 2008a, p. 28, f.n. 92; Eisele, 2013, p. 11).

Interim Conclusion

Given that index for the politicisation of immigration suggests a strong politicisation in the months before the negotiations of the Blue Card Directive, the theoretical framework would expect the 'Mass Politics Mode' to dominate the preferences of the German government slightly. The employers' foremost priority was to prevent harmonisation that would replace the national admission schemes for highly skilled labour migrants. The German government fully supported this view. In the end, the Commission was unable to impose full harmonisation, but

optional harmonisation prevailed in the negotiations, allowing member states to keep national admission schemes. This adjustment, granting vast discretion to the member states on whether to actually make use of the Blue Card scheme or not, is considered to be the result of mainly German negotiation efforts (Agence France Presse, 2008b). Observers argue that “the German negotiators played a significant role in downgrading and weakening the ambitious proposal of the European Commission” (Kolb, 2017). The BDA, in turn, traced this negotiation position back to its own lobbying efforts (BDA, 2008a, p. 132). Hence, the fact that Germany was “standing on the brakes” (Kolb, 2017) can be derived from the sceptical stance of employers and their perceived low dependence on a common EU policy. Preventing full harmonisation that would replace the national admission schemes for highly skilled labour migrants was the foremost priority of both the employers as well as the German negotiation team in the Council.

Table 5: Blue Card Directive: Policy Positions of German employers and government

Level of Politicisation: medium			
Expected mode of responsiveness: Mass Politics Mode			
	Interests of German Employers	Policy Position of German government	Mode of responsiveness
Perceived interdependence	Low: unilateral policies are more effective	Low	
Policy-dimension	Liberal: supportive of low salary threshold;	Restrictive: increase salary threshold; reject professional experience as equivalent; require appropriate means of subsistence; limit intra-EU mobility; restrict family reunification, conditions for long-term residence permit and equal treatment.	Unilateral Client Politics allows for Mass Politics
Polity-dimension	optional harmonisation	optional harmonisation national: admission decisions and admission volumes;	

However, the German delegation went beyond the employers’ demand of simply preventing full harmonisation. First, it demanded to restrict admission criteria and salary thresholds and to curb the rights of Blue Card holders. Second, and more importantly, the government’s key concern was to keep full control over determining both the overall admission volume as well as deciding on individual admission applications for the Blue Card. Hence, these attempts to

dilute the Commission's proposal cannot be directly attributed to employers' interests and lobbying attempts; however, it can be argued that the perceived low dependence on the Blue Card provided the German delegation the leeway to speak to the communitarian concerns of the public in times of medium strong politicisation. While the decision to oppose harmonisation derives primarily from the employers' opposition, publicly the government's justification to oppose an EU-wide harmonised labour migration scheme was supposed to speak to the electorate rather than employers.

This notion is supported when looking at the justification strategies of the government. The German government did not adopt the employers' utilitarian line of argument, which states that national schemes are much better equipped to meet the diverse needs of national labour markets. When defending their sceptical policy positions, German policymakers used both economic and cultural-identitarian justifications. First, German ministers referred to the protection of the national labour force in times of high unemployment. Interior Minister Wolfgang Schäuble, Labour Minister Olaf Scholz as well as deputy CDU floor leader of the Bundestag Wolfgang Bosbach argued in terms of protecting the national labour force; in times of high unemployment the appropriate answer to domestic labour shortages must be job training, re-training and the education of the already available domestic labour force rather than looking for high skilled labour outside the EU (Agence France Presse, 2007a, 2007c; Collett, 2008; Europe Daily Bulletins, 2007b; Spiegel Online, 2007). Second, besides the protection of the domestic labour market, then labour minister Franz Müntefering (SPD) invoked national sovereignty when opposing the Directive. He claimed that

“this is no matter to be casually decided by home affairs ministers - and also not by the commissioner in charge of home affairs. This is not a matter for the Commission at all. It must be the responsibility of national parliaments and governments” (Müntefering cited in Euractiv, 2008).

Hence, Müntefering is here defending national interdependence in this policy field “not for utilitarian reasons but for its own sake – the symbolic value of national sovereignty” (Hoeglenger, Wuest, & Helbling, 2012, p. 239). Furthermore, the German obsession with preserve national sovereignty over the admission volumes of third country nationals is interesting, as the treaties state clearly that EU labour migration policies ‘shall not affect the right of Member States to determine volumes of admission of third country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed’ (Article 79(5) TFEU). Hence, assuming that the German delegation is aware of this exclusive national competence, the comments referring to volumes of admission can be

understood as a ‘signalling responsiveness’ to communitarian interests present among the electorate. Also Schäuble, who actively contributed to dilute the Commission’s proposal, justified his decision to vote in favour of the final text by discrediting it as a mere “Symbolpolitik” (English: symbolic policy) with only “limited added value” (Schäuble cited in *Stuttgarter Zeitung*, 2008b). Hence, he sought to downplay the relevance of the proposal and the related authority transfer to the EU.

Two observations at the national level support the view that the government’s opposition to the proposal was mainly related to liberalisations at the EU level and not the liberalisation of labour migration policies in general, and furthermore that the government’s decision to object to vast harmonisation was primarily steered by the demands of employers. First, while the negotiations of the Blue Card proposal were already underway (and heavily diluted in particular by the German negotiation team), the business-friendly reforms continued at the national level. The Ministry of Labour drafted the ‘Law for the management of labour migration’ (German: *Arbeitsmigrationssteuerungsgesetz* 2008), which reduced the national salary threshold for highly skilled from 86.400 Euro to 63.600 Euro, and lowered the minimum investment amount of foreign entrepreneurs to 250,000 Euro (Laubenthal, 2008, p. 3). The law was eventually adopted at the end of 2008 and very much so welcomed by the employers’ organisations (BDA, 2008a, p. 18; Menz, 2016, p. 335). Moreover, the labour market access for university graduates from the EU8 accession countries was permitted and facilitated for EU8 and EU2 nationals. Additionally, in 2007, the German government facilitated labour migration of specialists for mechanical engineering and the electrical industry from the EU8 countries by dropping the requirement of carrying out labour market tests (Agence France Presse, 2007c). Similarly, in 2008, the German government permitted the free access to the German labour market for academics from the EU8 member states (*Stuttgarter Zeitung*, 2018). The accommodation of the employers’ liberal demands at the national level suggests that the German government did not shy away from economic adaption costs or liberalisations in general when opposing the Blue Card (Angenendt & Parkes, 2010, p. 2; Mayer, 2017).

Instead, the second observation supports the view that the government’s opposition derives from the employers’ interests. When the prospects of substantial reforms in the form of the introduction of a points-based system did not materialise, employers increasingly attacked existing national provisions as unattractive for third country nationals, fearing a competitive disadvantage compared to other member states (Kolb, 2017, p. 17). As unilateral policies were considered ineffective, the perceived dependence on a common EU policy changed – and so

did the preferences of the German government. In sharp contrast to the fierce efforts of the German government to dilute the directive during the negotiations and to trivialise its relevance as ‘Symbolpolitik’, the growing pressure from employers incentivised the German government to implement the directive in 2012 without further ado in the most liberal and generous way possible (Kolb, 2017, p. 14). Germany decided to abdicate labour market tests and chose the lowest salary threshold of 43,000 Euro and the shortest time period of 14 days for processing the Blue Card. Not only is the Blue Card now in Germany the “central backbone of the its labour migration regime” (Kolb, 2017, p. 17), in the shadow of which other national admission schemes became almost irrelevant - it is also almost exclusively used by German employers. Since 2012, the number of Blue Cards granted in the EU rose from 3.700 to 24.300 in 2017, and German authorities issued around 85 per cent of them. Hence, the former main opponent of the directive “has prevented the Blue Card from being completely irrelevant” (Kolb, 2017).

Hence, the case of the EU Blue Card suggests how Germany follows the interests of employers when setting out their policy positions regarding a common EU policy. In its decision to fiercely object to vast harmonisation and liberalisation, the government was primarily steered by the employers’ opposition to the Commission’s proposal. When employers oppose harmonisation, because they are concerned about losing political influence and worry that it would increase the competition for talents between member states, the government follows suit (*Expectation 1.2*). Instead, employers’ demands for liberalisation are sought to be met at the national level. At the same time, the employers’ opposition provides the government the leeway to serve communitarian interests as well. Germany sold their opposition to harmonisation as concerns related to the protection of national sovereignty and the domestic labour force. Hence, ‘unilateral Client Politics’ allow for ‘Mass Politics’ at the EU level. The radical turn at the implementation stage seems to derive from the employers’ changed perspective on national legislation. Unilateral policies were no longer deemed to be effective for achieving the employers’ policy goals of attracting highly skilled labour migrants. Accordingly, without further ado and without mentioning sovereignty or identity concerns, the government followed the employers’ altered policy position. It therefore supports Moravcsik’s ‘Client Politics Mode’ of policymaking. The perceived dependence on a common EU effort dictates whether Germany supports or opposes the harmonisation and liberalisation at the EU level.

4.3.2. The Seasonal Workers Directive, July 2010

The national context

With around 300.000 work permits per year granted in Germany for the purpose of seasonal work, Germany has the largest number of temporary workers among the EU member states (Bünthe & Müller, 2011, pp. 35, 39; OECD, 2013, p. 57). The German economy, in particular the agricultural sector, is heavily reliant on flexible and cheap labour from abroad to fill positions that the domestic labour force is unwilling to do, due to unattractive work conditions such as hard physical labour and low wages. Therefore, already in the early 1990s, German policy makers granted an exemption to the official zero-immigration rule (Green, 2013, f.n. 22). To prevent security threats and unplanned permanent settlement, Germany was keen on achieving a high level of state control over who is entering the country. Thus, it made systematic use of temporary labour migration schemes by concluding bilateral seasonal workers agreements with Central and Eastern European countries (Poland, the Czech Republic, Slovakia, Hungary, Romania, Slovenia, Bulgaria, and Croatia) to regulate the accession of certain numbers of workers for seasonal work in a legal and ordered fashion (Castles, 2006, p. 750). All the main sending countries but Croatia entered the EU between 2004 and 2007. However, as transitional agreements continued to restrict the freedom of movement for their citizens to EU labour markets, (seasonal) workers still had to apply for work permits. Employers seeking to hire seasonal workers from those countries had to file a request to the relevant authority in Germany, which then forwarded the request to the national employment agency of the respective sending country. Regulations related to social security obligations or payment of contributions varied depending on the agreement with the respective country (Bundesministerium für Arbeit und Soziales, 2010). Admission numbers for each sending country were determined annually, and were also based on current unemployment figures (Topagrar, 2009). Industries defined as seasonal in Germany, which are permitted to recruit seasonal workers, are the agriculture and forestry sector, the hotel and catering industry, the fruit and vegetable processing industry as well as sawmills (Deutscher Bundestag, 2012). The construction sector is explicitly excluded, due to sufficient labour supply domestically (Bünthe & Müller, 2011, p. 35).

Despite the high number of yearly work permits granted for the purpose of seasonal work, the agriculture industry continued to report shortages of seasonal workers during peak season in 2008; the labour recruitment of the relevant authorities did not meet the domestic demand for seasonal workers. Hence, at the time when the Seasonal Workers Directive was being

negotiated in the Council, German employers, especially in the agriculture sector, lobbied the German government strongly for a more lenient policy towards seasonal workers. Federations of employers requested to extend the maximum yearly work period from four to eleven months, arguing that this would mitigate the labour shortage as it would also make the German labour market more attractive for seasonal workers (Topagrar, 2008). In 2009, employers' organisations achieved a partial success, when the maximum duration of seasonal employment was extended to six months (Bundesministerium für Arbeit und Soziales, 2010, p. 3).

Even though (and partially also because) the transitional agreement for some of the new EU member states were about to expire in May 2011 for Poland and in January 2012 for Romania and Bulgaria, employers' organisations were wary of massive fluctuations on the European labour market. On the one hand, German associations of employers in the sector of agriculture had criticized the restrictions on the freedom of movement inherent in the transitional agreements for the EU8 countries. Thus, in general they welcomed the agreements' expiry as it would facilitate the employment of seasonal workers from those member states (Topagrar, 2010b, 2012). On the other hand, with the expiration, the bilateral temporary work programmes with Poland, Romania and Bulgaria would also be obsolete and with it also the sectoral constraints for the workers. Hence, the agricultural sector expected to be exposed to greater competition for low-skilled workers from other sectors such as the construction and cleaning industry (Deutscher Bauernverband, 2009; Topagrar, 2010a). Furthermore, the economic and social situation in Eastern and Central European member states improved steadily. Moving temporarily to Germany to perform hard physical labour as a seasonal worker became a less attractive option. At that time, the effect already manifested itself in decreasing numbers of seasonal work permits granted for Polish citizens, which, historically, made up the largest group of seasonal workers in Germany (OECD, 2013, p. 58).

Levels of Politicisation

The Commission introduced the proposals of the ICT and Seasonal Workers Directive at a time that was characterised by relatively low levels of politicisation. In the year before the negotiations on the Seasonal Workers Directive commenced in July 2010, both the politicisation of the EU as well as the politicisation of immigration was relatively low, with the indices in Figure 2 exhibiting values below the investigation period mean. With a looming Euro Crisis, the politicisation of the EU increased over the course of the following years, while that of immigration dropped considerably.

The low politicisation of the EU and immigration at that time also manifests itself in a very low media coverage of the Commission's proposal, the subsequent negotiations, and the policy position of the German government. Consequently, search queries in the newspaper databases did not result in any articles communicating the statement of the German government regarding the Commission's proposal. As outlined below, the hesitation of the government to take a concrete policy position publicly in the Bundestag gives the impression that the government was not particularly keen on increasing public attention but was content to keep the negotiations of the Seasonal Workers Directive low profile.

Employers' Interests

Fearing greater competition between sectors for an anticipated decreasing number of seasonal workers from the new EU member countries, employers lobbied the German government to permit the recruitment of seasonal workers from third countries in order to allow flexible employment in times of high demand during peak seasons (Agrarheute, 2010; Hauptverband, 2013). At that time, only recruitment of workers from Croatia was permitted (Topagrar, 2010c). Even though most of farmers' labour demands were covered by workers from mostly Poland, Romania, and Bulgaria, the German Bauernverband (English: German farmers' association) welcomed the Commission's proposal. It encouraged Germany strongly to be open to seasonal workers from third countries in order to fill the anticipated labour shortages (Bensch, 2014). With regard to the Commission's proposal, the BDA showed general support for a harmonised legal framework for seasonal workers from third countries. Nevertheless, German employers did not deem an EU policy as indispensable nor more effective than potential national regulations for achieving their policy goal of attracting seasonal workers to their labour market. With no other bilateral agreement or national policy in place targeting third country nationals, employers were simply hoping to utilise the legislative change at the European level to 'download' such a scheme from the EU level.

The BDA demanded more flexibility and national discretion in the transposition of certain provisions to ensure that each member state can adapt it to the specific needs of the national labour market. The BDA disapproved the proposal's broad definition of seasonal sectors as 'depending on the passing of the seasons'. Instead, member states should be able to define the seasonal industries nationally in order to circumvent abuse (BDA, 2010, p. 127). The Commission's definition would also include the construction industry, which is according to German law not categorised as a seasonal industry. Likewise, German employers criticised the proposal for limiting the length of employment to six months within a 12-month period. Instead,

the directive should take into account the diverse interests and characteristics of different sectors and therefore refrain from a rigid regulation, but give the member states some leeway to determine the minimum and maximum length of stay nationally (BDA, 2011, p. 118f., 2012, p. 129). In addition, to allow for even more flexibility, the BDA demanded specific provisions regulating short-term stays of less than three months, which were not foreseen in the initial proposal (BDA, 2012, p. 127, 2013, p. 108). Moreover, employers sought to facilitate cross-border movement and employment of workers, which was relevant especially for employers of seasonal workers in border regions, as this would be the real added value of an EU-wide Directive on seasonal work (BDA, 2010, p. 127).

The BDA also actively lobbied to restrict the employers' obligations towards seasonal workers as well as the rights of the latter. Arguing that it seeks to avoid any additional burden for the social security system of the member state, the German employers demanded the German government to prevent allowances for family members of seasonal workers (BDA, 2011, p. 119). Naturally, the provision that employers should cover the costs for travelling, visa and health insurances was also a target of employers' criticism. The BDA took the stance that this would violate contractual freedom and therefore should be a matter of the individual employment contract, in particular because many seasonal workers are bound to social and health insurances in their home countries anyways, which would lead to double burden on the workers (BDA, 2012, p. 128).

Policy Position of the German Government

The fact that the German government did not actively seek to communicate its policy position regarding the proposal publicly did also not go unnoticed by the opposition parties in the German Bundestag. Unsatisfied with the government's public communication, several brief parliamentary inquiries ('Kleine Anfrage') were issued by the parties DIE LINKE (Deutscher Bundestag, 2010b, 2012) and the SPD (Deutscher Bundestag, 2010a) to prompt the coalition government of the CDU/CSU and the FDP to take an official position on the directive. In answering the first inquiry in 2010, the German government took a cautious but positive stance, stating that "according to examinations thus far, in principle the necessity of a European regulation in the area of seasonal work should be affirmative" (Deutscher Bundestag, 2010b, p. 6, own translation). However, DIE LINKE criticised that the government, instead of replying to the inquiry's questions, referred to negotiation reports that it submitted to the German

Bundestag³⁶. Those reports, however, are confidential. Parliamentary inquiries, instead, are meant to inform the public about the intentions and positions of the government. Therefore, DIE LINKE submitted another inquiry two years later asking for an update on the status of the negotiations and the position of the German government (Deutscher Bundestag, 2012). The German government claimed that its “central, overarching negotiation maxim” is to “ensure further leeway for national control over the labour market and immigration as well as procedural autonomy of the member states” (Deutscher Bundestag, 2010b, p. 9, own translation). Thus, while supporting the directive in general, the German government stated clearly that it would negotiate more national discretion. Most of the government’s demands for increased discretion, however, correspond with employers’ interests. Besides demanding flexibility regarding certain provisions, the German delegation did not object to minimum harmonisation of national migration policies regarding seasonal workers from third countries. Hence, unlike its position during the Blue Card negotiations, it agreed that only more favourable national policies and bilateral agreements can exist in parallel at the national level.

Scope and Admission Criteria

Almost all of Germany’s attempts to increase national discretion in the transposition of the directive corresponded with employers’ demands. Germany adopted the employers’ standpoint that the definition of seasonal work as suggested in the proposal is too broad, which “bears the risk that the Directive will not remain confined to work that is genuinely seasonal” (Council, 2011a, p. 2). Consequently, the German negotiation team therefore demanded, in a comment to the Social Questions Working Party, to define seasonal work more narrowly, or, alternatively, to offer scope discretion, meaning that the sectors that qualify as seasonal industry are determined nationally (Council, 2011l, p. 2, f.n. 11, 2011a, p. 2; Deutscher Bundestag, 2010b, p. 9). In accordance with the employers’ demands, the German government also raised scrutiny reservations on the proposal’s provision limiting the length of employment to six months within a twelve months period (Council, 2011l, p. 13, f.n. 42). It also advocated in the Council successfully for the employers’ request to include a provision that covers also short-term stays for seasonal work of less than three months (Deutscher Bundestag, 2012, p. 3). Hence, since most of these demands by the German employers aimed at increasing national discretion rather

³⁶ Reports on negotiations in the Council must be submitted to the German Bundestag according to ‘the law on cooperation between the Federal Government and the Federal Parliament in matters of the European Union’ (EUZBBG).

than explicitly liberalising the provisions, the German negotiation team had an easy task to represent them at the European level.

Admission Decisions

Not represented by the German government was the employers' plea to facilitate cross-border employment of seasonal workers. This aversion relates to the general hesitation of the German government to give up control over who enters the German labour market, as is noticeable during the negotiations of other labour migration directives. Likewise, the German negotiation team was keen to stress that the directive is not in any way creating an entitlement for admission. Rather, the right to decide which seasonal workers gain access to the territory is the discretionary power of the respective member state (Council, 2010e, pp. 4, 10, 16, f.n. 7, 36, 56, 2011m, p. 9, f.n. 26, 2011n, p. 9, f.n. 32). For instance, the German negotiation team criticised the fact that the list of admission criteria (Art. 5), grounds for refusal (Art. 6) and withdrawal or non-renewal of the permit (Art. 7) aim at maximum harmonisation (Council, 2011l, pp. 6, 8, f.n. 19, 26, 2011o, p. 11, f.n. 42). Instead, the directive should clarify that these listings constitute minimum harmonisation, meaning that requirements "may be made stricter depending on national law and the demand on the national labour market" (Council, 2011f, p. 4). Furthermore, a provision should be included that implies that "the competent authority shall issue a visa or residence permit to seasonal workers at its own discretion" (Council, 2011f, p. 4, 2011l, p. 6, f.n. 19). In relation to Article 6, outlining the grounds for refusal, the German government was keen to add that "regarding volumes of admission, Member States retain the possibility not to grant residence permits for seasonal employment in general or for certain professions, economic sectors or regions" (Council, 2011o, p. 11, f.n. 39, 2011m, p. 13, f.n. 45, 2011l, p. 9, f.n. 30). The German negotiation team also demanded optional harmonisation regarding whether or not the member states may offer a contract extension or a change of employer (Art. 11) (Council, 2010b, p. 2). Above all, Germany alluded to the indispensable national discretion to regularly assess the situation on the labour market and apply quotas as well as the principle of Union preference if necessary (Council, 2010e, p. 16 f.n. 56).

Migrants' Rights and Benefits

Regarding the rights and benefits of seasonal workers, the German government adopted the demands of employers. For instance, just as the BDA, the German government opposed granting seasonal workers equal treatment regarding benefits such as family benefits, but also study grants (Council, 2010e, pp. 19, 20, f.n. 69, 72, 2010b, p. 4), arguing that "the temporary nature of the stay in the Member State would not justify such far-reaching equality of treatment"

(Council, 2011a, p. 7). With regard to Article 11, which includes the sanctioning of both seasonal workers and employers that did not comply with the obligations arising from the admission decision or the work contract, Germany criticised the mandatory character of the provision and demanded optional harmonisation (Council, 2011o, p. 18, f.n. 64).

Interim Conclusion

With low politicisation of both the EU and immigration, the theoretical framework expects the German government to act according to the ‘Client Politics Mode’, hence, responding mostly to the interests of employers during the Council negotiations.

The employers’ general support for the Commission’s endeavour does not derive from strong issue-specific dependence. The BDA did not perceive a common and strongly harmonised policy as necessary to attract seasonal workers to the domestic labour market and to compete with other global players such as the US and Canada. Instead, a common policy was considered as a means to ‘download’ an optional scheme from the European to the national level that includes third country national. This is also reflected in the fact that German employers were not overly enthusiastic about the scheme and strong harmonisation. Primarily, employers demanded vast national discretion rather than more liberal admission criteria.

Table 6: Seasonal Workers Directive: Policy Positions of German employers and government

Level of Politicisation: low			
Expected mode of responsiveness: Client Politics Mode			
	Interests of German Employers	Policy Position of German government	Mode of responsiveness
Perceived interdependence	medium: ‘download’ additional scheme for TCN to the national level		
Policy-dimension	Liberal: facilitate cross-border movement and employment. Restrictive: prevent family allowances.	Restrictive: add grounds of refusal; labour market tests; prevent family allowances.	Client politics
Polity-dimension	national: definition of ‘seasonal activity’; determination of length of stay; allow short-term stays.	minimum harmonisation national: definition of ‘seasonal activity’; determination of length of stay; allow short-term stays; admission decision; volume of admission; optional sanctions for employers.	

And indeed, as expected the German delegation team represented almost all demands of the employers, which, in turn the BDA attributed to its own lobbying efforts (BDA, 2011, p. 119, 2012, p. 127, 2013, p. 108). Most of the efforts sought to increase national discretion, such as flexibility regarding the minimum and maximum duration of employment and the ability to define seasonal industries nationally (see polity-dimension in Table 6 above); others sought to restrict the rights of migrants. Representing these employers' interests was unproblematic for the German delegation, as firstly, none of them sought to substantially increase harmonisation or liberalise admission and secondly, politicisation was low. Increased national discretion limits the potential political costs involved as it restricts harmonisation and the transfer of authority to the European level in a sovereignty sensitive policy field.

Nevertheless, the German inquiries to increase national discretion went beyond the employers' demands and revealed the government's sovereignty concerns, despite low levels of politicisation. Besides ignoring the employers' plea to facilitate cross-border movement and employment of seasonal workers, the German delegation repeatedly mentioned the necessity of retaining full control over the admission volumes and the individual admission decisions. However, apart from the opposition to cross-border mobility of seasonal workers, the government's sovereignty concerns did not impair the employers' interests. The findings of this sub-case seem to confirm Moravcsik's 'Client Politics Mode' of preference formation (Expectation 1.1). At the same time, the findings do not reject Postfunctionalist expectations as the low levels of politicisation prior to the negotiations would also not anticipate a 'constraining dissensus' and a strong responsiveness to communitarian interests of parts of the electorate. Nevertheless, sovereignty concerns of the government, in particular related to the volume of admission and admission decisions surfaced once more in the government's policy position. Again, the expression of these concerns can be understood as signalling responsiveness to the electorate (see 0 above). Hence, it suggests that domestic politicisation is not a necessary condition for governments to respond to the anticipated sovereignty and identity concerns of parts of their electorate during the negotiations of labour migration policies in the Council.

4.3.3. The Intra-Corporate Transfer (ICT) Directive, July 2010

The national context

At the time of the negotiations, the main channel for multi-national companies to transfer employers from non-EU-countries temporarily to a business unit in Germany was the 'International Personnel Exchange' programme, regulated in the national Employment

Regulation. As the name of the programme suggests, the transfer of personnel from one unit to another is based on the idea of reciprocity; to disburden the national labour market, for each third country national transferred to the German labour market, an employer of the national company unit should be sent to a unit abroad (Arbeitsagentur, 2019). However, in practice it is deemed to be sufficient if, “from time to time, the company also sends skilled employees from Germany to other countries” (Baker & McKenzie, 2010, p. 198). The admission conditions require the skilled employee to be permanently employed by the company group, to possess a university diploma or, alternatively, provide evidence of at least five years of employment with the company in question. A work related residence permit under this scheme can be granted by the Central Placement Office for up to three years and under simplified conditions without a labour market test (Baker & McKenzie, 2010, p. 197ff.; Council, 2010a, p. 83). The number of employees transferred via the ‘International Personnel Exchange’ programme to the German labour market grew gradually from 5822 in 2007 to 7538 in 2012 (Kane, 2019, p. 181). While it facilitates the transfer of third country nationals *to* a company unit in Germany, it does not facilitate intra-EU mobility of third country nationals from a German company unit to one in another member state, as envisaged by the ICT Directive.

Levels of Politicisation

As the ICT and Seasonal Workers Directive were proposed at the same time, in July 2010, the levels of politicisation are the same. Both EU politicisation as well as the politicisation of immigration were relatively low. With a looming Euro Crisis, the politicisation of the EU increased over the course of the following years, while that of immigration dropped considerably.

Employers’ Interests

The Commission’s intention was to facilitate not only the intra-corporate transfer of employees of third countries *to* EU member states but subsequently also their transfer *between* member states. Hence, the case of the ICT Directive is a typical case for high dependence of employers across the EU member states to find a harmonised solution at the EU level, as very different admission conditions and procedures hamper the transfer of third country national between European company units. Accordingly, the German employers’ organisation BDA also welcomed the signalling effect of the Commission’s proposal, which would address some of the employers’ central demands (BDA, 2010, p. 126f.). However, the BDA stressed that certain amendments would be necessary to design the directive more practically. The BDA lobbied

policy makers to liberalise the proposal by increasing the scope of the directive, relaxing admission criteria, facilitating intra-EU mobility and strengthening the rights of transferees.

In the view of the BDA, the proposal defined the directive's target group too narrowly. For instance, using the term 'skilled worker' implies that the worker has sector-specific knowledge. Consequently, an automobile manufacturer could not post an IT developer for the purpose of developing an automation system. Hence, not sector-specific knowledge and expertise should be decisive, but expertise that is of importance for the specific task or project. The BDA also emphasised its discontent with the proposal's narrow definition of 'group of undertakings', which would exclude companies that enjoy a legal affiliation or those who are under the same management (BDA, 2011, p. 118).

Furthermore, the BDA challenged the mandatory prior employment of at least 12 months with the undertaking before a worker could be transferred under the ICT Directive to a European member state (BDA, 2012, p. 127). Likewise, it rejected attempts of member states to establish a three-year waiting period for workers who have already been admitted under the ICT Directive before they could obtain a second ICT permit (BDA, 2012, p. 127). It welcomed the fact that the directive includes the right of family reunification, but criticised that it does not provide facilitated access to the domestic labour market for the spouse or partner of the posted employee. In addition, labour market access for partners should not only be facilitated and provided in the first host member state, but also in the second member state, in case the posted employee will be relocated (BDA, 2011, p. 118).

For the BDA, the core 'added value' of the Commission's proposal to harmonise ICT permits at the European level is that it would facilitate flexible intra-EU mobility of posted TCN. Hence, employers welcomed especially those regulations, which would allow employers to post their 'key personnel' to several different branches in different member states within a short period, without both employers and employees having to undergo several application procedures in the second or third member state. For instance, the BDA applauded the provision that allows member states to transfer a TCN from the first member state, which granted the ICT permit, for up to 12 months to a second member state, without having to apply for another permit in the second member state. Consequently, later amendments to the proposal, which severely restricted intra-EU mobility, were fiercely, albeit unsuccessfully, disputed by the BDA (BDA, 2011, p. 118). These restrictions, that for instance limited the intra-EU transfer of ICT to a second member state to a maximum of three months within a six months period, were criticised

as causing unnecessary legal uncertainties and administrative burden for companies (BDA, 2013, p. 107).

Position of German Government:

With low politicisation of both the EU and Immigration and strong support of German employers for the Commission's endeavour to harmonise intra-corporate transfers at the EU level, we should expect the 'Client Politics Mode' to persist. However, as Table 4 illustrates, the German government only represented one of the many liberal demands of employers.

The German delegation participated very actively in the negotiations, in part by submitting several written contributions, in which it outlined its position on the proposal and suggested amendments (Council, 2011c, 2011d, 2011h, 2011g). Germany did not object to the overall minimum harmonisation of national legislation related to intra-corporate transferees, meaning "the Directive shall apply without prejudice to more favourable provisions" (Art. 4), but not more restrictive provisions. However, to increase national discretion, the German government sought to increase the flexibility of certain provisions within the directive or to restrict admission conditions.

Admission decision

Time and again, the greatest concern of the German delegation was to stress that admission decisions and quotas should be of national concern, as was also observed during negotiations of the Blue Card Directive and the Seasonal Workers Directive. Germany repeatedly sought to clarify that member states maintain their discretion for granting the residence permit (Council, 2010c, p. 17, f.n. 49). Likewise, Germany demanded national discretion with regard to the admission criteria in the form of a non-exhaustive list. It feared that an exhaustive list would mean that by fulfilling the admission criteria, a TCN applicant would automatically be entitled to admission, if no installed fixed national quotas oppose an admission (Council, 2010c, pp. 10, 12, f.n. 26, 28, 2011g, p. 4, 2011d, p. 2). In a similar vein, Germany sought to add additional grounds for refusal, such as "other significant interests of the host Member State" (Council, 2011g, p. 5) or filled national quotas (Council, 2010c, p. 12, f.n. 28), which would increase the national discretion over rejecting admission applications. Likewise, the German delegation requested to rephrase Article 6.3. regarding the grounds of refusal in the following way: "The directive shall not affect the right of Member States to set limits on the number of intra-corporate transferees in general and/or for certain professions, economic sectors or regions. Member States may use such limits to entirely rule out the possibility of admitting third country

nationals as intra-corporate transferees” (Council, 2011g, p. 5). Explicitly stating and shielding the rights of member states regarding the admission of migrants, illustrates clearly the sovereignty concerns of the German government.

Intra-EU mobility

Linked to the issue of national sovereignty over admission decisions are also provisions facilitating intra-EU mobility, which were hailed by the employers as the ‘core added value’ of harmonising labour migration rules for intra-corporate transferees. Ignoring the interests of employers, the German negotiation team channelled a good amount of effort into restricting intra-EU mobility. The delegates were wary that a facilitated posting of TCN across member states “might provoke abuse; TCN might apply to MS where lenient criteria apply and after a brief time move to a second MS” (Council, 2010c, p. 21, f.n. 61). Accordingly, Germany demanded that the seconding company should be obliged to apply for an additional ICT permit when transferring a third country national to a second member state within the EU (Council, 2011h, p. 11). It exemplifies the lack of trust of German policy-makers in the thoroughness or effectiveness of the competent authorities of other member states, which is why it disputes heavily the idea of having to cede authority over admission decisions to authorities other than the national ones.

Admission criteria

The German government agreed with the BDA’s critique regarding the requirement of a pre-employment period for transferees, and therefore suggested to make the period of prior employment optional and give member states the flexibility to choose any time period of *up to* 12 months (BDA, 2012, p. 127; Deutscher Bundestag, 2012, p. 10). Hence, it suggested a flexible design of the regulation, so that member states would gain more discretion. The suggested wording would allow member states to also accept a period of prior employment of less than three months or to not require prior employment at all. Yet, that was the only employers’ demand represented by the German delegation team.

Rights and benefits

The German delegation neither supported nor opposed the employers’ demand for labour market access of ICT’s partners. However, regarding equal treatment of transferees, Germany was keen on limiting access to non-contributory social security, in particular family member’s allowances, since “it would influence and distort the choice of the host country and would run counter to the family policy objectives of these benefits” (Deutscher Bundestag, 2012, p. 5).

The German delegation argued that first, family allowances are very generous in Germany, which might then become a main criterion for choosing a host country and second, these benefits are meant as support for families that settle and raise children in Germany permanently, and not for a short period of time (Council, 2011g, p. 7; Deutscher Bundestag, 2012, p. 5).

Interim Conclusion

Despite low politicisation and the governments' general support for minimum harmonisation (instead of optional or no harmonisation), we cannot speak of a 'Client Politics Mode'. The employers were very eager to facilitate intra-corporate transfers to and between EU member states. To achieve this goal, employers perceived themselves to be strongly dependent on a common harmonised policy and pressed the German government to liberalise standards in Brussels. The government, however, did not share the employers' enthusiasm. Only one of the employers' content-related demands - the criticism levelled against the admission criteria of fulfilling a certain pre-employment period - was represented by the German delegation in the Council negotiations (see Table 7).

Table 7: ICT Directive: Policy Positions of German employers and government

Level of Politicisation: low			
Expected mode of responsiveness: Client Politics Mode			
	Interests of German Employers	Policy Position of German government	Mode of responsiveness
Perceived interdependence	high: facilitate intra-EU mobility of transferees		
Policy-dimension	Liberal: increase target group and scope of directive; delete mandatory prior employment and waiting period for former transferees; labour market access for family members in first and second ms; facilitated intra-EU mobility;	Restrictive: add grounds of refusal; limit intra-EU mobility; limit access to non-contributory social security; Liberal: optional pre-employment requirements (up to 12 months);	Mass politics
Polity-dimension		minimum harmonisation national: admission decision; volume of admission; non-exhaustive list of admission criteria;	

All other inquiries by the German delegation team sought to restrict admission and transferees' rights or to increase national discretion. As already observed during the negotiations of the Seasonal Workers Directive and the Blue Card Directive, the findings of the sub-case suggest that the power over admission decisions, including the determination of admission volumes, is the 'minimum' of state sovereignty that the German government is not willing to give up at any price – no matter the interests of employers or the level of politicisation. It therefore also rejected any provisions that intended to facilitate intra-EU mobility of third country nationals between member states, which would delegate the admission decisions at least to a certain extent to the authorities of other member states. As the ICT Directive was precisely targeting this 'core' of sovereignty, the German government was unable to settle the employers' demands and act according to the 'Client Politics Mode'. Hence, against the expectations of the theoretical framework, we observe a 'Mass Politics Mode' despite strong issue-specific dependence and low levels of politicisation. For the German government to respond to communitarian interests prevalent in parts of the German public, high politicisation is not a necessary condition.

4.3.4. The Revision of the EU Blue Card, June 2016

National context

Both the structural foundations of German labour migration policies as well as public and political discourse in Germany underwent major changes in the years before the negotiations of the EU Blue Card Directive. Under the pressure of increasing numbers of asylum seekers from war-torn Syria, Iraq and Afghanistan arriving at the Schengen borders, the EU border regime was about to collapse, and the Dublin Convention was practically suspended. Following the decision of Chancellor Angela Merkel at the beginning of September 2015 to take in thousands of refugees stranded in Hungary, Germany became the number one destination country for refugees in Europe. Almost 500.000 asylum applications were filed in Germany in 2015 and 750.000 in 2016, the highest numbers since 1992.

Merkel's decision increasingly polarised the public discourse, revolving around the question whether ignoring the Dublin Rules was rightful and whether the consequences are manageable for Germany's society. The right wing populist party AfD, which already gained electoral ground in Germany in the course of the Euro Crisis, seized the opportunity to mobilise the sceptical public with latent 'anti-immigrant' and 'Eurosceptic' sentiments and chanted 'Merkel must go' along the lines of protecting state sovereignty and identity from the open border

policies of the political elite. Hence, in 2016, when the Commission introduced the proposal for a revised Blue Card Directive, the populist right in Germany was on the rise and dominating the national discourse. Mainstream parties, in particular the Bavarian CSU as well as parts of Merkel's CDU increasingly questioned Merkel's mantra 'We can do it' (Nielsen, 2018; Zaun, 2018). Wary of the upcoming federal elections in 2017, politicians of the CDU/CSU increasingly fished for votes from the AfD by re-adjusting their political position on the cultural-identitarian dimension. Eventually, the two-dimensional conflict structure manifested itself in the Bundestag, with the AfD gaining 12 per cent in the federal elections and impeding the formation of a government, which "led to the Federal Republic's longest period without a government since World War II" (Kriesi, 2018, p. 59).

At that time, the German economy continued to be the strongest in the EU and employers repeatedly reported pervasive labour shortages, which jeopardised the country's economic growth. As outlined above, the transposition of the first EU Blue Card Directive into German law in 2012 "constitutes a significant liberalization of the existing system of employer-based and occupation-driven labour migration" (Finotelli & Kolb, 2017, p. 77). However, more importantly, the German government introduced at the same time a supply-driven immigration scheme in the form of a job-seeking visa that permits third country nationals to look for employment in Germany for up to six months. According to Kolb (2014, p. 66) this introduction imitates not only "a departure from the 'No immigration without labor contract'-dogma [...]" It is also nothing less than the introduction of a very basic, frugal and binary (yes/no) point system with just two accession criteria: an academic qualification and adequate means of subsistence for the planned duration of the stay". Nevertheless, the Blue Card scheme continued to be the dominant channel for highly qualified migrants to the German labour market.

Employers continued to heavily pressure the government to liberalise existent labour admission schemes, for instance, by including skilled labour migrants with professional experience but without a university degree into the scope of the job-seeker visa (Buck, 2018; Deutsche Welle, 2017). Due to the national heated debate about asylum and immigration, the government however was "at pains to stress that the plan to attract more skilled labour from abroad has nothing to do with the long-running political debate surrounding asylum and refugee policy" (Buck, 2018).

At the same time, employers' organisations actively tried to re-frame Merkel's decision to take in refugees in economic terms and stressed the refugees' potential for the German labour market (Dettmer, Katschak, & Ruppert, 2015). The BDA demanded an acceleration of labour market

access for asylum seekers and recognised and tolerated refugees (BDA, 2015d). In Germany the admission schemes for the purpose of asking for international protection are strictly separated from admission schemes that manage labour migration (Neuerer, 2015). A so-called “Spurwechsel” (English: ‘line change’), which would allow asylum seekers to apply for a work permit, was highly disputed in the political arena and particularly opposed by the Bavarian CSU (Bader, 2018; Deutsche Welle, 2018). In contrast, the BDA argued in June 2015 that “against the background of growing skills shortages, it is a good idea to facilitate the transition from asylum into economic migration if the conditions for a resident permit in the area of labour migration are met.” (BDA, 2015b).

Levels of Politicisation

Against the background of the domestic political situation in Germany at that time, it is not very surprising that the national heated discourse on immigration, borders and the role of the EU is reflected in the levels of politicisation, which skyrocket from 2015 onwards. Before the negotiation period of the Revision of the Blue Card Directive, we observe unprecedented high levels of EU politicisation in Germany. The highest peaks in EU politicisation was in the immediate months before the proposal was introduced, with values indicating very strong politicisation in June 2016 when Britain voted to leave the EU in the Brexit referendum.

Also the politicisation of immigration was experiencing a dramatic surge with the Schengen Crisis manifesting itself and the increasing numbers of asylum seekers arriving in Germany. In the year preceding the introduction of the proposal, the values of politicisation are high, but the index increases even more in January and February of 2016, “after large-scale sexual assaults and robberies on New Year’s Eve in Cologne reportedly committed by Northern African men, among whom there were also asylum-seekers” (Zaun, 2018, p. 9f.). Consequently, the main aspect of the Blue Card negotiations that was reflected in the German media was the discussion of whether the scope of the Blue Card should be expanded to also give highly skilled recognized refugees the possibility to apply for the Blue Card and enjoy the benefits it entails. Due to the controversy of the issue and the heated domestic debate, several members of Merkel’s party felt the urge to position themselves publicly on the issue. Christian Bäuml, the Deputy of the Christian Democratic Workforce, a small body of the CDU with a focus on social policy, vehemently argued that “the wall between asylum procedure and taking up work by the Blue Card has to be torn down” (cited in Neuerer, 2015; own translation). However, most politicians rejected the idea (Neuerer, 2015; Walter, 2015), such as the CDU politician Günter Krings. He argued that “if we tell would-be immigrants, just come here and then we’ll see if you can stay

thanks to asylum application or the Blue Card, then that would make an abuse of the asylum process much more attractive” (Günter Krings, Christian Democrat parliamentarian and State Secretary in the Interior Ministry, cited in Walter, 2015).

Employers' Interests

The following analysis of the BDA's policy position suggests that politicisation is not only a moderating variable strengthening or weakening the employers' representation by the government, but to a certain extent, strong politicisation also has a direct effect on the how employers frame their preferences. After 'the long summer of migration', that gathered its full political momentum only in September 2015, the domestic contestation about migration, asylum, borders and the role of the EU border regime became more heated and hostile in Germany. This is also reflected in the sharp increase in levels of politicisation of both EU and immigration. The more contested and polarised the national debate and the longer the negotiations of the revised Blue Card Directive lasted, the more the employers adapted their policy position to the domestic political climate. The BDA chose an increasingly modest and cautious approach to phrase its demands. Concrete suggestions to liberalise admission schemes were followed by cautious and understanding comments that took into account the heated debate at the national level and anticipated the government's sovereignty concerns.

Before the Commission actually proposed the revision of the Blue Card Directive, it consulted stakeholders in an open consultation, asking them to give their opinion about what more could be done at the EU level to increase the attractiveness of EU countries for highly qualified immigrant workers. When responding to the Commission's request, the BDA mostly stated its dissatisfaction with the German labour migration scheme. It argued that the German economy is in need of a so-called 'Potentialzuwanderung' (English: immigration of potential). Hence, German employers advocated for a supply-driven immigration scheme that is open to workers that have the necessary qualifications and language skills, and therefore a high potential to find a job position at the German labour market in the short run. Additionally, also qualified specialists without academic education should be able to obtain a job seeker visa to Germany (BDA, 2015c). The BDA regards the EU's main task to create an image of a 'Willkommenskultur' (English: welcoming culture) for highly skilled labour migrants by improving its 'communication and marketing strategy'. Externally, The EU must convey an open culture that welcomes qualified labour migrants. Internally, it has to increase the acceptance for labour migration among the European public, in particular because of the topics' "highly sensitive political background" (BDA, 2015c; own translation). As in 2007, the German

employers used the debate at the EU level in order to criticise the national admission scheme, rather than preferring a reform of the EU Blue Card. Nevertheless, acknowledging that the EU scheme rather than the national policies became the backbone of the German labour migration scheme or highly skilled migration, the BDA brought more content-related demands forward than during the negotiations in 2007, which reflects its higher dependence on the Blue Card Directive.

Before ‘the long summer of migration’ in 2015, the BDA took the view that highly qualified, rejected asylum seekers should be able to apply for a Blue Card Directive without having to travel back to their country of origin to submit an application (BDA, 2015c, 2015b). In the following months, the BDA did not further discuss this policy position but remained silent on the issue in its press statements and yearly reports. Other, smaller employers’ organisations, such as the German Federal Association of medium-size enterprises (BVMW) took a stronger stance on the issue. They demanded to open up the scope of the Blue Card to refugees that are already residing in the EU, arguing that “they are looking for professional prospects, we are looking for skilled workers” (Ohoven cited in Neuerer, 2015; own translation).

The BDA was supportive of the Commission’s attempt to relax some of the admission criteria of the current Blue Card Directive. For instance, it welcomed that the proposal seeks to reduce the minimum duration of work contracts, and argued that member states should consider even shorter stays of less than six months (BDA, 2019, p. 22). The BDA was also in favour of the Commission’s endeavour to broaden the scope of the Blue Card to include skilled workers that did not obtain a higher education degree equivalent to a bachelor’s degree, but who have adequate professional experience of at least three years (BDA, 2016, 2017). At the same time, however, the BDA cautioned that the attempt to broaden the scope would require strict and precise criteria to prevent that their “interpretation by the member states does not diverge too widely, and that this does not develop to a gateway of immigration of not formally qualified” (BDA, 2019, p. 22, own translation).

While the Association of German Chambers of Industry and Commerce (DIHK) demanded a lower salary threshold (Agence France Presse, 2017), the BDA took a more nuanced position. It argued that in general it welcomes the Commission’s proposal to reduce the income threshold for highly skilled. Interestingly, however, the BDA also pointed out that the reduction of the salary thresholds for young graduates and shortage occupations might go too far. It feared that it would trigger “a counterproductive discussion about the appropriate remuneration of skilled workers from abroad” (BDA, 2019, p. 22, own translation). Thus, the BDA suggested to allow

for national discretion, so that member states can determine the exact threshold nationally. The BDA welcomed again the Commission's attempts to facilitate intra-EU mobility of Blue Card holders and supported the new "mobility regulations" and the proposal that residence permits for family members shall be granted simultaneously with the EU Blue Card (BDA, 2019, p. 22f.).

As in the negotiations of the initial Blue Card in 2007, the BDA continued to vehemently oppose the full harmonisation of work permits for highly qualified individuals as proposed by the Commission, because it would not allow parallel national admission schemes (BDA, 2016). The BDA took the position that the EU should only set the general legal framework, while giving member states the leeway to implement it according to the needs of the national labour market (to keep their national admission schemes and to determine the numbers of incoming third country nationals) (BDA, 2015a)

Position of German Government

With the politicisation of the EU and immigration reaching unprecedented levels before and during the negotiations of the Revision of the Blue Card Directive, the political costs for politicians to support further harmonisation and liberalisation of labour migration policies increased. According to the theoretical framework, the preference formation of the German government with regard to the revised proposal constitutes a very likely case for 'mass public politics'. We expect identity and sovereignty concerns to impede further harmonisation and liberalisation and overtake the strong but cautious economic interests of employers.

The German Ministry of the Interior also participated in the Commission's open consultation on the revision of the Blue Card Directive in 2015. It took the view that the admission conditions of the Blue Card Directive are adequate and that there is no necessity for any further initiatives, as the current migration management tools are sufficient and fully meet current and future long-term demands (German Federal Ministry of the Interior, 2015). This illustrates that German policy-makers consider themselves not to be strongly dependent on a revised EU Blue Card to meet their policy goals.

Once the Commission tabled the proposal for a revision, the German government was very vague in its policy position and barely communicated its stance publicly. As mentioned above, only a few politicians of the governmental party CDU/CSU felt the urge to position themselves on the inclusion of rejected asylum-seekers. Both the slow proceedings of the negotiations as well as the standstill at a later point were attributed to the hesitant and sceptical stance of the

German government (BDA, 2019, p. 21; Nielsen, 2018; Tagesspiegel, 2017; Interview Employer_NL; Interview Rep_ES). The hesitation is also reflected in the involvement of the German delegation during the first reading of the proposal in the Council, where it adapted a comparatively inactive, passive role. Most of the comments made by Germany during the negotiations in the Council working groups were clarification questions. In order to urge the German government to position itself on the reform proposal, the parliamentary group of the FDP lodged a parliamentary inquiry. The federal government's reply, however, did not contribute clarity (Deutscher Bundestag, 2018).

One explanation for the government's hesitation to adopt a concrete policy position might be the upcoming federal elections in 2017, as the strong politicisation of immigration and the EU at the domestic level would increase the public attention on the governmental policy position. With the AfD gaining increasing electoral ground during regional elections, the German government was wary that political costs involved in supporting the directive would be echoed later in the election results. The situation did not change after the German elections. The elections left the political situation in Germany unclear, because it took Chancellor Angela Merkel five months to find a coalition partner and to negotiate a coalition agreement. Even though observers in Brussels expected the negotiations to come to an end in 2017, with the demands by the German government being dealt with in a compromise (Europe Daily Bulletins, 2017), the negotiations continue to be blocked today - still mainly due to German resistance (Nielsen, 2018). To quote a participant in the Council negotiations:

“there was a strong opposition by many countries, in particular by Germany. I remember that at the end of the discussion, when [the compromise] was presented to countries, Germany announced that they had a non-paper in preparation, so they asked for more time. They were able to secure a little bit more time, then asked for another delay. So they cooled down the whole thing and finally they presented a non-paper that was completely different to what we were talking about in the compromise. So, well, they, with the record on, they strongly opposed the compromise with some other countries also supporting. So, this was an important driver of the failure to find a compromise” (Interview Rep_ES).

Harmonisation

As mentioned by the Ministry of the Interior in its reply to the public consultation, it considers the EU Blue Card to have an added value if it “is designed as a guaranteed EU-wide minimum possibility to enter and work in Member States, leaving the possibility to MS to set up parallel national schemes that are designed according to their national needs” (German Federal Ministry of the Interior, 2015). Hence, in accordance with the employers' opposition, and similar to the governmental position in 2007, the German government continued to vehemently oppose a Blue

Card Directive that fully harmonises all national admission schemes and does not allow parallel national labour migration schemes with both more restrictive or liberal provisions (BDA, 2019, p. 22; Council, 2016a, p. 28, f.n. 45). Thus, Germany demanded that it “should still be possible to conclude all kinds of bilateral agreements even those that contain less favourable provisions” (Council, 2016b, p. 27, f.n. 38). However, as observed by Claude Moraes, a member of the European Parliament and chair of the parliament's civil liberties committee, even a compromise suggestion by the Bulgarian EU presidency that would have allowed national admission schemes to exist in parallel “was rejected outright by Germany” (Moraes, cited in Nielsen, 2018).

Scope & Admission Criteria

Merkel's CDU was split on the issue on whether or not to include rejected asylum-seekers into the scope of the directive (Neuerer, 2015; Walter, 2015). However, most politicians, including the minister of the interior, opposed the option as proposed by the Commission. This latter position was also adopted by the German negotiation team during the negotiations in the Council (Council, 2016b, p. 25, f.n. 32). Other comments of the German negotiation team targeted the liberal admission criteria: for instance, Germany demanded to increase the minimum length of the work contract from six to nine months and the minimum salary threshold from 1.0 to at least 1.3 times the average gross annual salary in the Member State concerned with no upper limit (Council, 2017a, pp. 31, 33, f.n. 54, 58). It also rejected the possibility of substituting higher educational qualification with higher professional experience, since obtaining evidence for the latter is difficult (Council, 2016b, p. 29, f.n. 44). In addition, a later compromise, that suggested to leave the decision to the member states, was also challenged by Germany (Council, 2016a, p. 43, f.n. 89). Likewise, Germany requested that the professional experience of an applicant should be always related to the job offered (Council, 2016b, p. 29, f.n. 44). The German negotiation team also targeted the eased labour market access as proposed by the Commission. According to Germany, Blue Card holders should be obliged to communicate any changes of employment or even obliged to receive an authorisation before the change (Council, 2016b, p. 44, f.n. 84).

Another concern of the German government was the foreseen facilitated intra-EU mobility. A participant in the negotiations traces the German reluctance back to sovereignty concerns and lack of trust, because Intra-EU mobility means

“less control for national authorities on the final result of the whole scheme. Even if it is agreed and it is under their terms and conditions, and they could be pushing for different conditions in

the European system. But at the end of the day they have no real, hundred per cent control of the people that are entering. We can trace this to perhaps weak mutual trust.[....] The bottom line was that they didn't trust other countries managing the same system as they had" (Interview Rep_ES).

Interim Conclusion

The analysis of the BDA's position seems to suggest that in times of high politicisation of immigration and European integration, employers also take a more cautious approach in their lobbying attempts to liberalise labour migration from third countries. In the course of the negotiations, the BDA dropped its demand to include highly qualified rejected asylum seekers into the scope of the directive and was wary that low salary thresholds might trigger a counterproductive national discourse. In addition, the BDA warned against lax admission criteria in other member states that could be exploited as a 'gateway' for not sufficiently skilled third country nationals. This sovereignty-sensitive framing of high skilled labour migration is novel for the BDA. The arguments resemble those put forward by the German government in previous negotiations of EU labour migration directives and feed into the government's sovereignty concerns and lack of trust in the admission decisions of other member states.

Table 8: Revision of Blue Card: Policy Positions of German employers and government

Level of Politicisation: high			
Expected mode of responsiveness: Mass Politics Mode			
	Interests of German Employers	Policy Position of German government	Mode of responsiveness
Perceived interdependence		Low: current migration management tools are sufficient	
Policy-dimension	Liberal: allow short stays of less than 6 months; allow for professional experience to substitute higher education; reduce salary threshold; facilitated family reunification and intra-EU mobility.	Restrictive: exclude rejected asylum-seekers; increase minimum length of work contracts from 6 to 9 months; increase salary threshold; reject professional experience as substitute; limit labour market access.	Mass politics
Polity-dimension	Optional harmonisation National: application of lower salary threshold for young graduates and shortage occupations; admission volumes	Optional/no further harmonisation European: reject professional experience as substitute;	

Employers were, after all, opposed to full or minimum harmonisation. It illustrates that they perceived themselves still to be weakly dependent on a common policy to attract highly skilled labour migrants to the German labour market (by increasing the scheme's visibility or achieving 'economies of scale effects'). Nevertheless, knowing its current dependence on the Blue Card Scheme as the backbone of the German immigration system, the employers brought forward some concrete suggestions of how they wish to relax the admission conditions for highly skilled labour migrants. Hence, again, employers sought to 'download' a more liberal scheme from the European to the national level.

Yet, the German government represented none of the content-related demands of employers. Instead, Germany not only sought to restrict the admission criteria but also refused to cede further sovereignty to the European level. While the protection of sovereignty in the sense of keeping full control over admission decisions and volumes appears to be the 'minimum policy position' of the German government during all four negotiations of labour migration policies at the EU level, strong politicisation severely inhibited the German willingness to compromise both on the polity as well as the policy-dimension.

As a consequence, politicisation had "a direct knock-on effect on EU-level legislation making on migration" [...] as "the fear of AfD slams brakes on EU legal migration reform" (Nielsen, 2018). The policy position of the German government regarding the revised Blue Card Directive suggests that unprecedented levels of politicisation (in combination with an unprecedented electoral success of a right-wing populist party) severely hampers the representation of employers' interests and at the same time strengthens the responsiveness of governments to the interest of the more communitarian-minded public.

Once more, a look at the policy developments at the domestic level reveals that the German hesitation is not so much caused by a general opposition to liberalised labour migration policies, but rather by the anticipated political costs inherent in agreeing to liberalisations and harmonisation at the EU level. Some of the content-related demands of employers on the polity-dimension were satisfied through legislative changes at the national level. While Germany continued to block the Blue Card negotiations, German policy makers agreed on a new German "Fachkräftezuwanderungsgesetz" ('skilled workers' immigration law') at the end of 2018 - despite high level of politicisation. Whereas the German delegation team fiercely opposed an inclusion of skilled workers into the scope of the Blue Card, the national legislation facilitates their admission to the German labour market. Like the job seeker visa for highly skilled, it allows workers with a professional qualification and with sufficient means of subsistence to

come to Germany for six months to search for a job position. If they apply for ‘shortage occupations’ and already have a job offer, third country nationals do not even have to prove their professional qualifications (Dernbach & Starzmann, 2018).

Again, relatively weak issue-specific dependence of employers on a concerted effort to attract highly skilled labour migrants allowed ‘unilateral Client Politics’ at the domestic level. It gave way to ‘Mass Politics’ in Brussels. In the case of the revised Blue Card, strong domestic politicisation, coupled with an increasing success of the right-wing populist challenger party AfD at the national level, reinforced the electoral pressure on the government. Accordingly, sovereignty and identity concerns surfaced ever more strongly in the German policy position and eventually led to the failure of the negotiations altogether. Hence, under conditions of weak issue-specific dependence (Expectation 1.2) and strong politicisation (Expectation 2) the German government is willing to serve the communitarian interests prevailing in parts of the electorate.

4.3.5. The Employer Sanction Directive, May 2007

National context

In Germany, at the beginning of the 2000s, the report of the Süßmuth-Commission that also dealt with issues of irregular migration, as well as the 2001 terrorist attacks in New York, fuelled a public discussion on irregular migration (Sinn, Kreienbrink, & von Loeffelholz, 2005a, p. 18). However, by the mid-2000s, at the time when the Commission introduced the proposal for the Employer Sanction Directive in 2007, issues of immigrant integration and the opening of the labour market for economic migrants overshadowed irregular migration in the public and political debate (Boswell, 2014, p. 56). Yet, Boswell (2014, p. 57) claims that “the German electorate has high expectations about what its government can and should do to combat illegal migration. Governments are likely to be reluctant to bow to business pressures and tolerate illegal migration, given the high electoral costs that are likely to ensue”.

Different German laws address illegal employment and, specifically, in conjunction with residence acts, the employment of irregular migrants. The punishment of the illegal employment of irregular migrants is regulated in German Social Code (SGB) and in the Law to combat undeclared work and illegal employment (SchwarzArbG) (Sinn, Kreienbrink, & von Loeffelholz, 2005b). With the SchwarzArbG that came into force in 2004, Germany increased the maximum penalty for illegal employment of irregular migrants from 250,000 to 500,000

Euro. The exact amount of the penalty is decided by national authorities, depending on the severity of the crime, as well as the personal and financial status of the accused employer (European Commission, 2007a, p. 89; Tangermann & Grote, 2017, p. 42). In particularly serious and aggravating cases of crime, imprisonment of up to five years is also possible (European Commission, 2007a, p. 93; Sinn et al., 2005b). The SchwarzArG pooled the checks for illegal employment at the Federal Customs Administration and increased the frequency and intensity of workplace checks. Compared to other European member states, the efficiency of those checks can be regarded as efficient (Boswell, 2014, p. 56; Sinn et al., 2005b)

Levels of Politicisation

In May 2007 when the Commission published the proposal for the Employer Sanction Directive, both the politicisation of the EU and immigration were somewhat higher than a few months later when the Blue Card Directive was introduced. EU politicisation was relatively high in the 12 months before the introduction of the proposal, while the politicisation of immigration was considerably high.

Employers' Interests

Due to the opt-out of the UK, Ireland and Denmark, the BDA was wary that the negotiations on the Sanctions Directive would be dominated by a Southern European legal culture regarding the treatment of illegal employment of irregular migrants (BDA, 2008a, p. 132; Interview Employer_DE). Hence, the BDA was cautious to preserve the northern European sanctions' culture that is characterised by

“a much higher compliance culture, where the state only gives a warning, and you can already feel it, while in southern Europe they go straight to plant closures. That would cause a northern European a heart attack.” (Interview Employer_DE).

Consequently, the German employers' organisation BDA extensively commented on the Commission's proposal and announced that it will closely monitor the negotiations (BDA, 2007b). The BDA assured that it strictly rejects illegal work due to its various negative consequences, as it “distorts fair competition, results in losses of revenue in social security systems and undermines the tax morality“ (BDA, 2007b, p. 93; own translation). Dieter Hundt, the then president of the BDA, also issued a press statement on the proposal, naturally stating that fighting illegal migration is a necessary component of managing migration, and that he agrees with the assumption that illegal employment constitutes an important ‘pull factor’ for irregular immigration. Yet, he took the view that the Commission's proposal is “going down

the wrong path” (BDA, 2007f; own translation). Despite high politicisation of immigration and the EU during this time, the BDA did not shy away from openly opposing the Commission’s proposal (BDA, 2007b).

In general, the BDA took the stance that the proposal only fights the symptoms of irregular employment and not the main causes behind the phenomenon, such as high taxes and contributions on labour, increasing regulation of the labour market and reduction of working time (BDA, 2007b, p. 93). More specifically, the BDA argued that first, the proposal one-sidedly burdens employers with the responsibility to examine the validity of residence and work permits of employed migrants. This, however, is genuinely the task of governments, and the BDA therefore strongly objected to the attempts of the Commission to oblige employers to assume the responsibility and liability (BDA, 2007b; Interview Employer_DE, 2007f). Second, the BDA considered the intensity of sanctions to be disproportionate. For instance, the BDA fiercely disputed the provision according to which employers can be sanctioned by a temporary closure of the production site or business establishment, as this would also punish the other, legal employees. Furthermore, making the main contractor or any intermediate subcontractor liable to pay sanctions and back payments, if a subcontractor infringed the rules, is unacceptable, in particular because main contractors very often do not have the leeway to enforce rules on their subcontractors (BDA, 2007f, 2008a, p. 132, 2009, p. 129; Interview Employer_DE). Third, the BDA demanded that determining the level and type of sanctions should be the sole responsibility of member states (BDA, 2008a, p. 132), as it is not the task of the EU to set legal requirements in this field (BDA, 2007f).

Position of German Government

The theoretical framework suggests that in times of high politicisation of the EU and immigration, the German government represents more ‘anti-immigrant’ and ‘Euro sceptic’ sentiments of the public, rather than the interests of employers. We can expect this to be even more so true if the directive targets the irregular instead of legal migration.

However, the findings above exhibit clearly that the preference formation of the German government regarding the Sanctions Directive seems to follow a different logic. Most comments of the German delegation in the previous four negotiations targeting ‘regular’ labour migration predominantly sought to restrict admission conditions and migrants’ rights or to increase national discretion. Barely any inquiries sought to liberalise the provisions. In contrast, in the case of the Sanctions Directive, most comments by the German delegation requested to

liberalise it. However, it is important to note, that in the case of this directive, liberalising does not mean to relax admission criteria, but to design the employers' obligation and sanctions to be less restrictive. Hence, the findings suggest that despite relatively high levels of politicisation, the government represented mainly the interests of employers.

The German government led a group of member states, including inter alia Sweden, Finland, and Poland, that strongly opposed the Commission's proposal (EFE Newswire, 2008). Interior Minister Schäuble challenged the view that employer sanctions lie in the scope of the EU's competence and argued that Germany already has effective and high penalties for employer of migrants without residence permits (Agence France Presse, 2008a; Wiesbadener Tagblatt, 2008). Hence, he downplayed the German dependence on tackling illegal employment of irregular migrants at the European level. In the course of the negotiations the German delegation tried to limit the restrictiveness of the provisions, while at the same time decrease the obligations of employers and the government towards the illegally employed. The delegation attempted to design the provisions more flexible, by making certain regulations optional and therefore decreasing harmonisation.

Firstly, during the negotiations, the main goal of the German delegation was to spare the employers from tough sanctions and administrative burdens. Hence, it therefore represented all demands voiced by German employers. Schäuble strictly rejected criminal sanctions against employers of irregular migrants, arguing there is "no justification" for such penalties, as "there are other ways to fight illegal employment" (Schäuble cited in Agence France Presse, 2008a; own translation; EUobserver, 2008). He demanded that national administrations should decide what kind of sanctions a specific case deserves. Accordingly, Germany took the view that certain sanctions, such as the exclusion from entitlement to public benefits and subsidies and from participating in public contracts should be optional (Council, 2007a, p. 10, f.n. 32). Following the critique of the employers' organisation, the German delegation raised reservations regarding the provision that both main and sub-contractor are liable for sanctions and it expressed its concerns regarding the administrative burden that employers would face by providing and checking the necessary documents (BDA, 2008a, p. 132; Council, 2007b, p. 5, f.n. 13).

Secondly, the German delegation attempted to restrict the rights of the illegally employed irregular migrants. It criticised the provision that obliges member states to postpone the execution of a return decision of an irregular migrant until the latter has received the back payment of their remuneration (Council, 2007a, p. 10, f.n. 28). Likewise, it criticised the nation

of granting limited residence permits for the time of the proceeding for those illegal migrants that were subject to exploitative working conditions and were cooperating in proceedings against the employer (Council, 2007a, p. 15, f.n. 53) as being too much an administrative burden. It demanded also that installing mechanisms that would inform employees automatically about the possibility of claiming outstanding remunerations should be optional (Council, 2007c, p. 10, f.n. 35). Furthermore, presuming automatically a work relationship of six months if employer cannot prove otherwise was considered too long by Germany (Council, 2007c, p. 11, f.n. 39). It also questioned the rational of Art. 14, which prohibits a member state from imposing sanctions against designated third parties on the grounds of facilitating unauthorized residence, if they provided assistance to third country nationals in lodging complaints. It expressed its concerns that this would convey a questionable message regarding third parties aiding illegally staying third country nationals (Council, 2007a, p. 15, f.n. 52).

Lastly, besides its attempt to restrict the rights of illegally employed migrants and to mitigate the obligations of employers, Germany also strongly objected to the regulation that would require governments to inspect at least 10 per cent of the firms on their territory per year randomly (Council, 2007a, p. 13, f.n. 21). Schäuble also continued to challenge the compromise of a five per cent target that was suggested by the Commission at a later stage of the negotiations (EFE Newswire, 2008; EUobserver, 2008), stating “it's not the number, which counts, but the quality” (Schäuble cited in EUobserver, 2008). The German delegation suggested qualitative criteria, such as a focus on sensitive sectors or the size of the employer's business, instead of a quantitative target. By the same token, the German delegation demanded during the negotiations that inspections should be left to national legislations, and suggested to replace it with a rather vague wording along the following line: “member states shall ensure effective and appropriate controls carried out” (Council, 2007a, p. 16, f.n. 59).

Interim Conclusion

As mentioned before, the academic literature highlights that in general Germany was eager to support European harmonisation when it had the purpose to control migration and render national policies more restrictive. However, unlike most other legislations related to controlling migration, the Sanctions Directive invoked issue-specific interests of a strong lobby group, the German employers.

Domestically, the problem of both irregular migration and illegal employment was considered to be relatively minor. Moreover, unilateral policies already in place at the national level were

deemed effective. Hence, the dependence on a concerted European effort to combat the phenomenon was relatively low.

Table 9: Employer Sanction Directive: Policy Positions of German employers and government

Level of Politicisation: high			
Expected mode of responsiveness: Mass Politics Mode			
	Interests of German Employers	Policy Position of German government	Mode of responsiveness
Perceived interdependence	Low		
Policy-dimension	Liberal: checking validity of residence and work permits is task of government not employers; no temporary closure of production sites; no liability of main contractors.	Restrictive: Liberal: no criminal sanctions; no liability of main contractors; no postponement of return decisions; no residence permit for exploited migrants; limit the presumed six months work relationship.	Client Politics
Polity-dimension	National: determining level and type of sanctions	National: determining level and type of sanctions, exclusion from public benefits, subsidies and participating in public contracts; inform employees about possibility to claim outstanding remunerations; quantity of yearly inspections.	

In essence, the high politicisation of immigration and the EU did not discourage the German government from fully representing the interests of employers during the negotiations or from objecting to most parts of the proposal, both publicly in statements given by Interior Minister Schäuble to the press, as well as behind closed doors by the German delegation during the negotiations in the Council (Interview Employer_DE). During the Council negotiations, the German delegation mostly sought to weaken (liberalising) the obligations of employers. Hence, it did not follow the logic of the ‘Mass Politics Mode’, which would anticipate governments to follow the interests of the more communitarian-minded public – despite strong politicisation domestically.

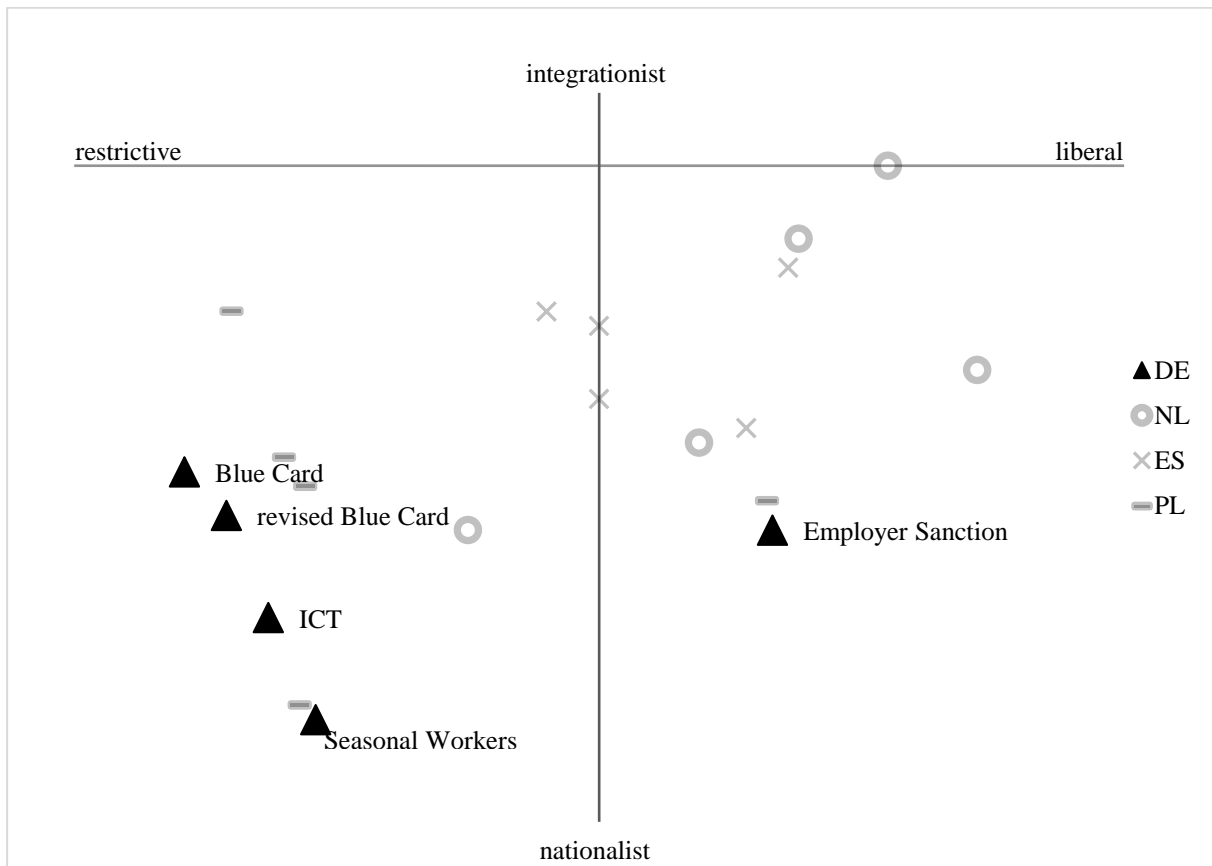
4.4. Conclusion

The analysis of the German preferences regarding EU labour migration policies demonstrates clearly that German governments predominantly sought to restrict the admission conditions for third country nationals, increase national discretion and decrease the overall harmonisation of EU labour migration policies. Accordingly, the German policy positions are primarily located in the lower-left quadrant of the negotiation space depicted in Figure 3.

The case study on Germany investigated whether and to what extent politicisation moderates the representation of mass public interests or employers' interests by the German government during the negotiations of EU labour migration policies in the EU Council. In Germany, issues of immigration and European integration are primarily politicised and mobilised along the cultural-identitarian dimension of the globalisation cleavage. Under conditions of strong politicisation, the Postfunctionalist literature expects the government to anticipate high political costs in the upcoming elections when it supports harmonisation of liberal migration policies at the EU level. Accordingly, the German government is likely to switch from the 'Client Politics Mode' to the 'Mass Politics Mode', representing the interests of the more communitarian-minded public rather than the issue-specific interests of employers.

The hesitation to cede authority to the European level can be attributed on the one hand to the reluctance of employers, which fear for their influence on the national policy design and their competitive advantage to attract talents; on the other hand, the German government responds to the more communitarian-minded parts of the German public when raising sovereignty concerns in the Council. The German governments shows a high averseness to support EU policies that might be perceived by the public as surrendering sovereignty over the admission decisions of third country nationals.

Figure 3: German Policy Positions during the Council negotiations of EU labour migration policies in a two-dimensional negotiation space



Source: own illustration and data (see chapter 3.2.2)

However, the evidence for a moderating effect of politicisation of immigration and the EU upon the responsiveness of governments to either the mass public or issue-specific interests of employers is weak. Three notions emerge from the analysis of German preferences:

First, the findings reveal that strong politicisation is not a necessary condition for sovereignty and identity concerns to surface in the negotiation positions of the German government in the Council. Throughout all negotiations of the directives dealing with legal labour migration, the German government as fiercely defending the 'core' of state sovereignty (sub-case 1-4); the state power to decide over admissions and in particular admission volumes is not negotiable. Hence, sovereignty concerns and lack of trust in the admission decisions of other member states are a 'constant trait' of the German policy position on EU labour migration policies. In particular the repetitive comments of the German government to determine admission volumes nationally is redundant; the treaties state clearly that EU labour migration policies 'shall not affect the right of Member States to determine volumes of admission of third country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed' (Article 79(5) TFEU). Hence, assuming that the German delegation is aware of this

exclusive national competence, the comments referring to volumes of admission can be understood as a signalling responsiveness to communitarian interests present among the electorate. Moreover, any provisions that touch upon the right of member states to decide over individual admissions of third country nationals to the domestic labour market are outright rejected by the German government. Thus, neglecting the employers' enthusiasm for facilitated intra-EU mobility, the German government rejects any delegation of admission decision to authorities of other member states – no matter the level of politicisation (sub-case 3). Accordingly, mass public interests trump employer interests, despite low levels of politicisation³⁷.

Second, only in the case of unprecedented strong levels of politicisation, coupled with the presence of a newly established right-wing populist parties, is the constant feature' of German policy positions, the sovereignty concerns, dominating the German policy position. The potential political costs of agreeing to EU harmonisation and liberalisation of labour migration policies multiply for German policy-makers and therefore intensify the effect of mass public interest on the governmental preferences. Accordingly, communitarian interests surface stronger. In the case of the revised Blue Card (sub-case 4), the 'constraining dissensus' leaves the German government unable to negotiate a compromise agreement in the Council, leading subsequently to a standstill of the negotiations. At the same time, it weakens the responsiveness to employers, which were wary of full harmonisation, but were hopeful to liberalise admission conditions.

However, third, the representation of sovereignty concerns at the EU level can to a certain extent also be explained by the employers' low level of dependence on and interest in a harmonised EU policy (sub-case study 1, 2, 4). When employers are wary that a EU policy weakens their political influence on the national policy design or increase competition for migrants between member states, they perceive the benefits of a common policy to be minor and subsequently oppose strong harmonisation (sub-case study 1, 2 and 5 in Table 10).

The German government is willing to represent the employers' demands regarding low level of harmonisation, as this stance does not contradict the communitarian interests present among the electorate, even more so if politicisation is high as during the negotiations of the revised Blue Card (sub-case study 4). Hence, governments do not face the dilemma whether to represent the

³⁷If this 'core' of state sovereignty is not targeted by a proposal, as in the case of the Sanctions Directive, employer interests trump mass public interest because of low interdependence and despite strong levels of politicisation.

interests of employers or of the mass public. Instead, they make use of the leeway granted by the employers to frame their opposition to the directive in terms of protecting national sovereignty. Content-related demands of employers, that require further liberalisation, are to a certain extent satisfied by legislative change at the national level. Hence, ‘unilateral Client Politics’ allow a ‘Mass Politics Mode’ at the European level (sub-case study 1 and 4 in Table 10). This suggests, that also the reluctance of German employers contributes to a “downward pressure on the level and scope of integration“ (Marks & Hooghe, 2009, p. 21). The case of the Employer Sanction Directive suggests a ‘Client Politics Mode’, despite strong levels of politicisation. Both employers and the government considered the sanctions as too severe and unilateral policies as effective. Hence, the government did not follow ‘anti-immigrant’ sentiments that prevail in parts of the German public but served employers interests both on the policy- as well as the polity dimension. The findings seem to suggest that Germany is not willing to serve ‘Mass Public Interests’ by harmonising policies, but rather by reverting to national solutions instead.

In sum, the evidence of a moderating effect of politicisation, as expected by Postfunctionalists, is weak (reject Expectation 2). German employers in general do not see an added value of an EU labour migration scheme to reach their policy goal of attracting labour migrants. Accordingly, in line with Moravcsik’s Liberal Intergovernmentalism, the German government seeks to prevent (strong) harmonisation of labour migration policies in Brussels (confirms Expectation 1.2). The relatively weak dependence on a common EU policy provides German policymakers the leeway first, to satisfy the employers’ demands at the national rather than the European level, and second, to represent communitarian interests in the Council instead. As a result, communitarian concerns surface much more strongly in the German policy positions - however, independent of the level of politicisation. Sovereignty concerns and lack of trust in the admission decisions of other member states are a ‘constant feature’ in the German policy position on EU labour migration policies. Hence, strong politicisation is not a necessary condition for the German government to serve mass public interests in Council negotiations.

Table 10: Summary of German Case Study

Sub-Case Study	Summary of key findings
1. Blue Card	<p>Unilateral Client Politics allow Mass Politics at the EU level:</p> <ul style="list-style-type: none"> - Employers and government perceive issue-specific dependence to be low - Provides government leeway to respond to communitarian interests in the Council negotiations - Employer and mass public interests reinforce each other and incentivise government to oppose strong harmonisation and liberalisation
2. Seasonal Workers Directive	<p>Client Politics Mode</p> <ul style="list-style-type: none"> - Moderate interests of employers (seeking national discretion rather than liberalisation) and low issue-specific dependence - low levels of politicisation - Employer and mass public interests do not clash
3. ICT Directive	<p>Mass Politics despite low levels of politicisation</p> <ul style="list-style-type: none"> - Employers seek strong harmonisation and facilitated intra-EU mobility - Directive and employers' demands target 'core' of German sovereignty concerns - Mass public interests trump employer interests, despite low levels of politicisation
4. Revision of Blue Card	<p>Unilateral Client Politics allow Mass Politics at the EU level</p> <ul style="list-style-type: none"> - Strong levels of politicisation prevent any harmonisation. - Mass public interests (strong politicisation) employer interests (low dependence) reinforce each other
5. Employer Sanction Directive	<p>Client Politics Mode despite strong levels of politicisation:</p> <ul style="list-style-type: none"> - Low dependence on harmonised sanctions for employers of irregular migrants - Opposition by employers - Employer interests trump mass public interests despite strong levels of politicisation

5. Case Study: Netherlands

The Netherlands is the second main country case study of this dissertation. I examine to what extent the politicisation of the EU and the politicisation of immigration moderates the responsiveness of the Dutch government to issue-specific interests of employers or interests of the mass public during Council negotiations of EU labour migration policies.

The first part of the chapter outlines the relevant contextual factors for the subsequent analysis of the Dutch preferences regarding EU labour migration policies. I give a brief overview of the Dutch experience with immigration and immigration policies. Due to substantial immigration to the Netherlands after World War II, mainly as an inheritance of the country's colonial past, the Netherlands is considered as an experienced 'old host country' of immigration. Subsequently, I sketch out the particularities of the independent variables 'employers' interests' and 'mass public interests' in the Netherlands. I claim that the generally strong interests of Netherlands' employers in EU labour migration policies stems from the perceived strong dependence on a common European effort to attract labour migrants from third countries. Dutch employers seek to profit from an 'economies of scale effect' when integrating into a more attractive EU-wide immigration scheme that spans across all of the EU's labour markets and allows intra-EU mobility of third country nationals. The Dutch 'mass public interests' are based on a similar conflict structure as Germany's, which suggests that politicisation of the EU and immigration are mostly driven by cultural-identitarian (rather than socio-economic) considerations. However, in contrast to Germany, in the Netherlands right-wing populist parties were successful in mobilising the public on the matters of sovereignty and identity as far back as the early 2000s. Thereafter I discuss the politicisation indices for the Netherlands and reflect on how they echo the public debates on immigration and European integration at the domestic level since 2002.

The second part of the case study analyses the moderating effect of politicisation on the responsiveness of governments to employers' interests or mass public interests when negotiating EU labour migration policies in the Council.

5.1. Dutch immigration history: from postcolonial to selective immigration

Post-War immigration to the Netherlands is mostly characterised by three groups: first, postcolonial migration from the former Dutch colonies, such as Indonesia, Surinam and more

recently the Dutch Antilles; second, labour migration in the course of the guest workers programme in the 1960s and 1970s from mostly Turkey and Morocco and subsequent family and spouse migration in the 1980s; and third, the arrival of refugees and asylum seekers in the mid-1990s and beginning of the 2010s. As a consequence of the continuous immigration to the Netherlands, the share of persons with an immigrant background at the turn of the century reached 17 per cent of the overall population (Entzinger, 2003, p. 59). Besides the former colonies, non-EU nationals came from Morocco, followed by Turkey and former Yugoslavia. Most of the debate on the Dutch multicultural society, however, focused on non-EU immigrant groups, in particular the growth of Muslim community in the Netherlands (Kriesi & Frey, 2008, p. 160). Recently, the quickest growing group of migrants in the Netherlands stems from within the EU, in particular from Central and Eastern European member states, such as Poland, in the course of the eastern enlargement of the EU in 2004 (Geddes & Scholten, 2016, p. 111).

Postcolonial and labour migration

A marked difference between the Dutch and German immigration experience derives from the role and size of the Dutch colonial empire. The Dutch former colonies were both destinations for Dutch emigrants as well as sending countries for migrants to the Netherlands. Many of the Dutch “immigration inflows in the immediate post-war period were triggered by colonial obligations rather than economic considerations” (Caviedes, 2010, p. 169). Following decolonisation and the independence of Indonesia and Surinam, ‘repatriation’ of former settlers to the Netherlands peaked in the 1950s and 1970s respectively (Bosma, Lucassen, & Oostindie, 2012, p. 13f; Geddes & Scholten, 2016, p. 104). From the 1980s up until now, there has been a continuous immigration from the non-sovereign Dutch Caribbean islands to the Netherlands³⁸.

The post-war economic boom led in the Netherlands to a rise in the demand for labour migrants. Consequently, the Netherlands joined the other Western European countries in the endeavour to recruit large numbers of people in the course of the so-called ‘guest workers programs’ in the 1960s. While agreements were also concluded with Italy, Portugal, Greece, Yugoslavia and Tunisia, the most important sending countries were Turkey, Morocco and Spain. Even though also the Netherlands struggled with the idea of being a country of immigration, “the Dutch long took pride in their country’s tolerance towards other cultures and religions” (Ersanilli, 2014, p. 1). Therefore, guest workers were encouraged to maintain their cultural identity and internal

³⁸ The Antilles and Aruba are part of the Kingdom of the Netherlands, and their citizens are Dutch nationals, which can move freely to the Netherlands and are not considered or registered as ‘immigrants’ (Bosma et al., 2012, p. 14; ter Wal, 2007, p. 149).

group structures (Entzinger, 2003, p. 61; Scholten, 2013, p. 100). Initially, the policy paradigm of ‘integration with retention of identity’ was not geared towards the integration of migrants into the host country, fearing that this might hamper their willingness to leave, but rather to allow the migrants (and their children) a smooth re-integration into their country of origin after returning (Ersanilli, 2014, p. 5; Scholten, 2013, p. 100)

The rise and fall of the Dutch multiculturalism paradigm

The Oil Crash in the 1970s led to a recession and a slowdown of the Dutch economy. It was followed by a vast restructuring of the Dutch industry, and came with a significant loss of jobs in the low-skilled sector and subsequently high unemployment, in particular among migrants. While Dutch policy-makers put an end to the active recruitment of labour migrants, they also had to come to the realisation that despite high unemployment many guest workers, in particular those from Morocco and Turkey, were not intending to return to their country of origin. Rather, migration from both countries to the Netherlands continued, mostly in the form of family and marriage migration (Ersanilli, 2014; Van Meeteren, van de Pol, Dekker, Engbersen, & Snel, 2013, p. 116). Though, unlike Germany, the Netherlands was hesitant to actively incentivise migrants to return to their home country as “the feeling prevailed that one does not send home people to whom the economy owes so much” (Entzinger, 2003, p. 62).

The Minorities Memorandum, adopted in 1983, established a minority policy geared towards the support and empowerment of the different ethnic communities. The policy marked a paradigm shift; cultural retention was no longer considered as a means to facilitate return, but rather as a necessity to allow for the emancipation of migrants in a multi-cultural society, to be achieved through equality before the law and promoting equal opportunity (Entzinger, 2003, p. 63ff.; Ersanilli, 2014, p. 5; Scholten, 2013, p. 101; Tweede Kamer, 1983, p. 10; Van Meeteren et al., 2013, p. 118).

However, the eventual doom of the new multiculturalist paradigm set in already at the end of the 1980s, when “the Dutch government began to express concerns about progress in integration, especially in material domains such as housing, education and labour” (Scholten, 2013, p. 102f.). To remedy the perceived flaws of the policy paradigm aiming at the preservation of cultural identity, it was replaced by a more liberal-egalitarianist understanding of integration, which did not put the emancipation of groups at centre stage any longer, but the integration of individual immigrants. It was accompanied by a focus on both the rights and duties of immigrants as active citizens in the Dutch society (Kriesi & Frey, 2008, p. 161;

Scholten, 2013, p. 103). At that time, family reunification peaked in the 1980s, while in the 1990s increasingly asylum seekers sought for protection in the Netherlands. In conjunction with relatively tolerant and progressive Dutch integration policies in the 1980s and 1990s, “more restrictive immigration policies were implemented and enforced regarding labour migration, and later, on family migration and asylum” (Bruquetas-Callejo, Garcés-Mascreñas, Penninx, & Scholten, 2007, p. 4). While immigration and integration increasingly entered the public discourse and polarised the debate, the ‘purple coalition’ between social democrats, left liberals and conservative liberals sought to maintain the ‘consensual style’ of Dutch policy-making by de-politicising immigration (Bruquetas-Callejo et al., 2007, p. 27).

Towards a utilitarian approach of labour migration

Against the background of continuous economic growth, low unemployment, a tight labour market and the demographic challenge, the Dutch political discourse increasingly dealt with the potential benefits of labour migration at that time (Vera Marinelli, 2005, p. 2f.). The political debate regarding labour migration came to a sudden halt “when the eccentric political outsider Pim Fortuyn brought new and stronger visibility to anti-immigrant positions in the wake of 9/11” (Berkhout, Sudulich, & van der Brug, 2015, p. 100). This trend manifested itself in the electoral arena with the success of the Fortuyn’s party in 2002 (see 0) and subsequently in the legislative realm, with a continuous trend towards assimilistic integration and selective immigration policies (Geddes & Scholten, 2016, p. 106; Van Meeteren et al., 2013, p. 119; Vera Marinelli, 2005, p. 3). Hence, while employers in certain sectors continued to lobby for a more relaxed admission criteria for labour migrants, the overall public contestation regarding immigration was ever more strained. The contradictory demands were settled by the government following a utilitarian approach towards immigration “to ensure that the entry of the highly skilled is facilitated at the same time as overall immigration becomes more restrictive” (Caviedes, 2010, p. 175). It culminated in 2004 in the Knowledge Migration Regulation (Dutch: Kennismigranten Regeling) that eased immigration for migrants with high salary levels. Under this scheme, no work permits and labour market tests are required. The policy exemplifies the turn of Dutch policy makers towards a more deliberate, active and utilitarian labour migration policy (OECD, 2016, p. 107).

Despite more selective immigration policies, migration to the Dutch labour market continued and increased considerably in the second half of the 2000s, which was mostly linked to the EU enlargement in 2004. Unlike Germany, the Netherlands lifted the restrictions of access to the Dutch labour market for EU citizens from the Central and Eastern European member states

earlier than necessary, namely after three years in 2007 (Bonjour & Scholten, 2014; Geddes & Scholten, 2016, p. 103). Intra-EU migration also led to growing concerns among the public and was exploited by populist right wing politicians such as Geert Wilders (Geddes & Scholten, 2016, p. 110f.).

From European motor to an opponent of EU harmonisation

Thus, in recent years the Netherlands has experienced a marked shift from a pro-EU country with a relatively open and tolerant approach towards immigration and integration to a country that has experienced a severe anti-immigrant backlash with prominent Eurosceptic and anti-immigration parties in the parliament or even government (Geddes & Scholten, 2016, p. 102). This shift has left an imprint on the Dutch willingness to concede sovereignty to the supranational level, even more so in the field of immigration. At the beginning of the 1990s, the Netherlands was one of the main drivers and open supporters of developing a common EU migration and asylum policy with effective burden-sharing between member states (Geddes & Scholten, 2016, p. 121). According to Geddes and Scholten (2016, p. 122), it did so because as a small and open economy it felt more dependent on attaining its aims with regard to immigration by pooling sovereignty and joining free movement arrangements, first with Belgium and Luxemburg in 1948, and later with the Schengen countries. Also, the Netherlands anticipated achieving burden-sharing mechanisms and regulations with EU member states with regard to ‘unwanted migrant categories’ such as family migration and asylum seekers.

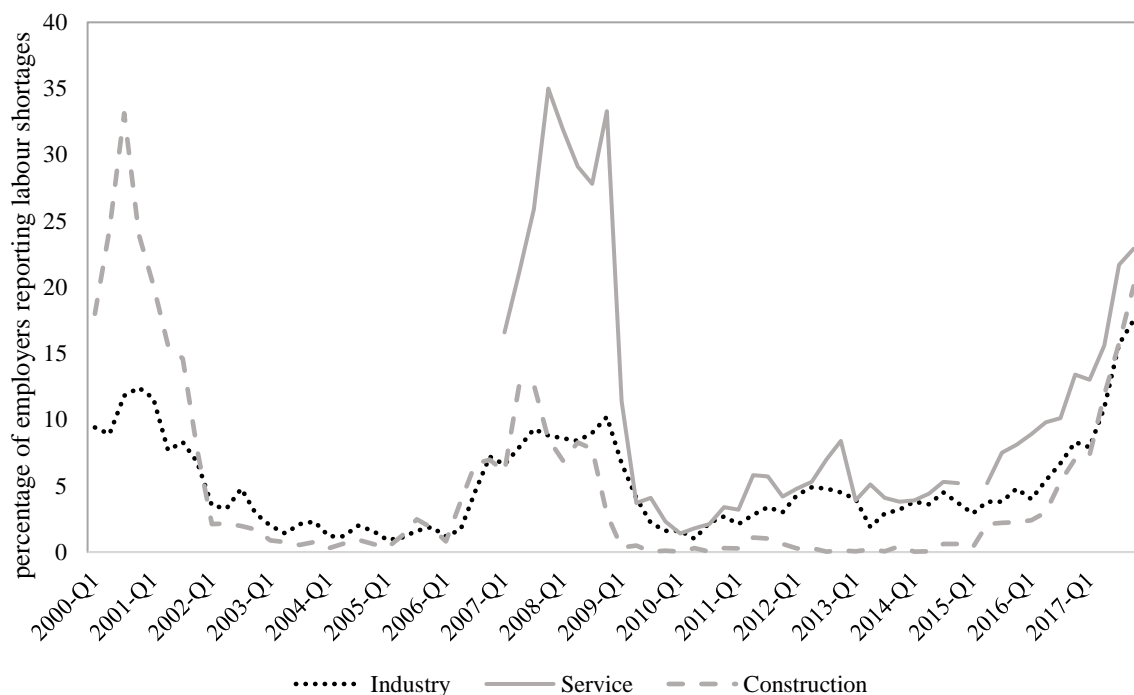
Later, “mostly although not exclusively on the right side of the political spectrum, politicians resent the reduction of national sovereignty over immigration and the obstacles posed to restrictive reforms” (Bonjour & Scholten, 2014). In certain instances, the Netherlands was unable to restrict national policies with regard to family migration and civic integration due to liberal supranational regulations, which the Netherlands itself pushed through enthusiastically a decade earlier (Bonjour & Scholten, 2014). Hence, while the Dutch enthusiasm for EU immigration policies has faded, this is not the case for EU labour migration policies targeting (high) skilled third country nationals, as we will see in the following sub-chapters.

5.2. Independent and moderating variables

5.2.1. Independent Variable: Employers' Interests

The interests of Dutch employers are represented by the Confederation of Netherlands Industry and Employers (VNO NCW), Federation of Small and Medium Enterprises (MKB) and the Dutch Agriculture and Horticulture Organisation (LTO). Furthermore, the Social Economic Council (SER), an advisory body of the government, brings together representatives of trade unions and employers' organisations. However, "as it is financed by industry and wholly independent from the government, it leads some to characterize the corporatist framework of the Netherlands as skewed in favor of business interests" (Caviedes, 2010, p. 173). Hence, the advice given by the SER is considered to broadly represent the interests of business.

Figure 4: Netherlands: percentage of employers reporting labour shortages as limiting production



Source: own illustration based on the BCI data (European Commission, 2020)

Compared to its neighbouring country Germany, the Netherlands is a relative small, open and interdependent economy (Caviedes, 2008, p. 22; Geddes & Scholten, 2016, p. 122; Kriesi & Frey, 2008, p. 156). Therefore, "globalization and greater European integration are said to benefit the nation" (Kremer, 2013a, p. 7). Furthermore, to match skills and jobs is believed to be generally harder in a small labour market. This explains why early on the Dutch enthusiastically supported free movement arrangements. The first one was established with

Belgium and Luxemburg as early as 1948. Later, the Netherlands was one of the founding countries of the Schengen Regime. By integrating into an EU-wide economic area, smaller countries seek to profit from ‘economies of scale effects’. It posits that “due to the expectation of high marginal returns, incentives for investment and migration increase” (König, 2015, p. 504). Hence, smaller member states seek to expand their access to the labour and capital of other EU member states. This reasoning corresponds with the main argument of the industry-oriented SER in an advisory report to the government in 2007, evaluating both the Dutch migration policy, as well as the Commission’s aspirations to harmonise labour migration policies at the EU level. The SER posits that the attractiveness of the Dutch labour market and the subsequent advantages of EU harmonisation are related to the size of the country. It states that “the Netherlands is a small country with a small language area and is therefore not the first choice for many migrants” (SER, 2007, p. 95; own translation). Consequently, the SER argues that the attractiveness of the European labour market would increase as a whole, but it expects that smaller member states benefit more, as intra-EU mobility would increase the job opportunities for potential labour migrants and therefore render the Dutch labour market a more attractive option. It states that “with national politics in place, a migrant would choose a large country more quickly because the job market opportunities are greater there” (SER, 2007, p. 143; own translation). However, free movement of third country nationals means also that the Netherlands could potentially loose migrants to other member states in an open competition. Therefore, the SER also pleaded for a flexible design at the EU level that allows member states to implement more liberal admission schemes. A fear of Dutch employers is that a scheme at the European level would be more restrictive than the current Dutch national scheme, due to restrictive pressures from countries such as Germany (Caviedes, 2008, p. 22). A flexible design would enable the Dutch government to maintain the liberal admission standards. Yet, the SER also made clear that it endorses endeavours to harmonise and liberalise labour migration policies for those that “can make a positive contribution to the Dutch economy [...], which include only highly qualified individuals, intra-corporate transferees and paid apprentices” (SER, 2007, p. 155; own translation). In contrast, admission regulations for individuals of the “lower or middle segment” should be left mainly to the member states (2007, p. 155).

Hence, it corresponds with the observations of Caviedes (2008, p. 22) that “the Netherlands displays the greatest optimism for cooperation at the European level” in the field of labour migration policies targeting third country nationals. Dutch employers hope that a harmonised scheme would not only render the EU more attractive as a whole, but that the Dutch employers, situated in a relatively small labour market, would profit from an ‘economies of scale effect’.

in particular if the EU would permit and facilitate intra-EU mobility for accepted third country nationals.

5.2.2. Independent Variable: Conflict Structure and Mass Public Interests

As outlined in the theoretical chapter, whether the EU and immigration are politicised according to a cultural-identitarian or a socio-economic logic depends on the national political conflict structures of a member state. These conflict structures differ due to the region-specific impact of two societal transformations. Said transformations triggered different structural potentials among the electorate, which were subsequently mobilised by newly emerging or adapting political parties. Hence, before studying the consequences of politicisation of European integration and immigration for the preference formation of member states, it is necessary to identify the particular drivers of politicisation at the national level. The impact of the two societal transformations, the value change of the ‘silent revolution’ and the process of globalisation had a similar strong impact on the Dutch national conflict structure as in Germany. An important difference, however, is that the change on the demand side of the Dutch electorate manifested itself already in the beginning of the 2000s on the supply side - the party system. Right-wing populist parties were electorally successful in national elections from 2002 onwards.

In the Netherlands, minorities structure society, social life but also party politics (Andeweg & Irwin, 2005, p. 19). Therefore, religion, as a non-material cleavage, was highly dominant. It structured the political space alongside the traditional left-right cleavage and left the Social Democratic Party to represent only secular workers. The acceleration of secularisation in the 1960s, in the course of the ‘cultural revolution’, led to a profound value change in the Dutch political space, which in turn left its imprint on the Dutch elections. It triggered the rise of the New Left and a profound loss of support for denominational parties, in particular the Catholic People’s Party (Dutch: Katholieke Volkspartij, KVP), which lost half of its seats in the 1972 elections (Kriesi & Frey, 2008, p. 156).

The second societal transformation triggered structural potentials on the side of the electorate towards the end of the 1980s, when the process of denationalisation gained momentum. The Dutch multicultural project and immigration came increasingly under attack. By the 1990s, the Dutch national political space was structured by a dichotomy between support of cultural liberalism and multiculturalism on the one side and a tough stance towards immigration and foreigners on the other. The economic dimension is defined by the contrast between economic

liberalism and the support of the welfare state (Kriesi & Frey, 2008, p. 167). However, unlike in other North Western European countries such as France and Austria, the manifestation of the new globalisation cleavage and the mobilisation of its political potentials in the party system was not immediate, but postponed until the early 2000s (Lorenzini & van Ditmars, 2019, p. 264). During the period of the ‘Purple Coalition’ from 1994 to 2002 between the Labour Party (PvdA), the conservative-liberal People's Party for Freedom and Democracy (VVD) and left-wing liberals (D66), the cabinet chose to purposely de-politicise the cultural dimension of immigration (Berkhout et al., 2015, p. 116; Bruquetas-Callejo et al., 2007, p. 17; Kriesi & Frey, 2008, p. 162). However, there was already a latent demand for parties with an anti-immigrant agenda (Kriesi & Frey, 2008, p. 162), which had not yet surface due to “the moral pressure exerted on citizens not to speak negatively about any aspect related to migration” (Van Kersbergen & Krouwel, 2008, p. 404) in a multicultural society of minorities (Kriesi & Frey, 2008, p. 162)

The latent demand was eventually met in 2002, when “for the first time in Dutch political history, issues of immigration and immigrant integration play a dominant role in local and national elections and in the Dutch political debate” (Van Meeteren et al., 2013, p. 118). The electoral volatility of the 2002 elections is considered as one of the most extreme compared to all western European general elections since 1900 (Kriesi & Frey, 2008, p. 163; Van Holsteyn & Irwin, 2003, p. 42). These elections concluded with a profound success for the only three months earlier established anti-immigrant Lijst Pim Fortuyn, winning 17 per cent of the votes. The party, and most importantly, its leader Fortuyn himself, depicted the Dutch consensual politics, which was most profound during the previous years of the ‘Purple Coalition’, as threatening Dutch democracy. Fortuyn’s criticism, coupled with anti-Muslim campaigning, fell on fertile soil in the Dutch society. Hence, Fortuyn dared to mobilise the latent anti-immigrant demands of parts of the Dutch society. According to his motto ‘I say what I think and I do what I say’, he broke the taboo surrounding issues of immigration and integration (Van Kersbergen & Krouwel, 2008, p. 404). The election eventually exhibited that the second profound societal transformation related to the process of globalization had severely affected the Dutch political conflict structure in the 1990s. While the electoral success of the party Lijst Fortuyn was temporary and its participation in a centre-right coalition was short-lived, the right-wing party PVV of Geert Wilders would eventually take its place as a rising anti-immigrant party. It gained 5.9 percent of votes in 2006 and 15.5 percent in 2010. Dutch parties had to form a minority government with the support of Geert Wilder’s Party, which mobilised its voters with

pronounced positions on immigration and European integration (Kriesi & Frey, 2008, p. 165; Meyer & Rosenberger, 2015, p. 5; Van Kersbergen & Krouwel, 2008, p. 410).

Under the pressure of the emerging right-wing populist parties, the party system as a whole adjusted to accommodate the newly emerged challenger parties at the conservative pole of the cultural-identitarian pole (Kriesi et al., 2006, p. 943; Van Kersbergen & Krouwel, 2008, p. 405). The two mainstream conservative parties, the VVD and the Christian Democratic Appeal (CDA), re-examined and consequently adapted their stance on immigration. The former of the two experienced a “severe internal conflict between the more libertarian wing (in favour of economic liberalism, personal freedoms and multiculturalism) and a more conservative faction (in favour of a more Eurosceptical and nationalistic stance, more stringent immigration and asylum policies and a more monocultural outlook)” (Van Kersbergen & Krouwel, 2008, p. 399). The conservative fraction subsequently split from the party, when ex-minister Rita Verdonk established the anti-immigration party *Trots op Nederland* in 2007. At the same time, negative attitudes towards immigration were increasingly linked to a negative outlook on European integration and the wish to limit the EU’s influence on national policy-making (Geddes & Scholten, 2016, p. 122)

Thus, as in Germany, both the classic socio-economic left-right and a cultural-identitarian dimension structure the Dutch political space, and since the early 2000s the Dutch party system too. Both societal transformations altered the religious cleavage into one that deals with general cultural and identitarian issues and thereby “dividing those who favour cultural liberalism from those who favour restrictive immigration policies” (Van Kersbergen & Krouwel, 2008, p. 408). Therefore, both European integration and immigration are integrated into the cultural dimension and their politicisation among the public is driven by a cultural-identitarian logic (Kriesi et al., 2006, p. 943). We observe “a clear rise in the importance of cultural attitudes for public left/right ideological placements at the expense of economic attitudes” (de Vries, Hakhverdian, & Lancee, 2013, p. 225).

Hence, in the Netherlands, the cultural-identitarian rather than the socio-economic dimension dominates the politicisation of and the opposition to European integration and immigration. Moreover, successfully established parties on the right increase the electoral pressure on the Dutch governments to satisfy the communitarian demands prevalent in parts of the Dutch electorate. The theoretical framework therefore expects that the communitarian attitudes, raised in protest to globalisation, European integration and immigration, will trump interest group

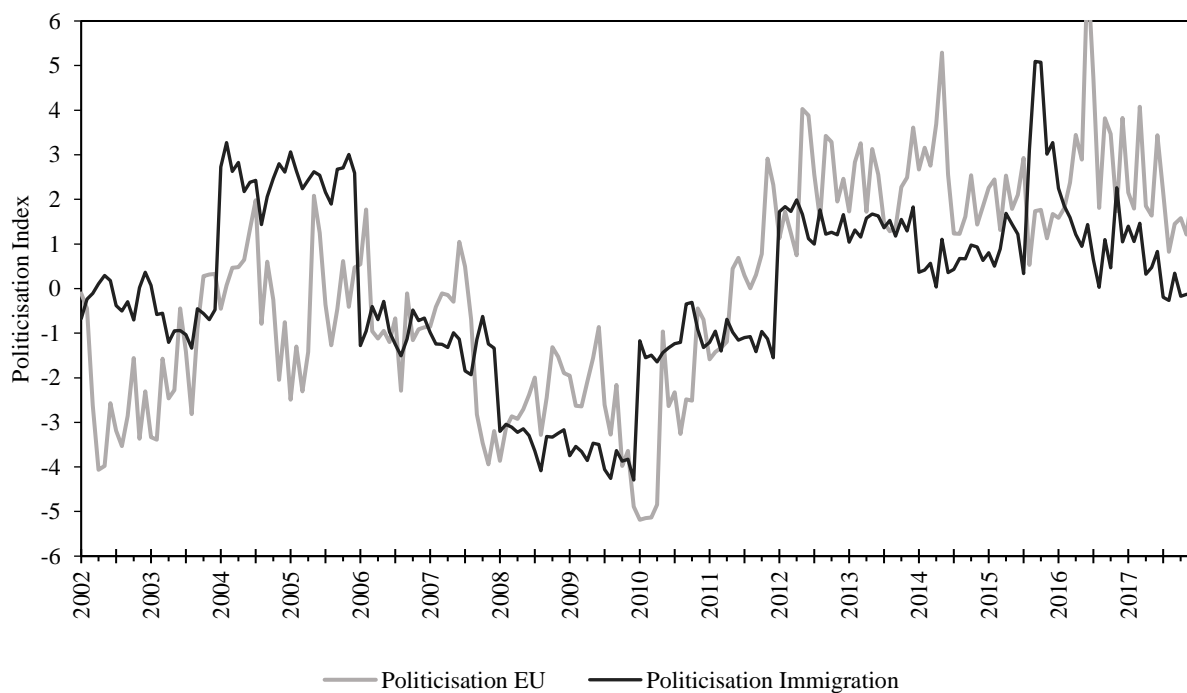
politics in the Netherlands. Hence, identity and sovereignty concerns are expected to surface in the Dutch policy positions when levels of politicisation are high.

5.2.3. Moderating Variable: Levels of Public Politicisation

According to the theoretical framework, politicisation of the EU and politicisation of immigration are expected to moderate whether governments follow the ‘Client Politics Mode’, representing the issue-specific interests of employers, or the ‘Mass Politics Mode’, following mass public interests.

What do the composite politicisation indices for the Netherlands, plotted in Figure 1, exhibit about the temporal nature and trends of politicisation of European integration and immigration among the wider citizenry in the Netherlands?

Figure 5: Politicisation Indices for the Netherlands



Source: own illustration and data (see chapter 3.2.1)

Across the investigation period, the composite index for EU politicisation in the Netherlands shows a positive long-term trend (see linear trend line as plotted as a grey dotted line in Figure 5). However, it is also subject to strong short-term fluctuations. Starting from a negative value, indicating weak politicisation in the first year of the investigation period, the politicisation of the EU rises continuously in the following two years to values fluctuating around the investigation period mean. This increase reflects the cumulative effects of debates surrounding

the eastern enlargement and European Parliament elections in 2004. After a few months of strong fluctuations, the index reaches a peak in May 2005, at the time when the Dutch electorate rejected the EU constitution in a referendum. For the following three years, the index hovers around the investigation period mean, before dropping into negative values and reaching the lowest point in 2009. With the onset of the financial crisis, the politicisation of EU rises considerably over the following year, reaching positive values in 2011 and reaching a preliminary peak in 2012, reflecting the intense negotiations at the EU level to stabilise the Euro currency. The politicisation index continues to stay at this high level until the end of the investigation period in 2018. Particularly high points, which stand out are 2014 due to the European elections and in 2016 when the British electorate voted to leave the EU.

The index for the politicisation of immigration shows a very similar trend. The index starts around the investigation period mean in 2002 and rises to the highest values beginning of 2004, which corresponds to the time when issues of immigration and integration entered electoral competition in Dutch politics. This surge is a reflection of an increasing polarisation of public opinion and the high salience of immigration. Before leaving the conservative party and establishing her own anti-immigrant party *Trots of Nederlands*, Rita Verdonk held the position as Minister of Immigration between 2003 and 2005. She contributed immensely to the intensification of “the debate on immigration and integration in the Netherlands, introducing stricter migration laws and new policies to educate/integrate citizens with an immigration background” (Berkhout et al., 2015, p. 100). At that time in the legislative arena the adoption of the Knowledge Migration Regulation, the introduction of the ‘cultural integration exam’ and discussions regarding the proposal for a new Law on Civic Integration Abroad seeking to limit family migration drew the public’s attention to issues of immigration. Besides the legislative activities, also the consensual and technocratic Dutch policy-making process in the field of immigration and integration was increasingly contested in the public, which questioned the role of experts with multicultural biases. Moreover, the strong politicisation is a result of the broad public attention to issues of immigration and integration triggered by a series of violent acts committed by individuals with an immigration background, and explicit statements and actions of radical imams in the course of 2004 and 2005. The peak, beginning in 2004, is due to the increased public salience related to the murder of a deputy headmaster of a school in 2004 by a young Moroccan school student. From then on, the index falls continuously, mostly due to declining polarisation. However, it reaches another, though less pronounced peak at the end of 2004, which coincides with the murder of the filmmaker Theo van Gogh by a Moroccan fundamentalist in November 2004 (Bruquetas-Callejo et al., 2007, p. 19f.). In particular the

latter event “deeply and directly impacted the country, provoking outrage throughout the Netherlands” (Berkhout et al., 2015, p. 103). This turbulent episode was followed by years characterised by low levels of politicisation from 2006 onwards, which matches the observation that in 2006, issues of immigration and integration were no longer dominating the election campaigns leading to the national elections in November (Bruquetas-Callejo et al., 2007, p. 23). In 2007 and 2008, levels of politicisation dropped even further, reaching the lowest value of the investigation period. politicisation levels steadily increased again from 2009 onwards, which is related mostly to growing polarisation of public opinion towards immigration. At that time, intra-EU mobility and movement to the Netherlands from Central and Eastern Europe provoked much discussion among the public. The index reaches a preliminary peak in 2012, when several legislative changes were discussed and adopted, such as the introduction of restrictions with respect to family reunification and negotiations regarding the planned ‘Modern Migration Policy’. While the index decreases again to reach the investigation period mean by 2014, the surge in salience due to the Schengen Crisis and the arrival of asylum seekers in summer 2015 is reflected in a sudden leap in the politicisation index.

I expect that the effect of politicisation is strongest when both EU and immigration are politicised simultaneously, and weakest in times when both are de-politicized and off the ‘public radar’. The proposals for the Seasonal Workers Directive and the ICT Directive (both July 2010) were introduced by the Commission at a time when the indices for both immigration and EU dropped to the lowest values in the investigation period, suggesting very low politicisation of both issues. Hence, we would expect a no moderating effect of politicisation on the preference formation of Dutch governments to mass public interests. The proposals for the Employer Sanction Directive (May 2007) and the first Blue Card Directive (October 2007) lie somewhere in-between, as politicisation levels were medium low. Yet, as the values are below the investigation period mean, we would expect the ‘Client Politics Mode’ to dominate the preference formation process of the Dutch government. In contrast, the proposal for the Revision of the Blue Card Directive (June 2016) was published by the Commission at a time that was preceded by months of relatively strong politicisation of both EU and immigration among the Dutch public following the Schengen Crisis. In that case we expect the mechanisms of the ‘mass public mode’ to have an effect.

5.3. The Dutch policy preferences regarding EU labour migration Directives

In the following subsections I examine the extent to which politicisation moderates the responsiveness of the Dutch government to either the employers' interests, pursuing client politics, or the interests of the mass public when negotiating EU labour migration policies in the Council.

5.3.1. The Blue Card Directive, October 2007

The national context

As mentioned before, with regard to highly qualified labour migration from third countries outside the EU the Dutch government implemented a relatively liberal immigration policy at the national level in 2004 - the Knowledge Migration Regulation. This regulation strived for facilitation admission for those third country nationals that are expected to contribute to the Dutch economy (Bonjour & Scholten, 2014). The scheme is demand-driven. Whenever a Dutch employer offers a job with an annual salary of least 49,087 Euro (or 35,997 Euro if the employee is younger than thirty years) to a potential worker from outside the EU, there is no need for a work permit or a labour market test (Kahanec & Zimmermann, 2010, p. 14; Obradović, 2014; OECD, 2016, p. 107). Other than the salary threshold, no other criteria for admission, such as educational requirements, have to be fulfilled to qualify as a 'knowledge migrant' and for the recruitment to be approved by the immigration authorities (OECD, 2016, p. 154). A high salary is therefore regarded "as a sufficient indication of valuable skills and considered it both a simple and objective criterion for selecting knowledge migrants" (OECD, 2016, p. 155). Interestingly, even though Dutch policy-makers showed in the past great enthusiasm to implement strict family reunification measures, this is not the case for highly qualified migrants. Their family members do not have to fulfil any further conditions, such as language requirements, and the spouse of a Blue Card holder is permitted to take up work as well (Kremer, 2013b). Furthermore, those migrants that have a permanent working contract can also apply for renewable residence permits of a maximum duration of five years (Kahanec & Zimmermann, 2010, p. 14f.). In 2011, 5,047 persons were granted entry to the Netherlands as knowledge migrants (Bonjour & Scholten, 2014).

Moreover, since 2004 non-EU citizens graduating from a Dutch university can stay in the Netherlands for a year to search employment on the Dutch labour market. That supply-driven approach was extended by a scheme in 2009 allowing recent graduates from recognised

universities worldwide to come to the Netherlands searching for a job or establishing a business (Facchini & Lodigiani, 2014; OECD, 2016, p. 108; Scheer, 2008). Around 2006, before the Commission's proposal was published, a reform of the national immigration law for highly skilled labour migrants was under discussion - the 'Blueprint Modern Migration policy' (Dutch: 'Blauwdruk modern migratiebeleid'). It sought to increase the responsibilities of employers in the application procedure, but at the same time to speed-up the admission process for companies that register as 'recognised sponsors'. The law was eventually adopted in 2010 (Bonjour & Scholten, 2014; Scheer, 2008). Hence, with this speedy and simple admission procedure for highly skilled migrants, the Netherlands is considered to have one of the most liberal immigration scheme for highly qualified labour in the EU (Kremer, 2013b, p. 54).

Levels of Politicisation

In the months leading up to the Commission introducing the proposal for the Blue Card Directive, levels of politicisation for immigration and the EU were medium low. After high levels of EU politicisation due the round of EU enlargement in 2004, the failed referenda on the EU constitution and the accession of Romania and Bulgaria in 2006 and 2007, politicisation of the EU experienced a drop, indicating negative values in the 12 months before October 2007.

The index for the politicisation of immigration just dropped shortly before the negotiation of the Blue Card Directive. It was preceded by a period of high politicisation of immigration. The public discourse on migration was negatively loaded due to a series of violent acts committed by individuals with an immigration background, such as the murder of Theo van Gogh by a youngster affiliated with a radical Islamist network. This was also due to the mostly restrictive legislative changes of the national immigration and integration law pushed through by the Minister of Immigration, who spurred the heated debate herself. In 2006, the public discourse on immigration calmed down and issues of immigration and integration were no longer dominating the election campaigns leading up to the national elections in November (Bruquetas-Callejo et al., 2007, p. 23). Hence, the politicisation index for immigration experienced a stark plunge in the months before the introduction of the proposal, but also during the time of the negotiations. In the immediate 12 months preceding the Commission's proposal, the average politicisation index was low. Given the low levels of politicisation, we would expect 'Client Politics Mode' to dominate slightly the preference formation process of the Dutch government.

Employers' Interests

Pressure from employers' organisations to open up the economy to labour migrants increased and became more prominent at the turn of the century. The Dutch job market was tense at the time when the Commission introduced the proposal for an EU Blue Card Directive in October 2007. Unemployment rate was low (Eurostat, 2020b), the job vacancy ratio high (Eurostat, 2020a) and the reported labour shortages by Dutch employers increased steadily from 2006 onwards in the manufacturing industry, the construction sector but in particular in the service industry, where at times more than 30 per cent of employers reported that lack of labour limits their production (compare Figure 4). At the national level, the employers' lobbying attempts bore first fruits with the Knowledge Migration Regulation in 2004.

The Dutch employers were in general supportive of a European immigration scheme for highly qualified migrants (Het Financieel Dagblad, 2007b; VNO NCW, 2007). The VNO NCW and the SER welcomed in particular the Commission's intention to facilitate free movement of highly qualified workers within the EU, which allows workers to travel freely between member states, but more importantly, to take job offers in an EU country other than the one that issued the permit (SER, 2007; VNO NCW, 2007, 2009). Employers expected that intra-EU mobility would render the Dutch labour market more attractive, because "then the highly skilled migrant can choose whether he wants to enter the Netherlands solely on the basis of our flexible rules, or whether he wants access to all of Europe at once, on the basis of his blue card" (Van den Bandt, Secretary for Innovation of the VNO NCW quoted in Trouw, 2008; own translation). Intra-EU mobility was also the SER's main argument in favour of a common EU approach to attract high skilled workers, repeatedly mentioning to expect considerable "economies of scale effects" from harmonising labour migration policies for highly skilled migrants (SER, 2007, p. 17, 136–138, 141f.). The SER argued as follows:

"Smaller Member States in particular could benefit from a common policy for the mobility of highly qualified migrants, since the choice of a migrant for a particular Member State is no longer final. With national politics in place, a migrant would choose a large country more quickly because the job market opportunities are greater there" (SER, 2007, p. 143; own translation).

However, the SER also pointed out that intra-EU mobility requires coordination between member states and trust in the admission decisions of other member states. To achieve this, a certain degree of harmonisation is necessary to prevent that some member states will admit workers that do not qualify as highly skilled in others. The Commission would also need to pay attention to the danger of fraud and corruption that might occur in countries with a weak government apparatus or low income levels (SER, 2007, p. 143).

The free movement of third country nationals would also mean that the Netherlands could potentially lose migrants to other member states in an open competition. Therefore, both the VNO NCW and the SER pleaded for minimum harmonisation at the EU level that would allow the Netherlands to implement more liberal admission schemes in order to provide Dutch employers with a competitive advantage in the race for talents vis-à-vis other member states (SER, 2007, p. 143; VNO NCW, 2009). An argument in favour of minimum harmonisation is also the fear of Dutch employers that a scheme at the European level would be more restrictive than the current Dutch national scheme, due to restrictive pressures from countries such as Germany (Caviedes, 2008, p. 22; Trouw, 2008; VNO NCW, 2009). In the years before the proposal, the employer associations lobbied successfully for a liberal immigration scheme for highly qualified workers from outside the EU. The 2004 Knowledge Migration Regulation was a response to that pressure (Het Financieel Dagblad, 2007a; Kremer, 2013b; OECD, 2016, p. 111). Hence, with one of Europe's most liberal immigration schemes for highly qualified migrants in place, which met to a great extent the expectation of Dutch employers (Het Financieel Dagblad, 2007a; Trouw, 2008), the latter were keen on maintaining that "fast and simple procedure" (Trouw, 2008).

Besides the employers plea for intra-EU mobility, minimum harmonisation and a flexible design, the SER also demanded first, a facilitated family reunification for highly skilled migrants, and second, the exemption from labour market tests (SER, 2007, p. 144). In addition, the VNO NCW criticised the Commission's proposal, as it is solely demand-driven in the sense that potential workers need to have a job offer to apply for a Blue Card. This approach would keep the top quality personnel from accepting a job offer since they cannot take a closer look around at the company before accepting the job (Het Financieel Dagblad, 2007a; Trouw, 2007; VNO NCW, 2009). Hence, employers would like to see more supply-driven elements, such as job seeking visas.

Preferences of the Dutch Government

With politicisation levels being medium-low, we can expect the 'Client Politics Mode' to dominate the preference formation process of the Dutch government slightly. And indeed, the Dutch government fully responded to the employers' liberal demands when supporting a common and liberal EU scheme to attract highly skilled labour migrants (Tweede Kamer, 2007c; Interview Rep_NL). As we will see in the following section, the Dutch government only raised sovereignty concerns when it became apparent that an EU scheme would be more restrictive than the national Knowledge Migration Regulation. The plea for less harmonisation

is therefore a reaction to the employers (fearing for their liberal national immigration scheme), rather than the more communitarian interests of the public.

The Dutch government argued that the Commission's endeavour can "stimulate the economy of the EU as a whole and thus also (in-)directly the Dutch economy and the possibility of intra-EU mobility makes it less risky for knowledge migrants to migrate to a small country when there is the prospect of migration to other EU member states (in the long term)" (Tweede Kamer, 2007a, own translation). The government therefore closely followed the employers' line of argument, stressing in particular the importance of intra-EU mobility and its advantages for a "small country, with a not so well known language" (Tweede Kamer, 2007c). Hence, in contrast to the German position in the negotiations, both the Dutch employers as well as policy-makers perceived a dependence of the Dutch economy on a concerted EU effort to attract highly skilled labour migrants to the Dutch labour market as high, hoping for economies of scale effects.

Most efforts of the Dutch delegation during the negotiations were related to rendering the directive more liberal or supporting and defending the already liberal content of the first proposal from restrictive attempts. The then Dutch Secretary of State for Justice, Nebahat Albayrak, noted that "there must be as little red tape as possible if we want to attract these most highly qualified workers" (quoted in Europe Daily Bulletins, 2007c). Consequently, the Netherlands pushed mainly for more relaxed admission criteria, a longer validity period of the Blue Card, facilitated intra-EU mobility of highly skilled workers, and allowing liberal national admission schemes to persist.

Definition and admission criteria

The Dutch government supported the suggested minimum threshold for the salary requirements of at least three times the gross monthly minimum wage (Tweede Kamer, 2007a). Due to pressure from countries such as Germany, the Commission raised the threshold to 1,5 times the average gross monthly wage after the first reading (Council, 2008c, p. 9), which the Dutch delegation opposed throughout the Council meetings. The government also stated that the Commission's proposal "does not meet the principle of quick and simple procedures" (Tweede Kamer, 2007a). Noting that "authorities should not take the role of employers in assessing the qualifications" (Council, 2008a, p. 11, f.n. 25), the Dutch delegation opposed specifying any criteria related to educational or work experience for highly skilled migrants, arguing that this "will certainly result in additional administrative burdens for non-regulated professions" (Tweede Kamer, 2007a). Hence, similar to the national knowledge migration regulation, the

Dutch government demanded solely a relatively low salary criterion to be defining for highly skilled migrants. The Dutch government also strongly opposed the provision that would allow member states to conduct labour market tests both at the time of first admission or upon continued migration to another EU member state. It argued that this would undermine “the objective of the proposal to achieve a common admission procedure, making the EU as a whole more attractive for highly skilled migrants compared to other countries, such as the US, Canada and Australia” (Tweede Kamer, 2007a).

The only demand of the Dutch employers that the Dutch government did not represent during the negotiations is the plea for a more supply-driven admission channel. Unlike the Dutch employers, the Dutch government appreciated the demand-led character of the Blue Card Directive as proposed by the Commission (Tweede Kamer, 2007a).

Rights of the Blue Card holder and obligations of the member states

In addition, when it comes to the rights and benefits of Blue Card holders, the Dutch delegation mostly demanded more liberal conditions than proposed by the Commission. First, the duration of validity of the Blue Card should not be limited to two years but should be linked to the duration of the work contract, plus three extra months. In the second reading, the Dutch delegation requested the possibility for member states to choose a validity period for the Blue Card ranging somewhere between two to five years (Council, 2008c, p. 11, f.n. 22; Tweede Kamer, 2007a).

Second, the Dutch government fully supported the employers’ view that the greatest advantage of the Blue Card proposal is the facilitation of intra-EU mobility of highly qualified migrants (Tweede Kamer, 2007c). Therefore, during the negotiations, the Dutch tried to strengthen this advantage by demanding to delete the two-year deadline for highly skilled migrants to move to another EU member state. It has been reduced to 18 months later, which the Dutch delegation still considered as too restrictive (Council, 2008d, p. 4). In the following readings, the Dutch negotiation team suggested to include the specific category of a ‘Blue Card commuter’, which is a Blue Card holder of one member state that “carries out highly qualified employment in a second member states while remaining a resident of the first member states” (Council, 2008d, p. 22). Third, the Dutch government supported the employers view on the importance of family reunification to render an admission scheme more attractive. It went beyond that by pleading for free access to the labour market for family members (Tweede Kamer, 2007a). The only restrictive comment the Dutch delegation made throughout the negotiations was regarding the withdrawal of the Blue Card. In case its holder would ask for social assistance during the three

months of unemployment, a withdrawal of the Blue Card should be possible (Council, 2008a, p. 26).

National vs. EU level

At first the Dutch government demanded minimum harmonisation, fearing for the EU level scheme to be more restrictive than the national admission rules. It requested to add a paragraph to the proposal that allows member states to “issue residence permits for the purpose of highly qualified employment on terms that are more favourable than those laid down by this Directive” (Council, 2008a, p. 9, f.n. 21). Later, when it became obvious that member states such as Germany were pressing for more restrictive and less flexible regulations, the Dutch representatives were advocating for optional harmonisation instead (Council, 2008a, p. 9).

Interim Conclusion

Given medium-low politicisation of both the EU and immigration, the Postfunctionalist framework neither expects a clear ‘Client Politics Mode’ nor a ‘Mass Politics Mode’ to dominate the preference formation process of the Netherlands’ government. However, both employers as well as the Dutch government stress the importance of a concerted EU effort to attract high skilled labour. As a relatively small member state, they hope to profit from economies of scale effects when integrating into a European labour market with an EU-wide admission scheme. Therefore, the Netherlands shows a strong dependency on EU harmonisation. Consequently, Liberal Intergovernmentalism therefore would expect the government to support harmonisation and liberalisation at the EU level.

Table 11 summarises the policy positions of both employers and the Dutch government. We can conclude that the employers’ demands were almost fully represented by the Dutch government during the negotiations of the Blue Card Directive in the Council. Unlike Germany, which shows a lack of trust in the admission decisions of other member states and is therefore at unease to give up sovereignty and allow for intra-EU mobility throughout the negotiations of all directives, the Dutch government vehemently defends the employers’ demands. The government’s efforts to facilitate intra-EU mobility and defend it from restrictive influences reflects the employers’ perceived high dependence on a common EU approach to attract third country nationals to the Dutch labour market. Moreover, the Dutch representatives followed the employers’ interests when it sought to relax regulations on family reunification and the labour market access of spouses and demanded exemptions from labour market tests for highly skilled. The negotiation team even went beyond the employers’ liberal demands when it

requested lower salary thresholds, sought to delete any admission requirements related to prior work experience or education and to increase the Blue Card's period of validity.

Table 11: Blue Card Directive: Policy Position of Dutch employers and government

Level of Politicisation: low			
Expected mode of responsiveness: Client Politics Mode			
	Interests of Dutch Employers	Policy Position of Dutch government	Mode of responsiveness
Perceived interdependence	High: expecting economies of scale effects	High: expecting economies of scale effects	
Policy-dimension	Liberal: facilitating intra-EU mobility, family reunification; exemption from labour market tests; job seeking visa	Liberal: facilitating intra-EU mobility, low salary thresholds, no admission requirements related to prior work or education; no labour market tests; longer validity of the Blue Card; facilitating family reunification.	Client politics
Polity-dimension	Minimum harmonisation	Minimum harmonisation European: no labour market tests	

The government shared the employers' fears that restrictive regulations at the EU level would override liberal national admission schemes. As a result, it vehemently defended the national knowledge migration scheme. To benefit from 'economies of scale effects' of an attractive EU scheme, the Dutch government demanded that the directive does not permit more restrictive national admission schemes. At the same time, to maintain the Dutch competitive advantage vis-à-vis the other member states, it demanded that more liberal national schemes should be allowed to exist in parallel to the EU Blue Card Directive.

Hence, in the case of the Blue Card Directive, we observe a clear 'Client Politics Mode' as the Dutch government fully responded to the Dutch employers' interests when negotiating the Commission's proposal in the Council (Interview Employer_NL). The medium low politicisation of the EU and immigration at that time did not incentivise the Dutch government to respond to communitarian interests of the public and raise sovereignty concerns that would have restricted admission conditions, limited the rights of labour migrants and decreased the level of harmonisation. Endeavours to limit the harmonisation of the directive and increase the discretion for governments were solely related to the employers' fears that restrictive EU regulations would override the liberal admission scheme at the national level. Hence, as

expected by the Liberal Intergovernmentalism, the strong dependence of Dutch employers on a concerted EU effort to attract highly skilled labour migrants due to the relatively small size of the Dutch country and labour market, explains the enthusiasm of the Dutch government for the harmonisation of regulations.

5.3.2. The Seasonal Workers Directive, July 2010³⁹

The national context

The migration of third country nationals to the Netherlands for temporary, seasonal work is regulated in the Foreign Nationals Employment Act (WAV). The admission conditions were considered to be highly restrictive. Each application of a worker from outside the EU for the purpose of seasonal work was handled individually and required a labour market test. Before employers can apply to hire a third country national for seasonal work, they have to advertise the job position for at least five weeks. In addition, the employer has to document that he or she tried all possible options to hire an EU citizen. Practically, no third country national was accepted as seasonal worker to the Netherlands in recent years (SER, 2007; Interview Rep_NL).

Levels of Politicisation

The Seasonal Workers Directive was proposed by the Commission at a time when the indices for the politicisation of the EU and the politicisation of immigration dropped to the lowest values in the investigation period (see Figure 5 above), suggesting low politicisation. Neither the EU nor immigration was particularly salient in the mass media. Thus, we would expect the Dutch government to act according to the ‘Client Politics Mode’, representing the interests of employers. In doing so, the Dutch government is not expected to be constrained by the public, which tend to hold more communitarian attitudes than the elites. Accordingly, the electorate’s concerns regarding sovereignty and identity do not surface in the policy position of the Dutch government.

Employers’ Interests

Both the VNO NCW and the SER were highly sceptical of harmonised rules for admission and intra-EU mobility for seasonal workers. The SER noted that “the regional character of seasonal work and the restrictive admission rules of the cabinet are reasons to be cautious towards the

³⁹ The Commission’s proposal sought to regulate the conditions under which third country nationals can enter and stay at the territory of an EU member state to work as a seasonal worker and define the labour rights and protection they enjoy when working as seasonal workers under the Directive. Hence, it targets low skilled, temporary and regular migration to the EU.

harmonisation of law for this category of labour migrants” (SER, 2007, p. 138). As labour markets needs and socio-demographic characteristics of the member states differ, the SER “calls for national sovereignty”, arguing that “harmonisation is neither necessary nor desirable” (SER, 2007, p. 146).

First, it is not necessary because the weak demand for seasonal workers can be met by migrant workers already living in the Netherlands, or by citizens willing to migrate from the new member states (SER, 2007, p. 156; Interview Rep_NL). Second, harmonisation is not desirable, because employers did not see any added value of EU harmonisation for the Dutch economy, because employers considered intra-EU mobility non-crucial for seasonal workers. Third, unlike in the case of the Blue Card Directive, Dutch employers did not foresee that a harmonised seasonal workers directive would yield beneficial ‘economies of scale effects’ for the Dutch labour market. According to employers, lower transaction costs due to similar procedures are already sufficiently assured by Directive 89/391/EC, which encourages improvements in the safety and health of workers at work (SER, 2007, p. 146). Hence, the SER evaluated “the necessity of a separate directive for (the admission conditions of) seasonal workers as not certain” (SER, 2007, p. 146, own translation). Therefore, both the VNO NCW as well as the SER assessed the Dutch dependence on a concerted EU effort to attract seasonal workers to their labour market as very low. Hence, Dutch employers did not have the policy goal of attracting third country nationals for seasonal work in the first place, and therefore also considered a European scheme to be irrelevant.

This is also reflected in the following comment of a representative of Dutch employers, which stresses the sufficiency of unilateral policies, by arguing that the directive would violate the principle of subsidiarity,

“when the European Commission is interfering with what we can surely handle in our own labour markets. [...] We didn’t want to have any interference by the European Commission” (Interview Employers_NL).

The main criticism of the VNO NCW was that in the course of the negotiations the ‘Commission Juncker’ added burdensome regulations on social policy to protect seasonal workers (Interview Employers_NL). After the introduction of other directives related to social protection of workers and migrants, such as the Work Life Balance and the Posted Workers Directive, Dutch employers were unwilling to accept further regulations in this field. As one representative of Dutch employers put it:

“It was a consequence of the overloaded agenda of social policy of the Commission. And that’s what we discussed several times with the Commission. ‘Commission, you are overreaching the

possibilities. You are asking too much.’ And we don’t want to be put in the position with the back against the wall.[...] we said ‘we have our own labour market, we have our own needs, and we know best. So don’t interfere with it, and don’t come up with burdensome regulations” (Interview Employers_NL).

Hence, not only did employers not see the necessity or desirability for a common approach, the main reason for the VNO NCW to reject the proposal so fiercely was its discontent with Juncker’s overall revision of the EU social policy (Interview Employers_NL).

Therefore, the employers’ position on the polity-dimension was clear; they rejected any harmonisation. This position derives from a perceived weak dependence on a common EU-wide effort to attract seasonal workers to the Netherlands, as the demand for seasonal workers was low and no ‘economies of scale effects’ was expected. In addition, on the policy-dimension, the in-their-eyes burdensome regulations with regard to social protection explains the employers’ discontent with the proposal. However, besides that, the employers’ position on the policy-dimension is not very detailed, as they did not clarify which provisions of the directive they oppose or support in specific.

Policy Position of the Dutch Government

The policy position of the Dutch government with regard to the Seasonal Workers Directive is a stark outlier compared to the other directives on legal labour migration. Whereas the Netherlands strongly supported EU harmonisation, intra-EU mobility and the liberalisation of admission conditions when negotiating the Blue Card Directive and the ICT Directive, it outright criticised the proposed Seasonal Workers Directive. The government sought to restrict its content and decrease harmonisation. Hence, the Dutch delegation did not seek to decrease harmonisation as a ‘last resort’ to circumvent restrictive EU regulation and to allow more liberal admission criteria at the national level. Instead, it sought to decrease harmonisation to restrict the directive’s impact on restrictive national legislation concerning seasonal work already in place in the Netherlands. More importantly, however, the Dutch government voted against the proposal in the Council.

An interview partner of the Migration Policy Department of the Dutch Ministry for Security and Justice explained the Dutch position as follows:

“There’s no need for an admission scheme for seasonal workers. The question of subsidiarity: the Dutch parliament and government didn’t see any cross border aspects of this directive, because there’s no inside EU mobility for seasonal workers. Every member state will have its own labour migration policy for seasonal workers that will not affect the other member states. So, I think the principle of subsidiarity plays an important role, but also because it’s lower skilled migration and

there's no need for lower skilled seasonal workers migration to the Netherlands. And this is why the Netherlands was very negative about this, this proposal" (Interview Rep_NL).

The government did not see any added value of a harmonised EU scheme for seasonal workers, and followed broadly the arguments of the Netherlands' employers. The government stated that the demand for seasonal workers in the Netherlands is low, which is also why only so few third country nationals come to the Netherlands for seasonal work (Eerste Kamer, 2011). In addition, the Dutch government did not consider intra-EU mobility of seasonal workers to be necessary, which would have justified the harmonisation of national admission regulations. Consequently, the government opposed establishing an admission scheme at the European level (Interview Rep_NL). The negative vote of the Dutch delegation at the end of the negotiations exemplifies this clearly.

However, this outright opposition of *any* harmonisation is not fully reflected in the Dutch policy position during the negotiations as extracted from the Council minutes. While the comments of the Dutch delegation sought to restrict the admission regulations, increase discretion and therefore limit harmonisation, the Netherlands never put the proposal as a whole in question. As suggested by the literature on policy responsiveness in the EU policy-making process, a negative vote against the proposal at the end of the negotiations "is best interpreted as a balancing act between incurring reputational costs among peers in the Council and signalling to domestic constituencies" (Naurin, 2018, p. 12). Hence, with the negative vote, the Dutch government was able to signal to the employers at home that their concerns related to the Commission's social agenda are heard and that the government is willing to communicate these concerns to the Commission by voting against the proposal. However, it is only a 'signal' because the vote was not consequential for the policy outcome anymore, because in the context of qualified majority voting the veto by one member state is not sufficient to prevent a directive (Arregui & Thomson, 2014; Bailer et al., 2015; Hagemann et al., 2017; Naurin, 2018).

Admission criteria, rights and benefits

While the employers' main concerns were the 'burdensome regulations' of social protection, the Dutch delegation put most of their effort into restricting admission conditions rather than limiting the rights and benefits of seasonal workers. The Dutch delegation team demanded that labour market tests should be mandatory before admitting seasonal workers from third countries to check whether the vacancy could be filled by national or EU citizens, or third country nationals already lawfully residing in the Member State (Council, 2010e, p. 9, f.n. 34). In addition, granting a stay of six months for seasonal workers was considered as too long, because

in the Netherlands this would entail the right for unemployment benefits (Council, 2010e, p. 2, f.n. 1). Instead, the Dutch representatives demanded greater flexibility by suggesting that member states can choose a time period between three and nine months (Council, 2010e, p. 14, f.n. 53). Moreover, the Netherlands opposed the Commission's suggestion to allow multi-seasonal permits, arguing that it is hard to predict future demands for seasonal workers (Council, 2010e, p. 16, f.n. 56). The Dutch delegation suggested including a requirement to inform authorities in case of change of employers. Furthermore, the facilitated procedure for the reapplication of seasonal workers who have been previously admitted was opposed. Instead, the Netherlands requested an optional wording, that allows national discretion when implementing the facilitated procedure (Council, 2010e, p. 16, f.n. 57). The Dutch delegation criticised the Commission's proposed provision, which obliges employers to check the standards of accommodation for seasonal workers, arguing that it constitutes an excessive administrative burden for employers and the administration (Council, 2011, p. 16, f.n. 53).

Interim Conclusion

The indices in Figure 5 suggest a very low politicisation of EU and politicisation of Immigration at the time of the negotiations. Given that both issues were 'off the public radar', we expect the Dutch government to act according to the 'Client Politics Mode', hence, representing the interests of employers rather than mass public interests. Table 12 below summarises the position of Dutch employers and the government. Employers responded with great scepticism to the Commission's proposal, arguing that first of all, the demand for seasonal workers is very low at the domestic labour market. Second, unlike for highly skilled labour migrants, enabling intra-EU mobility is not crucial for seasonal worker. Accordingly, employers disputed the necessity of a harmonised policy at the EU level. Third, they also opposed the content of the proposal, in particular 'the burdensome regulations' of social protections for seasonal workers. As a result, Dutch employers assessed the dependence on a concerted EU effort to attract seasonal workers to their labour market as very low (see Table 12 below). Liberal Intergovernmentalism therefore expects the Dutch government to respond to the employers' demands during the Council negotiations by opposing or decreasing harmonisation and restricting social protection for seasonal workers.

And indeed, as expected by the theoretical framework, the findings suggest that in the case of the Seasonal Workers Directive, the Dutch government overall acted according to the 'Client Politics Mode', which anticipates that the government rejects harmonisation and liberalisation if issue-specific dependence is perceived as weak. The Dutch government brought forward the

same arguments as the employers speaking out against harmonisation. Hence, employers fully rejected the Commission's proposal and the Dutch government followed suit. The Dutch government acted according to the 'Client Politics Model'

Table 12: Seasonal Workers Directive: Policy Position of Dutch employers and government,

Level of Politicisation: Low			
Expected mode of responsiveness: Client politics mode			
	Interests of Dutch Employers	Policy Position of Dutch government	Mode
Perceived interdependence	Low: no demand for seasonal workers; no necessity of intra-EU mobility	Low: no demand for seasonal workers; no necessity of intra-EU mobility	
Policy-dimension	Restrictive: prevent burdensome regulations of social protection	Restrictive: introduce mandatory labour market tests, prevent multi-seasonal permits;	Client politics
Polity-dimension	no harmonisation	low level of harmonisation/ negative vote National: optional facilitated procedure for re-admission;	

This position on the polity-dimension results from a generally low demand for seasonal workers in the Netherlands and a weak dependence on a European approach (see Table 12 above). Hence, just like the employers, the government was convinced that there is no need for collective action, as existing national schemes can sufficiently meet the low demand for seasonal workers. As maintained by a representative of the Dutch employers, after bringing forward his criticism of the Commission's proposal:

“So that's why we said - and that is why the parliament said - it is in the contradiction with subsidiarity. And the government took the same position” (Interview Employers_NL).

The negative vote against the proposal at the end of the negotiations can be understood as a strong signal by the Dutch government to domestic employers. By doing so, the government can indicate that the employers' disagreement with Juncker's social agenda is heard and that this disagreement is communicated to the Commission. While employers' policy-related demands were mostly concerned with the regulations of social protection, the government sought to restrict the admission scheme in general by introducing mandatory labour market tests, preventing multi-seasonal permits, and opposing facilitated procedures for re-admission. Hence, interestingly, this extraordinary position of the Dutch government in the case of the

Seasonal Workers Directive - restrictive on the policy-dimension and national on the polity-dimension - does not derive from communitarian attitudes of the public.

Thus, the findings suggest that the governmental position has been formed according to the ‘Client Politics Mode’ - reflecting the highly critical preferences of the employers. In the case of the Seasonal Workers Directive, the low added value of a harmonised scheme did not outweigh the potential sovereignty loss for Dutch employers and government. The Dutch policy position on the Seasonal Workers Directive exemplifies again that the “downward pressure on level and scope of integration” is more likely to result from sceptical issue-specific interest of employers, rather than EU-sceptic and anti-immigrant attitudes of the public.

5.3.3. The Intra-Corporate Transfer (ICT) Directive, July 2010

The national context

When the Commission introduced the ICT Directive, the Netherlands had two national schemes in place that allowed companies to transfer their labour force from a company branch in a third country to a branch in the Netherlands. First, the main scheme for intra-corporate transfers is regulated in the WAV. It states that multinational companies, with an annual turnover of at least 50 million Euros can transfer key personnel of the higher management to branches in the Netherlands. While transferees do not have to undergo a labour market test, they have to meet a monthly salary threshold similar to that of the threshold stipulated by the ‘knowledge migration regulation’ (OECD, 2016, p. 118; SER, 2007, p. 147). However, as the scope of the regulation is limited to key personnel, it does not include, for instance, employers with technical skills. Accordingly, firms were to a great extent reliant on the standard work permit to enable intra-corporate transfers (Caviedes, 2010, p. 177).

Second, since its adoption in 2004, the Knowledge Migration Regulation has become the main scheme to admit intra-corporate transferees to the Dutch labour market. Even though it was not specifically designed for the purpose of intra-company transfers, the admission process was less burdensome, allowing the permit to be granted to employees with salaries paid in the country of origin (Kroes, 2017, p. 69f.). Unlike the WAV scheme, the Knowledge Migration Regulation is not limited to personnel from higher level management or from companies with an annual turnover of at least 50 million Euros; however, workers have to reach a certain salary threshold, which limits the scope of the regulation to a great extent (Interview Rep_NL).

Levels of Politicisation

The Commission proposed the ICT Directive at the same time as it introduced the Seasonal Workers Directive (see chapter 0), when the indices for the politicisation of the EU and the politicisation of immigration had dropped to its lowest values in the period under investigation. Neither the EU nor immigration was salient in the mass media. In addition, public opinion on both issues was also not particularly polarised. Hence, we would expect the Dutch government to act according to the ‘Client Politics Mode’, representing the interests of employers. Sovereignty and identity concerns of a public that is considered to hold more communitarian attitudes than policy-makers are not expected to surface in the policy position of the Dutch government.

Employers’ Interests

The Netherlands’ employers’ organisation and the ‘business-friendly’ SER research institute showed great enthusiasm for the harmonisation of regulations concerning ICTs. An EU Directive that facilitates intra-EU mobility would offer “clear added value” (SER, 2007, p. 148), as it would contribute to the creation of a common knowledge-and-research area that could compete more easily with the main immigration destination countries such as the US and Canada (SER, 2007, p. 18). By integrating into a more extensive, EU-wide admission scheme for labour migrants, Dutch employers hoped that they would profit from an ‘economies of scale effect’ as the increase in the size of the labour market would also increase their competitive advantage in attracting labour migrants. Yet again, the Dutch pointed towards the necessity of a common European effort to withstand the worldwide competition for talent. They are convinced that they reach the goal of attracting highly skilled labour migrants more effectively if member states cooperate and establish a harmonised admission scheme. Once more, it illustrates that employers, situated in a relatively small economy and labour market, perceive themselves to be strongly dependent on a European approach.

Both the SER and the VNO NCW demanded an increase of the directive’s scope, a relaxation of admission criteria, facilitation of intra-EU mobility and strengthened rights of labour migrants. At the same time, they requested strong harmonisation, in the form of common procedural guarantees, admission conditions and rights for transferees. The SER identified some features that would increase or guarantee the ‘added value’ of a harmonised ICT Directive at the EU level. First, in order to ensure that the scope of the directive is wider than the national schemes for intra-corporate transferees, Dutch representatives should pay close attention to how

the proposal defines ‘core personnel and specialists’ (the directive’s ‘target group’). Second, the government should be cautious about whether or not the directive requires a worker to have had prior employment with an enterprise, before they can be transferred under the ICT Directive to a European member state (SER, 2007, p. 148). Third, transferees should be exempted from labour market tests and their spouses should also be guaranteed access to accommodation and employment opportunities.

Time and again, the SER and VNO NCW stressed that the key ‘added value’ of the directive is not necessarily the facilitated access of third country nationals *to* the European labour markets, but the facilitated mobility of third country nationals *between* EU member states. It is therefore essential that the directive’s provisions establish EU-wide procedural guarantees for the application and granting of residence permits (SER, 2007, p. 148). Common rules and procedures would facilitate, in turn, the transfer between member states. This point was also particularly stressed by the VNO NCW, which “wanted to keep a system where [the employees] could easily be transferred between the countries” (Interview Employers_NL). The position of the Netherlands’ employers on the polity-dimension is not explicit, as they did not state whether they prefer full, minimum or optional harmonisation. However, it is clear that they demanded strong harmonisation of admission conditions that allow for a facilitated transfer between member states, without having to undergo another time-consuming admission procedure in the second or third member state. Therefore, it is of importance that the conditions for admission and the transfer of workers between member states are harmonised to a certain extent. However, this can only be achieved by full or minimum harmonisation, not by optional harmonisation, as the latter would allow ICTs to be admitted under different national schemes.

Position of the Dutch Government

The Dutch government shared the employers’ enthusiasm for the Commission’s proposal and in particular for those provisions facilitating intra-EU mobility. It evaluated the directive’s impact as important and positive, because it is in line with the general ambitions of the Dutch immigration policy to attract highly skilled labour migrants to the Dutch labour market (Tweede Kamer, 2010; Interview Rep_NL). The Dutch Minister for Foreign Affairs, in a letter to the second chamber of the Dutch parliament, raised hopes that the proposal would create “opportunities in terms of attracting more key staff and management trainees and the possibility for intra-EU mobility” (Tweede Kamer, 2010, own translation). Hence, “the Netherlands is in favour of the proposal and will, in the negotiations, in particular advocate for the rights of intra-EU mobility” (Tweede Kamer, 2010, own translation). Furthermore, while family reunification

for most migrants was increasingly restricted in the Netherlands, the Dutch government welcomed the relaxed provisions regarding family reunification for transferees and stated that it will “be committed to this in the negotiations” (Tweede Kamer, 2010). This positive evaluation and interest in the directive is also reflected in the active involvement of the Dutch delegation during the negotiations. Almost all comments were seeking to liberalise the proposal or defend it from restriction attempts of other member states.

Position on the Policy-dimension

In line with the employers’ demand, the Dutch delegation sought to increase the scope of the directive. It expressed its wish to delete ‘rare’ in the wording that defines ‘specialist’ as “any person possessing [...] rare knowledge essential and specific to the host entity” (Council, 2011j, p. 6, f.n. 11). Not only should the scope include graduate trainees preparing for a managerial post, but also trainees preparing for positions as specialists (Council, 2010d, p. 5, f.n. 14). The Dutch representatives urged the Council to consider allowing those workers who are already legally present in a member state to lodge an application under the ICT Directive (Council, 2010d, p. 20, f.n. 61). The Netherlands furthermore demanded optional wording with regards to the exclusion of employers who have been sanctioned for undeclared work according to national law (Council, 2010d, p. 16, f.n. 50). The delegation also opposed charging fees upon applicants for handling the applications (Council, 2011j, p. 30, f.n. 85).

Rights and Benefits

As already proclaimed in the governmental letter to the second chamber, the Dutch delegation sought to facilitate family reunification, the access of spouses to the labour market as well as intra-EU mobility - thereby responding fully to employers’ demands. In line with the employers, the delegation suggested more flexible and liberal regulations regarding residence permits for family members, choosing the same period of validity for both the ICT permit and the family members’ residence permit should be optional for member states (Council, 2010d, p. 34, f.n. 104). The Netherlands also requested to delete any time limit with respect to the access of family members to the national labour market, as an eased access would “make the admission scheme more attractive” and “facilitate the integration of these family members to the host society” (Council, 2010c, p. 33, f.n. 94, 2011j, p. 36, f.n. 105).

Once more, great attention was dedicated to simplify intra-EU mobility of ICTs, the ‘main added value’ of a harmonised EU directive for both employers and the Dutch government (Council, 2011i, p. 2; Interview Rep_NL). Accordingly, the Dutch government proclaimed that

it is of utmost importance to defend this ‘added value’ and “to argue for this point during the negotiations” (Tweede Kamer, 2010; own translation). In a note of the Dutch delegation to the Council, it reemphasised the importance of intra-EU mobility, which is why “the delegation of the Netherlands is of the opinion that the current proposal would benefit from a significant simplification insofar as the provision for mobility is concerned” (Council, 2011i). This relates especially to the provision that transferees have to apply a second time if they wish to be transferred for work to a member state that is not covered by the initial ICT permit (Council, 2011j, p. 40, f.n. 113).

Position on the Polity-Dimension

During the negotiations, the Dutch delegation did not make any comments regarding the directive’s overall level of harmonisation. In a subsequent letter to the second chamber, Opstelten, the then Dutch Minister of Security and Justice, reported that the Netherlands eagerly defended minimum harmonisation in order to allow for more liberal admission conditions at the national level. If “a Member State believes that the foreign national in question has added value for the economy and/or society” (Eerste Kamer, 2011), but they do not meet the criteria of the ICT Directive, they should still be able to access the labour markets via a national admission scheme.

Interim Conclusion

Due to low levels of politicisation in the Netherlands at the time of the negotiations of the ICT Directive, we expect the Dutch government to act according to the ‘Client Politics Mode’ and respond to the interests of the Dutch employers. The latter were keen on liberalising admission conditions and assessed the Netherlands’ dependence on a common European effort to attract labour migrants and in particular to allow intra-EU mobility as high. Accordingly, Liberal Intergovernmentalism expects the Dutch government to support the harmonisation and liberalisation of regulations at the European level.

And indeed, the Dutch government shared the employers’ enthusiasm for a harmonised scheme for ICTs. In the eyes of the employers, the ‘key added value’ of an EU directive would be facilitated intra-EU mobility. As stressed several times, enabling intra-EU mobility of ICTs was not only the employers but also the government’s top policy priority during the negotiations. Besides that, the delegation represented the employers’ demands to liberalise family reunification for ICTs and the access of spouses to the labour market. While the government sought to liberalise general admission conditions, for instance by deleting provisions related to

charging fees from applicants for handling applications, it did not comment on the employers' demand to prevent prior employment requirements. As the Commission's draft directive did not include labour market tests for ICTs, the SER's opposition to labour market tests is obviously also not represented in the Dutch policy position during the negotiations, as there was no necessity for it.

Hence, the Dutch government almost fully represented the employers' liberal demands and shared their view on the importance of a harmonised approach to enable intra-EU mobility. We can therefore speak of a 'Client Politics Mode'. This is also exemplified by the comment of a representative of the Dutch employers, which evaluated the cooperation with the Dutch government as follows: "There was also no difference between our positions. We were very much on the same line. No, there was no big fight about it" (Interview Employers_NL).

Table 13: ICT Directive: Policy Position of Dutch employers and government

Level of Politicisation: Low			
Expected mode of responsiveness: Client politics mode			
	Interests of Dutch Employers	Policy Position of Dutch government	Mode of preference formation
Perceived interdependence	High: expecting economies of scale effects	High	
Policy-dimension	Liberal: increase scope, facilitated intra-EU mobility, family reunification, exemption from labour market tests, no or limited prior employment requirements	Liberal: increase scope, facilitated intra-EU mobility, family reunification and admission conditions	Client politics
Polity-dimension	Full or minimum harmonisation	minimum harmonisation	

5.3.4. The Revision of the EU Blue Card, June 2016

The national background

When member states negotiated the first Blue Card directive in 2007 and 2008, the Dutch policy-makers were discussing the reform of the national Knowledge Migration Regulation. The ‘modern migration policy’ (Dutch: Modern Migratie Beleid) was eventually adopted in 2010 and entered into force in 2013. While it increased their responsibilities, employers would be able to register as a ‘recognised sponsors’. This status provides employers the access to a facilitated admission procedure, which requires fewer documents for the application and promises admission of the highly skilled employer within two weeks after the application has been filed (Bonjour & Scholten, 2014).

Hence, in the Netherlands, the initial EU Blue Card adopted in 2009 operated in the shadow of an already relatively liberal and flexible national admission scheme. The salary threshold of the Blue Card was with a monthly income of 4.968 Euros higher than what was required under the national scheme (4.240 Euros), which also offered lower salary thresholds of 3.108 Euros for highly skilled workers younger than 30 and 2.228 Euros for recent graduates. Moreover, admission under the national scheme was faster (Tweede Kamer, 2016). Accordingly, the EU scheme has been rarely used by highly skilled labour migrants seeking employment on the Dutch labour market. In the years from 2011 to 2013 less than 10 residence permits have been granted under the Blue Card scheme in total, while for the same period, the knowledge migration regulation registered an annual immigration of around 6460 labour migrants in 2011 alone (Eerste Kamer, 2016; Obradović, 2014, p. 10).

Levels of Politicisation

In the time immediately preceding the negotiations of the Revision of the Blue Card, the indices for the politicisation of the EU and politicisation of Immigration hint at a very strong domestic politicisation of both issues. The strong EU politicisation of the EU relates not only to the Schengen Crisis and to the Brexit referendum, but also the fact that the Netherlands held the EU presidency increased the salience of EU policy-making among the public at that time. The politicisation of the EU reached its highest peak in June 2016, the same month when the Commission introduced the revised Blue Card proposal.

Due to the Schengen Crisis, the politicisation index for immigration showed unprecedented high levels of EU politicisation in the Netherlands, which peaked in September and October

2015. Just like Germany, the Netherlands was one of the main destination countries for asylum seekers arriving in the EU. The already established right-wing populist parties in the Netherlands increased the salience of immigration further. They exploited the crisis to mobilise the Dutch public. Geert Wilders for instance pleaded at that time for a ‘Nexit’, the Netherlands’ exit from the EU, to prevent the ‘Islamisation’ of the Netherlands. Hence, both the EU and immigration were not necessarily politicised individually at that time, but both controversial debates were very much coupled, as the EU was held responsible for the arrival of asylum seekers in the Netherlands.

Due to the strong politicisation at that time, we expect communitarian interests of the public to surface in the policy position of the Dutch government. Hence, the dissertation’s theoretical framework anticipates the representatives to behave according to the ‘Mass Politics Mode’.

Employers’ Interests

“The European Commission wanted to establish one scheme. And there the trouble began, because for the Netherlands - and that also accounts for many other European countries - we wanted to keep our own, what we call ‘kennismigrantenregeling’⁴⁰. [...] By far the most important thing is that we want to keep our knowledge based migration regulation. And we don’t want to get rid of it. We can make it more practical, we can modernise it, but we want to keep our own system” (Interview Employers_NL).

The goal of Dutch employers is to attract highly skilled labour migrants to the Netherlands’ labour market. At the tat time, the reported labour shortages by employers Figure 4 increased steadily across all sectors of the economy. However, the quote by a representative of Dutch employers above exemplifies clearly that the continued liberal reforms of national admission schemes weakened the perceived dependence of Dutch employers on a common European admission scheme to attract highly skilled workers to the Dutch labour market. A European approach was no longer deemed necessary to obtain the employers’ goal. Instead, knowing the restrictive regulations of the initial Blue Card and its poor utilisation in the Netherlands, a harmonised European scheme was considered to rather prevent Dutch employers from achieving their goal. Hence, the expected added value of a fully harmonised admission scheme was no longer deemed to outweigh the potential sovereignty loss, because the Netherlands would lose the flexibility to liberalise national admission schemes according to the interests of business. Employers expected that the national, reformed Knowledge Migration Regulation would satisfy their needs better than a harmonised EU Blue Card.

⁴⁰ English: Knowledge Migration Regulation

Therefore, the employers' main concern was that a harmonised and more restrictive EU scheme would replace the liberal knowledge migration scheme at the national level (VNO NCW, 2017; Interview Employers_NL; Interview Rep_NL). Hence, while they agreed that "promoting migration in the EU is important" (VNO NCW, 2017), the VNO NCW fiercely rejected the idea of fully harmonised admission schemes for highly skilled labour migrants. Hence, most lobbying effort by Dutch employers was invested to prevent full harmonisation as envisaged by the Commission and to allow optional or at least minimum harmonisation instead. While employers were in general in favour of liberalising and modernising the EU scheme, formulating content-related demands was not the priority. This is also illustrated by the fact that neither the press statements of the employers' organisation nor the stakeholders interviewed for this dissertation suggested detailed amendments to specific provisions of the draft directive. For instance, Dutch employers made no reference to facilitate intra-EU mobility or family reunification, which was a top priority for employers during the negotiations of the first Blue Card Directive and the ICT Directive. A representative of the VNO NCW stated merely that Dutch employers would prefer to lower the salary threshold for highly skilled workers (Interview Employers_NL).

Therefore, while employers generally supported liberalising the EU Blue Card Directive, the fear prevailed that the liberal national admission scheme would be replaced by a more restrictive and less flexible European scheme. Accordingly, dependence was considered to be low and the expected 'added value' of a revision of the Blue Card was deemed not to be worth the sovereignty loss by employers.

Position of the Dutch Government

While the employers' policy position was not very elaborated on the policy-dimension, but was rather devoted towards preventing full harmonisation on the polity-dimension, the position of the Dutch government was more detailed. In the Netherlands' response to the Commission's public policy consultation in 2015, the Dutch Ministry for Justice and Security indicated the government's general support of the Commission's plan to re-negotiate the Blue Card Directive. It stated that the "EU agenda for migration falls within the scope of the Dutch national strategy" (Dutch Ministry for Justice and Security, 2015; own translation). To improve the attractiveness of the EU as a migration destination for highly skilled non-EU migrants, the Ministry first highlighted the necessity to ease the process of getting a permit by installing a fast-track procedure, second, to facilitate the recognition of foreign qualifications and third, to enable intra-EU mobility which allows Blue Card holders to take up work in another member

state. More specifically, the ministry also recommended the directive should take into account the regulations of Dutch admission scheme for highly skilled migrants, which in the eyes of the government was very successful and effective. In contrast to the Blue Card, the national regulations do not require any educational qualifications from labour migrants, allow fast-track decision-making, require less documents to be submitted for the application and the permit has a longer period of validity (Dutch Ministry for Justice and Security, 2015).

Position on the Polity-Dimension

During the negotiations in the Council, the Netherlands was among the countries that supported the Commission's draft (Interview Rep_ES). After an initial reading of the Commission's proposal, the Dutch government took the view that a common EU policy on highly skilled migrants increases the attractiveness of both the EU and its member states as a migrant destination. It came to the conclusion that "this joint policy can be better regulated at EU level than by the individual Member States" (Tweede Kamer, 2016, own translation). Accordingly, the Dutch government was convinced that an EU scheme is better equipped to reach the policy goal of attracting highly skilled labour migrants than unilateral endeavours at the national level. Hence, the Dutch government considered the Netherlands to be still dependent on a harmonised scheme. When assessing the single provisions suggested by the Commission, the government concluded "that there are not more or stricter requirements than under the national highly skilled migrant scheme" (Tweede Kamer, 2016, own translation).

However, it demanded some discretion. Member states should retain the ability first to determine the quota, and by extension the number of third country nationals admitted under the Blue Card Directive, second, to choose more liberal admission conditions and third, to decide whether to implement labour market tests or not (Tweede Kamer, 2016). The Dutch government stated clearly that it does not want to burden employers and employees with more conditions and constraints than is currently the case (Tweede Kamer, 2016; Interview Rep_NL). Hence, it assured that in case it becomes apparent during the negotiations that the revised Blue Card scheme would be less flexible and effective and impose stricter conditions for highly skilled migrants to entering national labour markets than the current Dutch scheme, "the government will make every effort to ensure that member states can maintain their national schemes for highly skilled migrants" (Eerste Kamer, 2016, own translation).

Hence, while Dutch employers fiercely sought to prevent full harmonisation that would prevent the national knowledge migration regulation from existing in parallel, the government had a more lenient position on the polity-dimension. It was willing to accept full harmonisation as

envisaged by the Commission, provided that the admission conditions were comparable to the Dutch knowledge migration scheme. However, the Dutch government announced it would plead for optional harmonisation if restrictive pressures from other member states would prevent liberal provisions (Eerste Kamer, 2016; Tweede Kamer, 2016; Interview Rep_NL). Consequently, in the course of the negotiations, the Dutch government sought to liberalise the proposal further and defend it against restrictive attempts from other countries.

Position on the Policy-Dimension

The Dutch government welcomed the Commission's intention to include entrepreneurs into the scope of the directive, arguing that "especially innovative start-ups, are of great importance to our economies because they can empower job creation and innovation" (Dutch Ministry for Justice and Security, 2015; own translation). The Dutch government also suggested including a job seeking visa for non-EU high skilled migrants. Interestingly, the Dutch position on the inclusion of beneficiaries of international protection into the scope of the directive was ambivalent in the course of the negotiations. First, it requested "to keep the scope of the current directive, which excludes beneficiaries of international protection" (Council, 2016b, p. 38, f.n. 70), and at a later state, raised "reservations on the fact that beneficiaries of international protection cannot apply for an EU Blue Card in the member state that has granted them protection" (Council, 2017b, p. 32, f.n. 58). Moreover, the Dutch demanded that they should be able to apply for a Blue Card immediately and not only after a 12-month waiting period. In order to prevent the deletion of the clause, the Dutch suggested choosing an optional wording, by replacing 'shall' with 'may' (Council, 2017b, p. 32, f.n. 58).

The Dutch negotiation team took the view that member states "should be able to adopt more favourable provisions in relation to all articles concerning the admission conditions", arguing that "this would give MS sufficient flexibility to take into account the situation of national labour markets" (Council, 2016b, p. 27, f.n. 38). Regarding specific admission criteria, the Netherlands opposed any regulation that would demand member states to apply educational criteria, which would mean that highly skilled migrants would need to be in the possession of a university degree. The Dutch government was of the opinion that the business community itself is best suited to evaluate which skills and qualifications are needed to fill a certain job position. Hence, reaching a certain salary threshold is evidence enough that a third country national is making "an above-average contribution to the Dutch knowledge economy" (Tweede Kamer, 2016; own translation). Regarding the latter, the Dutch delegation team sought to reduce the upper limit of the salary threshold to 1.7 times the minimum wage, therefore decreasing the

discretion for member states to choose more restrictive salary thresholds (Council, 2017a, p. 33, f.n. 58). Furthermore, the Netherlands opposed the requirement that ‘relevant higher professional qualifications’ need to be related to the work in question (Council, 2016a, p. 30, f.n. 54). Also, the Dutch government took the view that assessing a person’s professional experience, is “even more difficult than the qualification level. And that takes much more time for the immigration service to assess an application and it will make the Netherlands less attractive for highly skilled than at this moment with our own national highly skilled admission scheme” (Interview Rep_NL). The government additionally argued that the necessary duration of a work contract as an admission criteria should be decreased from six months to 90 days (Council, 2016b, p. 28, f.n. 43). “For reasons of harmonisation and attractiveness of the EU scheme”, the Dutch delegation suggested that granting long-term residence to an EU Blue Card holder that resided legally and continuously within the territory of a member state should be obligatory, not optional (Council, 2017b, p. 58, f.n. 119). Hence, with this demand the Netherlands sought to increase harmonisation and render the provision more liberal.

Interim Conclusion

In the time immediately preceding the negotiations of the Revision of the Blue Card Directive, the indices plotting politicisation in the Netherlands (see *Figure 5* above) suggest a very strong domestic politicisation of both the EU and immigration. As a result, we would expect the Dutch government to be constrained by a politicised public that tends to hold more communitarian views than the elite. On the policy-dimension, the Postfunctionalist body of literature would assume that member states are more inclined to restrict admission conditions and rights of migrants to satisfy ‘anti-immigrant’ attitudes held by parts of the Dutch population, instead of responding to the liberal demands of employers. On the polity-dimension, Postfunctionalists expect member states to oppose or water down harmonisation and demand discretionary power over admission decisions in order to respond to Eurosceptic demands prevalent in parts of the Dutch society. Yet, in the case of the revision of the Blue Card Directive, this would not necessarily contradict the employers’ interests on the polity-dimension. They too were very much so critical of the Commission’s idea to fully harmonise admission schemes for highly skilled labour migrants, as employers were increasingly worried that a European scheme would replace the newly reformed and liberal national policy. Given that employers were to a great extent satisfied with the liberal scheme at the national level, they were of the opinion that the added value of a revised Blue Card, resulting from an ‘economies of scale effect’, would not outweigh the costs of a more restrictive scheme at the European level. We would therefore

expect a clash of mass public interests and employers' interests regarding the content of the directive on the policy-dimension (as employers are still interested in liberalising the EU admission scheme in order to render the EU and therefore the Netherlands more attractive to highly skilled labour migrations), but not with regard to the level of harmonisation on the polity-dimension (as both the politicised public as well as employers are sceptical of strong harmonisation).

Table 14: Revision of the Blue Card: Policy Position of Dutch employers and government,

Level of Politicisation: high			
Expected mode of responsiveness: Mass politics mode			
	Interests of Dutch Employers	Policy Position of Dutch government	Mode of preference formation
Perceived interdependence	medium	high	
Policy-dimension	Liberal: lower salary threshold	Liberal: expand the scope (incl. entrepreneurs and later beneficiaries of international protection), no educational or prior professional requirements, decrease salary threshold and necessary duration of work contract; obligatory granting of long-term residence	Client politics
Polity-dimension	Minimum or optional harmonisation	Full harmonisation if liberal; Minimum or optional harmonisation if restrictive European: obligation to grant long-term residence to an EU Blue Card holder	

Contrary to the Postfunctionalist expectations, however, strong politicisation did not incentivise Dutch governments to respond to communitarian interests prevalent in parts of the Dutch electorate. Instead, the Dutch government followed purely the 'Client Politics Mode'. A representative of Dutch employers assessed the cooperation between the employers' organisation and the Dutch government as follows:

"Right from the beginning, we were very much on the same line with the Dutch government and we were in touch on a regular basis with the Dutch ministries of social affairs and also with the Dutch representative here in Brussels. Our position was right from the beginning very clear and from the very beginning we were on the same side and the Commission knew that when they launched the proposal for the revision of the Blue Card Directive [...]. We have a good

understanding between the Dutch government and the employer organisations VNO NCW MKB Netherlands. No difference of opinion whatsoever” (Interview Employers_NL).

He continued to argue that lobbying for the employers’ specific interests “was not hard” because “it is very much known by the Dutch ministry” (Interview Employers_NL). Hence, despite high domestic politicisation of immigration and the EU, it did not require strong lobbying attempts on the side of the Dutch employers to push through their interests.

On the policy-dimension, the Dutch government demanded very liberal admission conditions that went beyond what the Commission and employers had suggested. Even more surprisingly, however, was the government’s position on the polity-dimension, because both the politicised public’s communitarian demands as well as the employers’ scepticism are generally expected to incentivise the government to oppose harmonisation. Instead, the government supported full harmonisation, arguing that the Dutch labour market is still dependent on a European concerted effort to increase its attractiveness for highly skilled labour migrants vis-à-vis countries such as the US and Canada. Yet, it stated that it would change its polity-related position towards less harmonisation, if it becomes apparent that the content of the directive would be more restrictive than the national Knowledge Migration Scheme. A representative of the Dutch government in turn, stated that the employers’

“only message to us is ‘try to keep our own national highly skilled admission scheme’. And we could reassure them that that’s indeed our point of view. And we will not accept an EU directive that’s less favourable for highly skilled than the current national scheme” (Interview Rep_NL).

Therefore, it promised to follow the employers’ demands when push comes to shove and the national competitive advantage in attracting highly skilled labour migrants via the national scheme is threatened due to restrictive pressures from other member states. Hence, politicisation did not have any moderating effect on the responsiveness of the Dutch government. Hence, identity and sovereignty concerns were neglected by the Dutch government and did not trump issue-specific interests of employers in times of strong politicisation. The employers’ scepticism towards full harmonisation at the EU level would have offered the Dutch policy-makers the leeway to water down harmonisation during the negotiations and sell it as a response to Eurosceptic attitudes of the public. Instead, the government supported the Commission’s endeavour enthusiastically and supported extensive harmonisation and liberalisation at the EU level. Hence, the government’s position did not change since the negotiations of the first EU Blue Card, despite the fact that since then, politicisation of the EU and immigration rose considerably.

5.3.5. The Employer Sanction Directive, May 2007

Levels of Politicisation

When the Commission proposed the Employers' Sanctions Directive in May 2007, politicisation levels in Figure 1 above suggest a low politicisation of the EU and immigration. Hence, we would expect the 'Client Politics Mode' to dominate the preference formation process of the Dutch government.

Employers' Interests

The Dutch employers' organisations VNO NCW and MKB did not position themselves prominently with regard to the Commission's proposal of the Employers' Sanctions Directive (Krop, Lange, & Tjebbes, 2009, p. 341). However, an interviewee of the VNO NCW stated that when it comes to sanctioning the illegal employment of irregular migrants, Dutch employers

“are looking for European level playing fields. And then it is important that the European level playing field is maintained at the European level and that the sanctions and the enforcement of regulations are the same everywhere for reasons of competition” (Interview Employers_NL).

Hence, in order to assure fair and equal competition between businesses and employers of different member states, the VNO NCW supported EU harmonisation to combat illegal employment of irregular migrants. Dutch employers therefore acknowledged the interdependence of EU member states in a single market, where companies of different member states stand in immediate competition with each other and where the tolerance of irregular employment in one member state would create a competitive disadvantage for business in other member states. The interviewee stated furthermore that the focus of attention for employers was not the financial or criminal sanctions themselves. Rather, the employers' organisation sought “to guide companies” by making “the regulations as easy to comply with as possible. That was the position from the beginning” (Interview Employers_NL). Hence, of importance was to design regulations in a way that they would be easy to understand and to comply with for employers.

Position of the Dutch Government

The Dutch state secretary of foreign affairs, Timmermans, outlined the government's position regarding the proposal in a letter to the second chamber in July 2007 (Tweede Kamer, 2007b). In general, the Dutch government was positive towards the proposal, arguing that due to the abolishment of internal border controls only a collective European approach could prevent irregular migration to the EU effectively (Tweede Kamer, 2007b). Hence, just like the

employers, the government acknowledged the interdependence of EU member states in a borderless Schengen Area. Yet, the Dutch negotiation team disputed some provisions as proposed by the Commission. Most importantly, it sought to soften financial sanctions, while at the same time reinforcing the administrative obligations for employers. Hence, the ratio of restrictive and liberal comments by the Dutch delegation was balanced.

The Dutch delegation took the view that member states should be allowed to maintain or introduce a broader definition of employment at the national level. Therefore, it welcomed the fact that a later version did not define employment by the payment of wages (Council, 2007b, p. 3, f.n. 8; Krop et al., 2009, p. 338). The Dutch delegation approved the proposed administrative fines for the illegal employment of irregular migrants, as the Netherlands had already had good experiences with it (Krop et al., 2009, p. 337). However, it criticized the suggestion that sanctions should go hand in hand with criminal prosecution of employers, whose necessity, according to Dutch experiences, is not clear. Hence, it requested that the directive should leave the decision, whether an employer who violated the regulations is held liable under criminal or administrative law, to the member states (Tweede Kamer, 2007b).

Furthermore, the Dutch government thought that the financial burden for employers is disproportionately high (Council, 2007c, p. 8, f.n. 28; Krop et al., 2009, p. 337). It argued that demanding employers to pay the costs of returning an irregular migrant is unfair, insofar that only the last employer of the illegal employee, and no other employers who might have employed him or her before, must bare the costs (Tweede Kamer, 2007b). Furthermore, the promise to pay back outstanding remunerations and to postpone return decisions can have an attracting effect on migrants. Therefore, demanding employers to pay the costs of the return should be optional for member states (Council, 2007c, p. 8, f.n. 28). Likewise, the implementation of other penalties such as the exclusion from entitlements of public benefits and from participation in public contracts should be optional (Council, 2007c, p. 12, f.n. 45). Like Germany, the Netherlands, demanded not to provide for the possibility of having several liable main contractors and sub-contractors (Council, 2007b, p. 12, f.n. 37; Tweede Kamer, 2007b, p. 6). Regardless of its attempts to soften the sanctions, the Dutch government criticised at the same time the provision that only those employers who accepted 'manifestly incorrect' residence permits would be subject to sanctions. As argued, this creates a loophole for employers to escape sanctions that would eventually weaken the intended overarching goal of the directive: the stringent fight against illegal employment (Tweede Kamer, 2007b). Hence, while Germany was keen on stressing that employers should in no way be obliged to substitute

the authorities' tasks of examining and verifying residence and work permits, the Dutch government was not hesitate to hold employers responsible and liable in this regard (Council, 2007c, p. 7, f.n. 24).

This indicates that the Dutch government sought to soften financial sanctions for employers but did not object to administrative obligations that the proposal would impose on employers. For instance, the Dutch government suggested that employers should be required, first, to communicate to the relevant authority both the date of beginning and the expiry of the work permit which the third country national is supposed to hold (Council, 2007c, p. 5, f.n. 18) and second, to keep the relevant documents, such as copies of residence or work permits for at least five years, instead of only for the duration of employment (Council, 2007c, p. 6, f.n. 19)

Regarding the Commission's provisions on the rights of irregular employed and exploited third country nationals, the Dutch comments are comparatively modest and vague. It solely expressed its disappointment that the shall-clause on granting residence permits of limited duration to third country nationals who have been subjected to exploitative working conditions and therefore cooperated in proceedings against the employer, has been replaced by a 'may-clause' (Council, 2007c, p. 20, f.n. 80)

Regarding the inspections of firms and work sites, the Dutch delegation held the position that inspections at work sites are essential. Compared to the German delegation, the Netherlands did not object to target for yearly inspections in general, but instead suggested as a compromise that the percentage of companies to be inspected should lie between 5 per cent and 10 per cent yearly (Council, 2007b, p. 16, f.n. 59).

Interim Conclusion⁴¹

With politicisation levels of the EU and immigration being medium low, the theoretical framework anticipates the employers' interests to dominate the preferences of the Dutch government. The policy position of Dutch employers with regard to the Employers' Sanctions Directive, however, was very vague. Employers sought to render the provisions easy to comply with. Other than that, employers were generally in favour of achieving a 'level playing field' among EU member states with regard to the sanctioning of employers, which would assure that companies in all member states would be competing under the same conditions.

⁴¹ Because the proposal is concerning irregular migration rather than legal migration, it is important to note, that in the case of this directive, the liberalisation of provisions does not mean to relax admission criteria, but to soften the employers' obligation and sanctions.

Table 15: Employer Sanction Directive: Policy Position of Dutch employers and government

Level of Politicisation: low			
Expected mode of responsiveness: Client politics mode			
	Interests of Dutch Employers	Policy Position of Dutch government	Mode of preference formation
Perceived interdependence	high	high	
Policy-dimension	-	<p>Liberal: no criminal prosecution of employers, employers should not pay the costs of returning an irregular migrant, main contractors should not be liable for their sub-contractors</p> <p>Restrictive: broader definition of employment; employers are liable for checking correctness of residence permits; employers should communicate date of beginning and expiry of the work permit, employers should keep the relevant documents for at least five years; obligatory limited residence permits for exploited workers cooperating in proceedings against the employer;</p>	Client Politics
Polity-dimension	full harmonisation	<p>full harmonisation</p> <p>national: demand employers to pay the costs of the return and the implementation of other penalties should be optional</p>	

The Netherlands' government's position on the proposal is very different from the positions with regard to legal labour migration. During the negotiations of the proposals discussed above, the Dutch government held a very clear position on the policy-dimension - it sought to either liberalise (in the case of the Blue Card, its Revision and the ICT Directive) or restrict admission conditions and rights (in the case of seasonal workers). In the case of the Employer Sanction Directive, the government's position was more ambiguous, as the delegation raised both restrictive and liberal comments (see Table 15 above). While it sought to weaken the sanctions for employers who were found guilty, it did not object to the administrative obligations that the proposal suggests for employers, such as the checking of whether residence permits are correct. It supported the harmonisation of national standards while, however, demanding national discretion with regard to certain provisions.

Despite the occasionally restrictive comments of the Dutch government, the behaviour can be understood as 'Client Politics Mode'. As demanded by the Dutch employers, the government sought to achieve a 'level playing field' at the European level that is roughly as restrictive as

the Dutch national regulations. Hence, it acted according to the interests of employers when it sought to establish a directive that would also increase the control and sanctions upon employers in other (mostly southern European) member states, who stood in direct competition with Dutch enterprises.

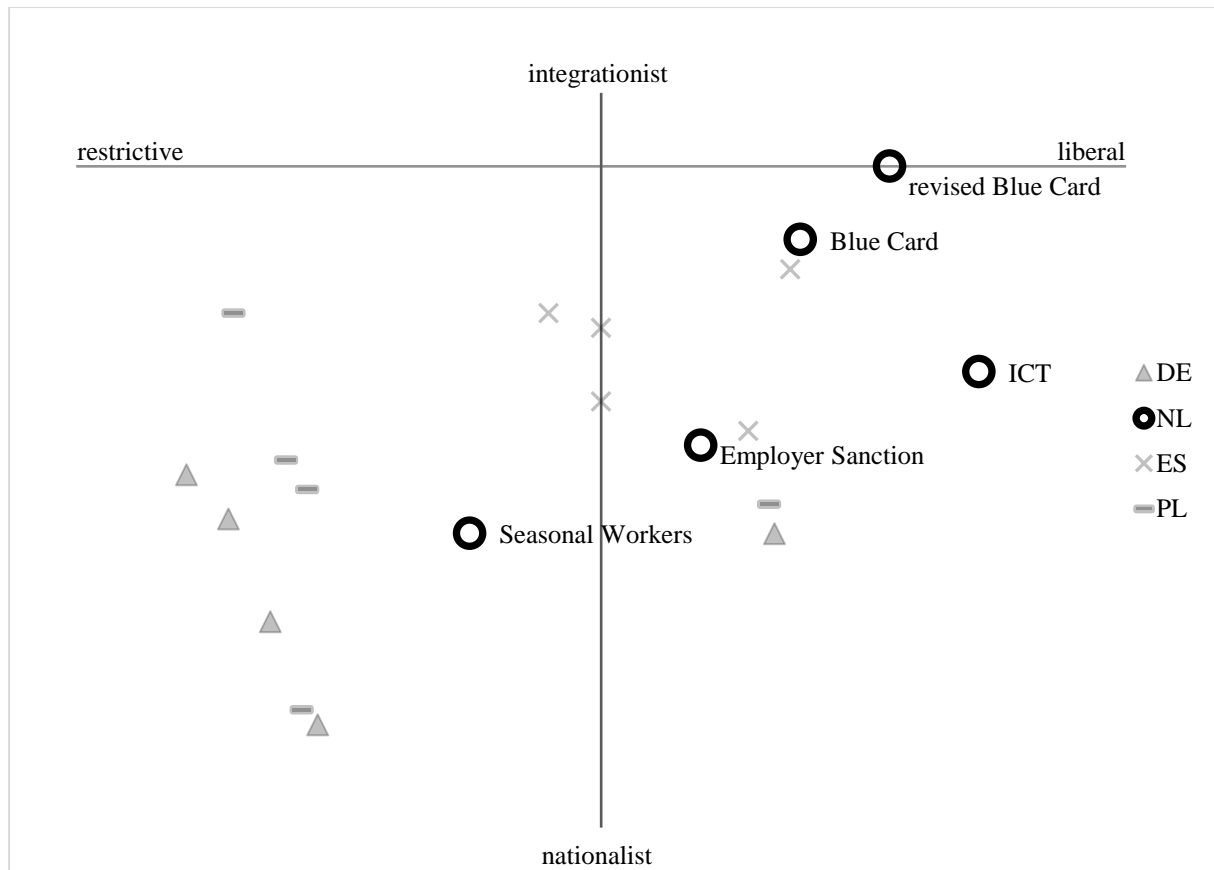
5.4. Conclusion

This case study has set out to test the Postfunctionalist challenge against Moravcsik's pluralist expectations by studying the preference formation of the Dutch government regarding five policy proposals in the field of EU labour migration. These positions are also reflected in Figure 6, which plots the policy positions of the Dutch government in a two-dimensional negotiations space. The governmental positions on the Blue Card directive, the Revision of the Blue Card and the ICT Directive lie in the lower right-hand quadrant of the negotiation space. It indicates a very liberal position on the policy-dimension and a somewhat national or neutral position on the polity-dimension. This corresponds with the analysis of the policy position of the Dutch government above. The findings suggest that the Dutch government predominantly sought to liberalise and harmonise national schemes for labour migration at the EU level. Only when facing restrictive pressures from other member states does the Dutch government plea for weaker harmonisation that allows more liberal admission schemes at the national level. A stark outlier is the government's position on the Seasonal Workers Directive. It is located in the lower left-hand quadrant of the negotiation space, suggesting a very national position on the polity-dimension and a rather restrictive position on the policy-dimension. It resembles the findings above; The Dutch government demanded weak harmonisation, restrictive admission conditions and limited rights for migrant workers.

Yet, what explains those differences between the policy positions of the Dutch government? The Postfunctionalist Theory of European Integration expects that the level of politicisation at the time of the negotiations has a moderating effect on the responsiveness of governments. In the Netherlands European integration and immigration are politicised according to the cultural-identitarian logic. Moreover, strong and established populist right-wing parties successfully mobilise communitarian attitudes prevalent in parts of the Dutch society along the lines of national identity and sovereignty. Accordingly, if politicisation of both the EU and immigration is strong, governments are more likely to respond to Eurosceptic and anti-immigrant positions, in particular due to electoral pressure from the political right. Liberal Intergovernmentalism instead posits that the variances in the positions derive from different issue-specific interests of

employers. If employers are seeking to liberalise admission conditions for labour migrants and perceive themselves to be strongly dependent on a harmonised European effort to achieve this goal, the government will represent those interests by demanding liberalisation and harmonisation at the EU level.

Figure 6: Dutch Policy Positions during the Council negotiations of EU labour migration policies in a two-dimensional negotiation space



Source: own illustration and data (see chapter 3.2.2)

In the case of the negotiations of the first Blue Card Directive in 2007 and the ICT Directive in 2010, the positions of the government reflect the perceived strong dependence of employers on a harmonised labour migration policy at the EU level (sub-case 1 and 3 in

Table 16). Dutch employers very clearly and repeatedly speak of ‘added value’ and ‘economies of scale effects’ when evaluating the necessity or desirability of EU harmonisation in the area of labour migration policies. This reflects the perceived strong dependence on an EU concerted effort. As a small country with a small language area, Dutch employers hope to create an ‘economies of scale effect’ when integrating into a comprehensive, harmonised EU admission scheme for third country nationals. The sovereignty costs inherent in the harmonisation at the EU level are considered as bearable, in the light of an EU-wide scheme – however only if the

latter is liberal enough. Both policy sub-cases support the expectations of Liberal Intergovernmentalism. However, the government's behaviour according to the 'Client Politics Mode' was also to be expected by this theoretical framework as the politicisation of the EU and the politicisation of immigration was low or medium-low, which provided the government with the 'permissive consensus' to represent the interests of business.

Table 16: Summary of Dutch Case Study

Sub-Case Study	Summary of key findings
1. Blue Card	Client Politics Mode: <ul style="list-style-type: none"> - Employers and government perceive issue-specific dependence to be high, expecting 'economies of scale' effects - Employer and mass public interests (low levels of politicisation) do not clash
2. Seasonal Workers Directive	Client Politics Mode: <ul style="list-style-type: none"> - Strong opposition of employers (low demand, 'burdensome regulations regarding workers protection'); Employers and governments perceive issue-specific dependence to be low - Employer and mass public interests (low levels of politicisation) do not clash
3. ICT Directive	Client Politics Mode: <ul style="list-style-type: none"> - Employers seek strong harmonisation and facilitated intra-EU mobility - Employers and governments perceive issue-specific dependence to be high - Employer and mass public interests (low levels of politicisation) do not clash
4. Revision of Blue Card	Client Politics Mode: <ul style="list-style-type: none"> - Employers oppose full harmonisation, fear for liberal scheme at the national level - Government perceives issue-specific dependence to be high; supports full harmonisation (if of liberal content) - Economic interests trump mass public interests (strong politicisation)
5. Employer Sanction Directive	Client Politics Mode: <ul style="list-style-type: none"> - Employers seek the same 'level playing field' in the EU, support harmonised sanctions for employers of irregular migrants. - Employer interests and mass public interests do not clash

However, in particular the policy sub-case of the Revision of the Blue Card suggests that the evidence for a moderating effect of politicisation of immigration and politicisation of the EU (sub-case 4 in

Table 16) on the responsiveness of the Dutch government is very weak. When the Commission proposed the revision of the Blue Card Directive in 2016, the indices suggest the strongest domestic politicisation of both the EU and of immigration in the period of investigation. The 'Mass Politics Mode' of preference formation would anticipate the Dutch government to

respond strongly to Eurosceptic and anti-immigrant attitudes prevalent among parts of the Dutch electorate that are mobilised by established right wing populist parties. The analysis of the governmental position above and the position in the negotiation space below, however, suggests that of all of the Dutch policy positions studied in this dissertation, the government's position on the Revision of the Blue Card is the most liberal and pro-integrationist. Hence, the communitarian interests, which would suggest a more restrictive and more nationalist position of the government, did not surface at all. The 'Client Politics Mode' prevails despite strong politicisation. Even though employers supported liberalisation at the EU level, they feared that the EU scheme would replace an even more liberal national scheme. In theory, this sceptical position of the employers would have provided the Dutch government the leeway to oppose harmonisation and sell it to the electorate as a response to public's communitarian concerns. Instead, the government openly supported the Commission's proposal and vehemently sought to liberalise *and* harmonise the Blue Card at the EU level. It only diverted from its polity-position once it became apparent that other member states would be too stubborn to liberalise the scheme. Hence, the restrictive pressure in the Council was too strong for the Dutch government to achieve the same level of openness at the EU level as already established at the national level. Accordingly, it requested the option to keep the national scheme in parallel.

As mentioned before, the position on the Seasonal Workers Directive does not correspond with the overall liberal and pro-integrationist preferences of the Dutch government (sub-case 2 in Table 16). Instead, the Dutch government demanded weak harmonisation and restrictive admission conditions and rights for seasonal workers. One might assume that this stark inconsistency can be explained by communitarian concerns related to sovereignty and identity of parts of the public and pressure from right wing populist parties. However, the low levels of politicisation at the time of the negotiations expect the 'Client Politics Mode' to prevail. And indeed, the restrictive and anti-integrationist position of the government can be best explained by looking at the interests of employers. The Dutch employers' organisation was extremely critical of the 'social agenda' pursued by the Juncker Commission. Juncker's ambitions were also mirrored in the Seasonal Workers Directive, in particular in the provisions related to the social protection of seasonal workers. On top of that, employers assessed that the 'added value' of a harmonised Seasonal Workers Directive is not worth the sovereignty loss. The domestic demand for seasonal workers was low, the expected 'economies of scale effect' absent and perceived dependence on a harmonised policy was therefore weak. Hence, once again, the Dutch policy position confirms the expectations of the Liberal Intergovernmentalism: member

states respond to the preferences of strong domestic interest groups when negotiating policies at the EU level. If employers deem a European policy as redundant or even harmful to their interests, the government will seek to limit harmonisation and restrict the admission criteria and rights of migrant workers during the negotiations at the supranational level. To signal its responsiveness to employers' demands, the government even took the radical and very rare step of voting against the directive at the end of the negotiations, despite the Council's 'consensus culture' (Heisenberg, 2005; Novak, 2013). It confirms the research by Bailer et al. (2015), which argue that opposition in the Council can be best explained by economic explanations, in particular following the domestic specialised interests (Bailer et al., 2015).

Hence, regardless of the level of politicisation, the preference formation follows in all cases of legal labour migration the 'Client Politics Mode' – by responding to the issue-specific interests of employers (sub-case 1-4 in

Table 16). These findings therefore broadly support the expectations of Moravcsik's Liberal Intergovernmentalism: governments support harmonisation if unilateral policies are not considered to be sufficient to reach a policy goal. In instances when the government raised sovereignty concerns, it did so to meet the demands of employers. When employers feared for a more restrictive scheme at the EU level, the government demanded national discretion that allows for more liberal conditions at the national level. To put it in a nutshell:

“Only if the directive on the EU level has an added value, then the Netherlands is in favour of such a Directive, and otherwise the Netherlands is against a European legislation” (Interview Rep_NL).

The Dutch case study also demonstrates the intense global competition for talents – not only between regions and global players such as the US and Canada, but also between member states. On the one hand, Dutch employers seek to integrate into a more comprehensive, EU-wide labour migration scheme to profit from 'economies of scale effects' when attracting (highly skilled) labour migrants to the Netherlands. On the other hand, however, employers demand to have the possibility of implementing or keeping more liberal admission conditions at the national level that allows the Netherlands to maintain its competitive advantage vis-à-vis other EU member states. Hence, an increasingly competitive dynamic does not only evolve between the EU and Canada or the US, but also within the EU. Hence, we can conclude that the Dutch preference formation corresponds strongly with Moravcsik's and Freeman's 'Client Politics Mode', reflecting the issue-specific dependence of employers on a concerted European effort to attract labour migrants to the Dutch labour market. Hence, economic interests trump identity

concerns when both come into play, despite strong politicisation and successful right-wing populist parties.

6. Case Study: Spain

The following chapter on Spain constitutes a minor case study of this dissertations. It examines the preference of Spanish governments regarding EU labour migration policies. I included Spain because European integration and immigration are not mobilised in cultural-identitarian terms but were integrated into the socio-economic dimension of the globalisation cleavage. The Postfunctionalist literature remains silent on what effect to expect from politicisation if it does not follow the cultural-identitarian logic. At the same time, as a ‘recent host country’, it shows an increasingly strong issue-specific dependence on a concerted European effort to both restrict and sanction irregular immigration (as in the case of the sanctions directive) as well as attract labour migrants.

6.1. Spanish Immigration History: from emigration to immigration

Due to its relatively young immigration history, but its quickly growing immigrant population, Spain can be classified as a ‘recent host country’ (Triandafyllidou & Gropas, 2007). Up until the early 1980s, Spain experienced mostly emigration to the Americas and to Northern European countries (in the course of the guest workers programmes). This emigration pattern changed and eventually reversed progressively in the late 1980s and early 1990s due to mainly three interrelated processes, which left an imprint on Spanish society and economy: first, Franco’s authoritarian regime fell and gave way to a relatively smooth transition to a liberal democracy in the late 1970s. Second, less than a decade later, Spain joined the EU in 1986 and was subsequently another “gateway to Europe” (Balch, 2010, p. 59) for non-EU citizens. Third, the Spanish economy experienced rapid growth, accompanied by increasing living standards on the one hand and declining birth rates on the other, creating a need for foreign workers to fill unqualified jobs that locals were no longer willing to do (Facchini & Lodigiani, 2014, p. 16; Finotelli, 2012, p. 4; Kahanec & Zimmermann, 2010; Moreno, 2004). Hence, the economic convergence between Spain and the old European member states and its geographical location at the southern European border made Spain an attractive destination for immigrants from Latin America, Northern African countries and later also from Eastern European countries, especially Romania. Accordingly, migration to Spain is mainly characterised by immigration into low-skilled sectors, such as agriculture, construction or domestic work (Balch, 2010, p. 63f.; Kahanec & Zimmermann, 2010, p. 5). Furthermore, as a Southern European member state it is experiencing high levels of irregular immigration and unauthorised entry to its territory via the

Strait of Gibraltar, the Spanish exclaves in Northern Africa, Ceuta and Melilla, and via the Canary Islands.

This surge turned Spain from a country of emigration into Europe's main immigrant destination (Finotelli, 2012, p. 4; Maas, 2010, p. 236). By the end of the 1990s, the number of foreign immigrants exceeded the number of emigrants and the foreign population in Spain almost sextupled between 2000 and 2011 (Balch, 2010, p. 59; Finotelli, 2012, p. 4).

From immigration through the “back door” to the “front door”

The ‘policy of the backdoor’ based on the toleration of irregular residence, informal employment and ex-post regularisations” (Finotelli, 2012, p. 6) was characteristic for the migration regime in Spain. Extraordinary processes of regularisation of irregular migrants took place six times between 1985 and 2005 (Balch, 2010, p. 67). The last regularisation in 2005 was the largest performed in Spain, with 690,679 people applying for regularisation and 561,241 being approved. It received great public attention and was subject to controversial debate in Spain as well as other European member states (Mosneaga, 2012, p. 179). While irregular migration and regularisation provided some of the workforce to cover labour shortages of a growing economy that the official admission schemes were not able to fill, it was not designed to match labour market needs effectively. Even though Spain has to offer several different schemes to recruit labour migration, “the official Spanish government policies have only played a very limited role in shaping the current composition of the immigrant population” (Facchini & Lodigiani, 2014, p. 17).

Spain's generous approach towards irregular migration and its strong dependence on the informal sector did not match the EU's security-driven emphasis on border control and immigration (Geddes & Scholten, 2016, pp. 176, 186). Hence, it was the Spanish EU accession that was the driving force behind the establishment of the Spanish migration schemes, which were supposed to manage immigration through the “front door” (Geddes & Scholten, 2016, p. 186). Therefore, one year before Spain joined the EU, the General Regime (Spanish: *Regimen General*) was adopted in 1985. It constitutes “a classic employment-based system according to which the actual recruitment of a foreign worker had to take place in the country of origin” (Finotelli & Kolb, 2017, p. 77). However, the process was so cumbersome⁴², that it was easier

⁴² The first hurdle to apply for a visa at the Spanish consulate in the country of origin was therefore a job offer from a Spanish employer. As a second hurdle, the Spanish labour market was also protected by a labour market test, to check if not a Spanish or EU citizen could fill the job position.

for employers to rely on irregular migrants instead of recruiting third country nationals legally (Finotelli & Kolb, 2017, p. 77f.; Geddes & Scholten, 2016, p. 186).

In 1993, the government established an annual quota (Spanish: ‘contingente’) for a collective recruitment of foreign labour force from countries that have signed bilateral agreements with Spain. It allowed companies to recruit group of workers to perform a specific type of job (Finotelli, 2012, p. 17). The quota was determined by the administration, relying on the report of the nation’s employment situation, and taking into account reports of labour shortages by employers and employers’ organisations. Again, the process was “complex and inefficient, leading to most foreign workers entering by other means” (Balch, 2010, p. 71). Up until its reform employers used the ‘contingente’ mostly to hire irregular migrants already residing in Spain or to recruit temporary workers for seasonal work (Finotelli, 2012, pp. 8, 20).

With an “increasing awareness among employers and policy-makers that more efficient entry channels were needed” (Finotelli, 2013, p. 333), in 2004 under the pressure of employers, the government enacted a reform of the General Regime to match labour market demands and supply more effectively (Finotelli, 2012, p. 12). Since then, labour market checks can be avoided, if the occupation is included in the shortage list of the “Catalogue-of-Hard-to-Find-Occupations” (Spanish: *Catalogo de ocupaciones de difícil cobertura*). The catalogue is published every three months by the government after negotiations with employers’ organisations and trade unions (Arango, 2013, p. 3; Finotelli & Kolb, 2017, p. 78). It is not limited to low-skilled work, but also lists open occupations for e.g. doctors and engineers (Finotelli, 2013, p. 334). It was not until the negotiations of the Blue Card Directive in 2007, that Spain established a national immigration scheme specifically targeted at attracting highly skilled labour migrants to the Spanish labour market (see chapter 0 on the Blue Card Directive).

Towards selective immigration: the competition state

In the wake of the financial and economic crisis that caused severe unemployment in Spain, the immigration law was reformed twice. First in 2011, the Royal Decree 557/2011 sought to restrict immigration to Spain by rigidly interpreting the national employment situation when granting work permits to labour migrants (Elorza Guerrero, 2017, p. 12). The second reform in 2013 constituted a paradigm change in the Spanish management of labour migration. Law 14/2013 for the support of entrepreneurs and their internationalisation goes beyond assessing the national labour market situation but implements a selective immigration approach. The Explanatory Memorandum acknowledges that ‘immigration policies are increasingly becoming

an element of competitiveness' (Law 13/2013, own translation). Therefore, selective immigration was seen as a means to favour economic growth and economic recovery to "internationalise the economy, boost the presence of foreign companies, attract talent and foreign investment to Spain, [...] and remove barriers to foreign entrepreneurship and investment in business projects with an impact on job creation" (Ministerio de Empleo Y Seguridad Social, 2015, p. 5). Hence, it was in the light of a severe economic crisis, coupled with increasing international competition for migrants, that Spain eventually moved from a general to an utilitarian immigration scheme, selecting migrants depending "on the contribution that immigration can make to the economic growth and economic recovery of the country" (Elorza Guerrero, 2017, p. 4). By doing so, Spain shows a great "openness and favourable predisposition towards the European framework" and "openly acknowledge the need of a European common legal framework to regulate migration" (Iglesias Sánchez, 2013, p. 68).

6.2. Independent and moderating variables

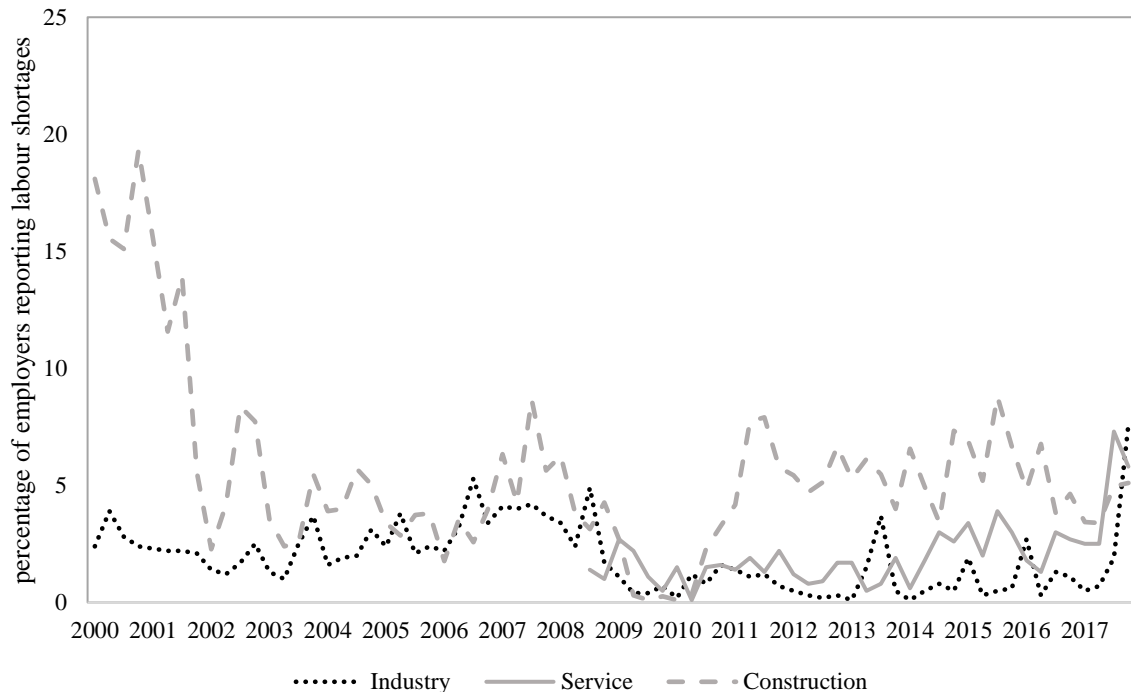
6.2.1. Independent Variable: Employers' Interests

In the 1980s and 1990s, at a time of recession and high unemployment due to economic restructuring, employers turned to (irregular) immigrant workers⁴³ mostly because "low wages were the only means for businesses to retain a competitive edge" (Bruquetas-callejo, Garcés-mascareñas, Morén-alegret, & Penninx, 2008, p. 4). In the early 2000s the construction sector experienced a rapid boom, whereby immigration played a role both as provider of labour as well as customers for the real estate sector. The increasing demand for workers in the construction sector can be clearly seen in Figure 1, which plots a peak in the labour shortages reported by Spanish employers from 1999 onwards. As a result, the numbers of both regular and irregular immigrants to the construction and tourist sector increased rapidly. Increasingly "leftist parties, NGOs and immigrant associations accused the government of benefiting the employers in the underground economy, by putting undocumented and, therefore, cheaper labour at their disposal" (González-Enríquez, 2014, p. 330). The government reacted to the

⁴³ Sanctions for the employment of irregular migrants were rarely enforced. Hence, the Spanish government followed a lenient approach, "because stringent implementation of labour market controls with the necessary levels of control and intrusion would impinge not only on migrants (who have lack political power) but also on employers (who tend to be well-organised and politically influential)" (Geddes & Scholten, 2016, p. 181).

criticism by turning towards more restrictive policies for both irregular and regular labour migrants.

Figure 7: Spain: percentage of employers reporting labour shortages as limiting production



Source: own illustration based on the BCI data (European Commission, 2020)

However, the structural demand for low- and medium skilled labour in the construction and tourist sector continued to be high (Bruquetas-callejo et al., 2008, p. 4) and employers and employers' organisations increased the pressure for more lenient admission policies for foreign workers. Hence, the reform of the 'General Regime' and the establishment of the 'shortage list' (the catalogue of hard-to-fill occupations) was a response to the employers' lobbying efforts, enabled also by a population that showed relatively little hostility towards foreigners and immigrants (Finotelli, 2012, pp. 11, 34). Hence, the establishment of the Spanish migration scheme can be understood as a clientelist mode of policy-making, where a lenient attitude of the citizens towards immigration allows governments to represent the interests of business.

At the same time, the establishment of the Tripartite Labour Commission of Immigration, composed of representative from employers, trade unions and the Ministry of employment and social security, further institutionalised the participation of employers in both designing and implementing labour migration policies. Employers are therefore involved in negotiating the quota and the content of the 'shortage list' (Bruquetas-callejo et al., 2008, p. 16; Finotelli, 2012, p. 15; Finotelli & Echeverría, 2017, p. 45). In addition, alongside inter alia NGOs, trade unions

and regional governments, employers' organisations are also participating in the Forum for the Social Integration of Immigrants, which must be consulted before any law on immigration or integration can be adopted (Serra, Mas, Xalabarder, & Pinyol, 2005, p. 25). As a consequence, the Spanish labour migration regime is strongly employer-oriented (Finotelli & Echeverría, 2017, p. 47).

At the time when the EU Blue Card Directive was negotiated in 2007, Spanish employers increasingly pressured for facilitated admission schemes for highly skilled. The 'Large Company Unit' decided upon in 2007 is therefore another example for the Spanish client politics as it was established in response to the lobbying efforts of employers and large companies (Finotelli & Echeverría, 2017, p. 45). Hence, employers increasingly shifted from immigration through the 'back door' to immigration through the 'front door' and successfully pressured in the mid-2000s the Spanish policy-makers to establish a labour migration regime that facilitates the employment of foreign workers and establish a working environment where employers are involved in the policy-making process and the implementation of policies. Only recently did the employers' preferences though shift from low-skilled labour migration to highly skilled labour migration. In general, Spanish policy-making in the field of labour migration can be described as client politics, in "which explicit entrepreneurial lobbying for a more open admission policy was not countered by any strong and vocal anti-immigration movement" (Pastore, 2014).

Hence, Spanish employers' organisation became actively involved in shaping national labour migration policies. However, this is not the case for legislation in the field at the EU level. For most of the directives discussed below, no statements or position papers of Spain's main employers' organisation, the Spanish Confederation of Business Organizations (CEOE), could be found. The apparent indifference of the organisation for EU legislation was also observed by representatives of the Spanish government in Brussels (Interview Rep_ES). Moreover, in the course of this research, I sought to conduct research interviews with representatives of the Spanish employers' organisation. However, representatives of the CEOE were unable to inform me about who is responsible in the organisation for labour migration policies at the EU level. The CEOE's representatives in Brussels referred me to the office in Madrid and vice-versa. The fact that there is no designated policy officer for EU migration policies supports the notion that the CEOE is generally indifferent about the legislative activity in this field at the EU level, or trusts the Spanish government to represent their interests anyways.

6.2.2. Independent Variable: Conflict Structure and Mass Public Interests

In Spain, like in other Southern European member states, the first societal transformation of the cultural revolution of the 60s and 70s, which had had a strong impact on the northern western European states, was non-existent in Spain, as it remained under the authoritarian Franco regime until the mid-70s. Hence, cultural-identitarian movements such as environmental, and women's movements, had no profound impact on the social foundations in Spain and other Southern European member states and were therefore also not mobilised by a New Left at that time (Hutter & Kriesi, 2019a, p. 15; Kriesi, 2016).

The second structural transformation, prompted by the exogenous process of globalisation and denationalisation, evident in the form of the opening up of national borders of which European integration is an important part of, coincide with the overthrow of the Franco regime. Hence, European integration was perceived positively and “was traditionally seen as a modernizing and democratizing force” (Hutter et al., 2018, p. 15). In addition, similar to Germany, any establishment of a New Right “was largely discredited by the authoritarian legacy” (Hutter & Kriesi, 2019a, p. 16).

However, not only the positive perception of European integration by Spanish political actors and citizens is rooted in the Spanish authoritarian legacy, also the relatively open attitude towards immigration, which prevented a broad mobilisation of the issue by anti-immigrant movements and New Right parties. In reaction to the Franco regime, the Spanish political culture was refashioned, which meant that “values associated with democracy were idealized, while those associated with dictatorship fell into disrepute. As a result, democratic, egalitarian, and universalistic values became the paradigm of social desirability” (Arango, 2013, p. 10). While the idealisation of those values faded over the years, they are still forming the political culture in Spain and restrain anti-immigrant attitudes (Arango, 2013). Also, citizens perceive and frame immigration not as a threat to the Spanish national identity. Nevertheless, the political culture leaves room for political parties to differ in their position towards immigration, with the left parties adopting an openly pro-immigrant stance, while the centre-right party following a more restrictive approach.

This authoritarian legacy and the limited impact of both societal transformations on the political conflict structure in Spain hindered social movements to mobilise European integration and immigration in cultural-identitarian terms, and instead were integrated into the economic dimension. Hence, the political space “remained essentially bipolar with cultural and economic issues amalgamated in one single left–right dimension” (Hutter et al., 2018, p. 10).

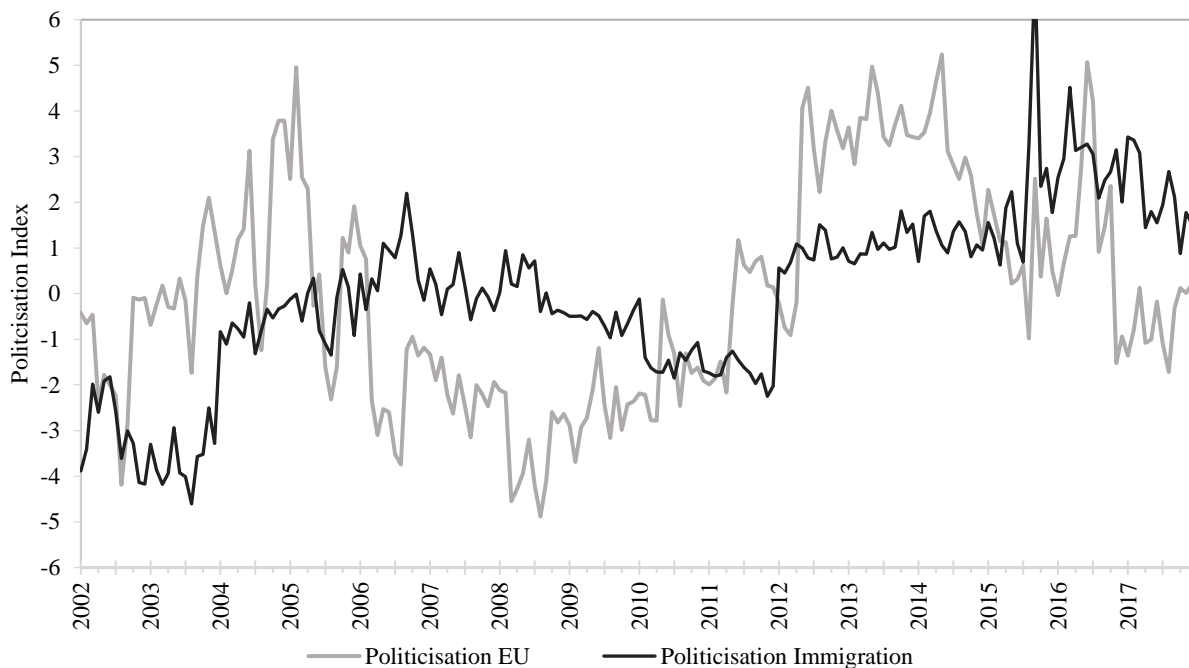
Euroscepticism, if existent at all, was mainly situated in the old communist left and was economically motivated (Kriesi, 2016). In addition, not only class, but also other traditional cleavages such as region, due to strong regionalist's movements mobilising in Catalonia and the Basque country, and religion prevailed strongly in Spain as in other Southern European member states. In Spain, similar to Poland, the party positions on religion are aligned with the economic left-right dimension, with the secular left challenging a conservative, religious right (Kriesi, 2016, p. 38).

The political and economic crisis in the last decade gave finally rise to the emergence of a 'New Left' in the form of Podemos, criticising the established political elites and calling for more social solidarity within the EU and between the member states. Hence, in Spain the Euro Crisis did not politicise Europe in a cultural-identitarian way as it happened for instance in the Netherlands and Germany, but "but rather replaced the economic left-right divide by a new divide related to European austerity" (Hutter et al., 2018, p. 20). Hence, unlike North Western European member states, the two societal transformations did not render the Spanish national political space two-dimensional. Issues, such as immigration or European integration, which are strongly charged and mobilised along cultural-identitarian terms in Germany and the Netherlands, are not salient in Spain or are mobilised according to a socio-economic logic. In addition, the legacy of the authoritarian regime discredited the 'New Right' in Spain, which is why, until recently, it did not gain foot hold in the Spanish party system.

Postfunctionalism attests politicisation a constraining effect on the ability of EU member states to proceed with an elite-dominated policy-making in Brussels. In times of heightened politicisation, concerns regarding national identity and sovereignty are supposed to surface more strongly in the policy preferences of member states. However, only if European integration and immigration run along the cultural-identitarian dimension of the globalisation cleavage. The scholarly literature remains silent on what to expect if both issues are politicised according to a socio-economic logic. Does politicisation then still constrain governments? Do economic considerations such as protection of the domestic labour force surface more strongly?

6.2.3. Moderating Variable: Levels of Public Politicisation

Figure 8: Politicisation Indices for Spain



Source: own illustration and data (see chapter 3.2.1)

According to the theoretical framework, politicisation is expected to moderate whether governments act according to the ‘Client Politics Mode’, representing the issue-specific interests of employers or the ‘Mass Public Mode’, and are steered by mass public interests.

The politicisation indices for Spain are plotted in Figure 8. The EU politicisation index starts off with negative values at the beginning of the investigation period but steadily increases to positive values 2004 and 2005, indicating very strong politicisation of the EU, as in particular the eastern enlargement and the European elections in 2004 and the failed constitutional referendum in 2005 received broad public attention. Afterwards, the politicisation index plunges into negative values, reaching the lowest levels of the investigation period in 2006 and in 2009. From thereon politicisation increased gradually, reaching again positive values in 2011 when the Greek bailout negotiations took centre stage in the course of the sovereign debt crisis. A profound surge of EU politicisation starting in Mai 2012 illustrates the intense public and political debate about the Spanish creditworthiness, related to the increase in the country’s borrowing costs, which led the government to submit an application for financial support for its banking sector to the Eurogroup. It was followed by an emergency meeting of the Eurogroup in June 2012. The politicisation index remains at a constantly high level, culminating in the highest value of the investigation period related to the European elections in Mai 2014. The

peak is followed by a brief drop in the politicisation index, a less distinct rise during the Schengen Crisis starting mid-2015, before the index shows a steep rise in the politicisation when the United Kingdom voted to leave the EU in June 2016.

While the politicisation index for immigration shows less pronounced ups and downs than the index for EU politicisation, the long-term trend across the investigation period is clearly positive. In the first 10 years of the investigation period shows weak to medium high politicisation. The peak in 2006 reflects the increased salience of immigration due to the growing number of persons who attempted unauthorised entry via the Canary Islands and increased reports about the inhuman conditions in the reception centres of the islands (Finotelli, 2012, p. 11). The generally low levels of politicisation as reported in the graph above broadly support the observations made by Arango (2013, p. 4), that “the immigration boom experienced during the 2000s was not accompanied by a surge in public concern, and the migration issue in Spain has not been politicized to any significant degree”. Neither the Madrid terrorist attack in March 2004, carried out by mostly Moroccan Islamist militants and which left nearly 200 people dead, nor the largest Spanish regularisation process of irregular migrants in 2005 triggered a pronounced surge in the politicisation index (Arango, 2013, p. 11). Hence, between 2004 and 2008 the index hovers around the investigation period mean, and declined further in 2009 as “the economy and unemployment rose up the list of perceived problems facing Spain” (Balch, 2010, p. 69). In the course of 2012, the politicisation index for immigration increases to slightly positive values again, which stems mostly from an increased polarisation in the opinion of citizens. From May 2015 the index increases and rises to the highest point of the investigation period of in September 2015 at the height of the Schengen Crisis. While the index levelled off slowly in the following years, the index remains at a relatively high level in 2016 and 2017.

I expect the effect of politicisation to be strongest when both EU and immigration are politicised simultaneously, and weakest in times when both are de-politicized and off the ‘public radar’. At the time when the EU labour migration directives were introduced by the Commission, EU politicisation was mostly relatively low. As the Revision of the Blue Card was proposed in the aftermath of the Schengen Crisis and the Brexit vote in the UK, politicisation of immigration and the EU was high. Hence, with relatively strong politicisation, we expect a strong moderating effect of politicisation on the preference formation of the Spanish government. However, as the outlined in the theoretical chapter and the subchapter above, both immigration as well as the EU are not politicised along socio-economic lines. Accordingly, the literature

does not expect a ‘constraining dissensus’ as in countries such as Germany and the Netherlands, where identitarian concerns prevail.

In the month preceding the introduction of the Seasonal Workers Directive and the ICT Directive, politicisation of immigration and politicisation of the EU was low. Hence, in both sub-cases we would expect the government to act according the ‘client politics mode and represent the interests of employers. In the months prior to the introduction of the proposals of the Employer Sanction Directive (May 2007) and the Blue Card Directive (October 2007), the EU was very weakly politicised, while politicisation of immigration was high and medium high. Hence, both sub-cases lie somewhere in-between, and we can expect the ‘Mass Politics Mode’ to dominate slightly.

6.3. The Spanish policy preferences regarding EU labour migration Directives

In the following subsections, I examine the extent to which politicisation moderates the responsiveness of the Spanish government to either the employers’ interests, following the ‘Client Politics Mode’, or the interests of the mass public when negotiating EU labour migration policies in the Council.

6.3.1. The Blue Card Directive, October 2007

The national context

All Spanish labour migration schemes (such as the ‘contingente’ and the shortage list) allow also highly qualified migration to the Spanish labour market. However, there was no admission scheme specifically designed for managing and attracting highly qualified migration that would also entail separate status and residence permit (Iglesias Sánchez, 2013, p. 69). Hence, immigration was still dominated by low- and medium-skilled migration (Kahanec & Zimmermann, 2010, p. 5). The procedure to acquire a work permit was the same for all potential labour migrants irrespective of their education attainments, years of professional experience or the stated salary in their work contract (Finotelli & Echeverría, 2017, p. 45).

However, in line with the general European ‘Zeitgeist’ (Finotelli, 2013, p. 340) of competing for ‘the best and brightest’, also Spain increasingly aspired to move away from low-skilled migrants and target highly skilled migrants instead (Cerna, 2013, p. 12). Yet, with no specific scheme in place, Spain was ranked as one of the most restrictive countries regarding the admission criteria for highly skilled migrants (Cerna, 2008, p. 13; Eisele, 2013, p. 20). Only at

the time when the Commission proposed the EU Blue Card Directive, change to open up the labour market specifically for highly skilled labour migrants was also encouraged nationally. Because negotiations of the EU Blue Card were proceeding too slow, Spain introduced the so-called 'Unit for Large Companies and Strategic Groups' (Spanish: Unidad de Grandes Empresas) by a ministerial agreement in 2007 (Finotelli, 2013, p. 334). It established a fast track recruitment channel for highly skilled workers to fill open job positions at large Spanish companies⁴⁴ without having to undergo a labour market test. The fact that Spain did not wait for the Blue Card negotiations to come to an end, shows the urgency with which Spanish employers of large firms were craving for rapid and flexible supply of highly qualified foreign workers in 2007 (Finotelli, 2012, p. 24, 2013, p. 333ff.). The Spanish employers, without whose lobbying efforts the Unit would not have been possible, welcomed then new and flexible admission channel, while Spanish trade unions were critical and also excluded from the negotiations of the Unit (Finotelli, 2012, p. 25; Finotelli & Echeverría, 2017, p. 45). Finotelli (2013, p. 340) claims that the establishment of the Unit "can be considered a major change after decades of low-skilled, often irregular, labour migration".

In the period from the Commission's proposal of the Blue Card in 2007 until the adoption in 2009, economic conditions in the Spain changed drastically; the economic boom that made unemployment rates fall steadily and attracted immigrants in the last decades to the Spanish labour market, came to a very sudden end in the last quarter of 2007, with the financial crisis making its way to Europe. Unemployment jumped from 8,2 per cent in the first quarter of 2007 to 17,9 per cent in the second quarter of 2009, and continued to rise steadily to 26 per cent in 2013 (Eurostat, 2020b). As immigrants are generally considered to be the most vulnerable groups in times of economic downturn, unemployment was especially high among the immigrant work force, rising from 11,2 per cent in 2006 to 27,4 per cent in 2009 (Arango, 2013, p. 6; OECD, 2019). As a result, also the reported labour shortages by employers, as plotted in Figure 7, dropped to (almost) zero in 2009 and 2010 across all sectors of the economy.

Consequently, the Spanish immigration trend of the last decades reversed, with both migrants and especially young graduates and high skilled Spanish citizens emigrating to Northern Europe, outnumbering immigration. The economic situation and high unemployment rendered "the issue of regulating access for qualified migration all the more socially and politically

⁴⁴ Companies must fulfil at least one of the following conditions if they seek to hire a third country national via the Unit: "i) have more than five hundred workers ii) have an international business volume of 200 Mio. euros per year in Spain or iii) not less of one million Euros of foreign investments in the three years preceding the application." (Finotelli, 2012, p. 25).

sensitive” (Iglesias Sánchez, 2013, p. 78). However, as a reaction to the crisis, Spain mostly focused on restricting the immigration to low and middle skilled occupations (Cerna, 2013, p. 16). The Spanish government, on consultation with trade unions and employers’ organisations, decided to reduce the national quota of the ‘Contingente’ by more than 90 per cent from around 15.700 job offers for third country nationals in 2008 to 900 in 2009, which reflects the changing priorities and policy preferences of the Spanish government in the course of the decreasing demand for employees during the economic crisis (Elmundos, 2008; González de Aguilar & Valbuena Reyero, 2011, p. 90). But also the number of requested workers on the catalogue of the ‘Unit for Large Companies’ fell to almost zero in the last quarter of 2011, while it contained 3000 job offers between 2007 and 2008 (González de Aguilar & Valbuena Reyero, 2011, p. 90).

Levels of Politicisation

After years of very strong EU politicisation in Spain, the politicisation index dropped to very low levels in 2006 and 2007. Hence, in the 12 months preceding the introduction of the Blue Card proposal by the Commission in October 2007, the EU was only weakly politicised. The index for the politicisation of immigration indicates a medium strong politicisation in the months before the negotiations. Hence, the sub-case lie somewhere in-between, and we can expect neither a ‘pure client politics mode’ nor a ‘pure mass politics mode’.

Employers’ Interests

The quick and simple establishment of the Unit illustrates, first, the urgent demand of Spanish employers for flexible access to highly skilled foreign workers. Second, it mirrors “the synergy between government and employer interests during a period of economic upsurge” (Finotelli, 2013, p. 344), which accelerated the policy change. Hence, in the years before the negotiations on the Blue Card Directive, certain Spanish employers and firms, in need “for a rapid supply of high-skilled workers for their businesses” (Finotelli, 2012, p. 24), were increasingly pressuring policy-makers to open up the Spanish labour market to highly skilled labour migrants. In particular the rapidly growing information technology sector was facing a shortage of qualified workers and suffering under the cumbersome recruitment procedures of the Spanish immigration schemes (Damborenea, 2007). Therefore, in 2007, employers’ organisation, especially in the tech industry, supported the Commission’s Blue Card proposal fully (Damborenea, 2007). Jesus Benaegas, at that time president of the Association of Spanish companies in electronics, information technology and telecommunications (AETIC), claimed that Europe has “to compete directly with the so-called green card” (cited in Damborenea, 2007;

own translation). Multinational companies cannot wait any longer. Hence, he perceived the Spanish dependency on a concerted European effort to be high and was certain that the “European proposal will be accepted in Spain” (cited in Damborenea, 2007; own translation). AETIC did not criticise the Unit’s admission criteria for highly skilled, but rather the high threshold regarding number of employees and investment volume that Spanish companies had to fulfil to be able to make use of the facilitated entry schemes for highly qualified migrants in the first place (Damborenea, 2007).

Preferences of the Spanish Government

With its current national immigration schemes unable to attract highly skilled labour, Spain was aware that in order to allow future economic growth, it needs to address the demands of the Spanish labour market more effectively and attract highly qualified workers, especially for the information and technology sector (ABC, 2007). Thus, Spain was one of the first member states to support the Commission’s Blue Card proposal (Cerna, 2008, p. 14, 2013, p. 13; El Dia, 2008; Ramirez, 2007), which Spanish Secretary of State for Immigration and Emigration Maria Consuelo Rumi Ibanez considered as “a strong message to third country nationals who want to come and work in the EU” (Europe Daily Bulletins, 2007c). The Blue Card Directive was in line with Spain’s recent national endeavours to redirect their immigration policies from asylum seekers, family members and low-skilled labour (ABC, 2007; Cerna, 2013; Europe Daily Bulletins, 2007c; Foltete-Paris, 2017) to “politically less contested migrants” (Cerna, 2013, p. 14). Spain was hoping that an EU scheme would be more visible internationally than their national schemes (Cerna, 2013, p. 14). This exemplifies the stronger dependency of Spain on finding a common European approach to attract high skilled labour.

Nevertheless, despite the general support for the Blue Card, the Spanish comments on the policy-dimension are rather balanced, neither throughout liberal nor restrictive. In general, Spain made only few comments, which mirrors the overall Spanish support of the Commission’s proposal. It demanded that intra-EU mobility and employment in a second member state should be possible after one year, instead of two years (Council, 2008b, p. 27, f.n. 83). Also, Spain proposed a more flexible and liberal wording regarding the equal treatment of Blue Card holders, by allowing access to the labour market after one year instead of two years (Council, 2008a, p. 23, f.n. 61). Furthermore, the proposed freedom of association should contain a reference to the right to strike (Council, 2008a, p. 27, f.n. 91).

Despite its general support for the Blue Card, the Spanish delegation suggested to restrict admission criteria by requiring higher education qualifications that lasted at least four instead of only three years. Moreover, it demanded to limit the initial validity of the Blue Card to at least one year, instead of two years (Council, 2008a, p. 16, f.n. 40; Eisele, 2013, p. 10). Regarding the Commission's proposal that unemployment in itself shall not constitute a reason for revoking an EU Blue Card, Spain demanded more discretion, by replacing the 'shall' with a 'may-clause'.

Interim Conclusion

The theoretical framework would expect the 'Client Politics Mode' to prevail the preference formation of the Spanish government; at the time of the negotiations, the overall politicisation of EU and immigration was medium-low. While the main Spanish employers' organisation CEOE did not take a position on the Blue Card Directive, the association representing companies of the tech industry spoke out in favour of the Blue Card, welcoming the advantage it would entail for Spain to compete in the 'global battle for talents'.

The full support of the Spanish government for the Blue Card mirrors the interests of employers in the tech industry. Spain supported the Commission's attempt to fully harmonised national admission schemes. In this sub-case, the expectations of the Postfunctionalism as well as Liberal Intergovernmentalism are not contradicting each other. Given that politicisation of the EU and immigration was low at the time, we do not expect a constraining effect on governments. Moravcsik's account of preference formation helps to explain the Spanish position on the Blue Card Directive; the dependence on a concerted effort to attain the national policy goal of attracting highly skilled labour migrants to the Spanish labour market was considered as high both by employers and the government. Hence, to increase the signalling effect of the scheme, Spain supported full harmonisation of national standards. To ease admission to the national labour market, Spain supported facilitated intra-EU mobility and access to national labour market. As expected by the literature on national conflict structure, comments by the Spanish government, such as the one related to the principle of equal treatment, are often motivated by socio-economic considerations. Concerns related to identity and sovereignty do not surface in the policy positions of the government.

6.3.2. The Seasonal Workers Directive, July 2010

The national context

With the economic situation worsening in Spain, unemployment among foreign born in Spain rose to 30,5 per cent in 2010, when the Commission introduced the proposal for the Seasonal Workers Directive and reaching 38,5 per cent in 2013 (OECD, 2019). Accordingly, also the labour shortages reported by the Spanish employers (as plotted in Figure 7) dropped to their lowest levels in the period of investigation.

The recruitment of seasonal workers in Spain is governed by the ‘contingente’. It allows the anonymous, collective recruitment of a group of third country nationals from countries that have signed bilateral agreements with Spain⁴⁵. The quota is determined by the administration, taking into account reports of labour shortages by employers and employers’ organisations. The procedure to select and hire candidates in the country of origin is mediated by public authorities, namely the Spanish Ministry of Labour as well as local employer services in the respective country of origin. The latter advertise the job positions in their countries and preselect candidates, which are then ultimately chosen in cooperation with the consulate functionary of the Ministry of Labour and a Spanish employers’ delegation. An employer has to employ at least ten seasonal workers to use the system, but agricultural employers’ organisation can also hire collectively. While it is generally open to all kind of labour recruitment, it has mostly been used to employ temporary workers for seasonal work. Seasonal workers can be hired for a maximum period of nine months (Finotelli, 2012, p. 20; OECD, 2008, p. 140).

Levels of Politicisation

After the index plotting EU politicisation in Figure 8 plunged to the lowest point of the investigation period in 2008, politicisation increased slowly in the following years. Still, in the month preceding the introduction of the Seasonal Workers Directive in July 2010, the EU was still very weakly politicised. At that time also the index plotting the politicisation of immigration is well below the investigation period mean, indicating low politicisation. Hence, given the weak politicisation of both the EU and immigration, the theoretical framework expects the ‘Client Politics Mode’ to prevail.

⁴⁵ In 2008, Spain had bilateral agreements with Columbia, Ecuador, Peru, the Dominican Republic, Morocco, Senegal and Romania and negotiated agreements with Mexico and Ukraine (OECD, 2008). Before 2001, employers could also hire third country nationals already residing in Spain (Balch, 2010, p. 79)

Employers' Interests

Again, Spanish employers did not position themselves regarding the Commission's proposal. Generally speaking, Balch (2010, p. 91) observes that Spain's main employers' organisation "CEOE has traditionally been in favour of increased migration for work purposes, especially temporary labour in areas and sectors where need is greatest and where employment patterns are more seasonal, such as agriculture, construction and tourism". Accordingly, the CEOE as well as the Spanish farmers' association COAG (Spanish: Coordinadora de Organizaciones de Agricultores y Ganaderos) increased the pressure on the government to facilitate and simplify admission mechanisms (Balch, 2010, p. 91; Laubenthal, 2012, p. 21). However, by 2010 when the Commission introduced the proposal, facilitating labour migration was naturally not the top priority for employers in Spain, given a worsening economic situation, high unemployment and therefore very low levels of labour shortages in Spain (Interview Rep_ES).

Policy Position of the Spanish Government

Spain generally supported the proposal, welcoming in particular the Commission's intention to facilitate circular migration (Council, 2010e, pp. 2, 16, f.n. 1, 57). However, the government was also not overly enthusiastic about the proposal. The share of comments seeking to liberalise or restrict the draft directive during the negotiations was balanced. In addition, it demanded flexibility and therefore national discretion regarding certain provisions, while seeking to increase harmonisation for others.

As Germany, the Netherlands and Poland, also Spain demanded scope discretion, meaning that the activities that qualify as seasonal work should be determined nationally (Council, 2011l, p. 4, f.n. 11). Also, the Spanish negotiation team was supportive of the German demand to clarify that the directive is not creating an entitlement for admission (Council, 2011l, p. 6, n. 19). Spain criticised that the list of admission criteria (Art. 5) aim at maximum harmonisation. Instead, it demanded that member states 'should be able to apply other criteria set out in national law, such as requirements for qualifications depending on the type of work' (Council, 2011l, p. 6, f.n. 19). It furthermore suggested two additional admission criteria, which allow member states to require the worker or employer 'to provide a guarantee of return to the country of origin, and to require the employer to organise and bear the costs of a travel of the worker from and to the country of origin' (Council, 2011m, p. 9, f.n. 26). In addition Spain sought to restrict and harmonise the grounds for withdrawal or non-renewal of the permit (Art. 7), by adding a provision that provides the possibility 'to withdraw or not renew the permit if the employer

does not meet his/her social security or tax obligations’, while at the same time member states *shall*, instead of *may* withdraw the permit for reasons of public policy, public security or public health (Council, 2011l, p. 9, f.n. 31).

In contrast, in another cases, the Spanish delegation sought to render admission criteria more flexible and liberal, for instance when it suggested making the provision, which requires that the seasonal worker has sufficient resources during their stay, optional (Council, 2011o, p. 9, f.n. 32). Spain argued that a work contract that guarantees the minimum wage for seasonal work should be sufficient (Council, 2011m, p. 11, f.n. 35). Likewise, with regard to Art. 12, outlining the provisions for re-entry and therefore enabling circular migration, Spain wished to be able to adopt more favourable provisions (Council, 2011m, p. 8, f.n. 24). In addition, the Spanish delegation was keen to increase the maximum period of stay from six to nine months within a calendar year, which should be applicable for all member states, and therefore harmonised at the EU level (Council, 2010e, p. 14, f.n. 53).

The Spanish delegation addressed the issue of equal treatment in two separate comments to the Council, criticising that the directive does not make the “principle of equal treatment applicable to working conditions, including pay and dismissal, as well as health and safety requirements at the workplace” (Council, 2011e, p. 15). It bears the risks of social dumping as foreign workers can be hired according to less favourable provisions and laws as citizens of other member states. To rectify this shortcoming, Spain submitted an amended proposal for Art. 16 that included the above mentioned working conditions (Council, 2011b, p. 3). The Spanish suggestion would strengthen the rights of seasonal workers and protect national citizens from unfair competition.

Interim Conclusion

Again, Spanish employers and employers’ organisation showed no particular interest in the EU’s legislative activity regarding seasonal workers. Given the deteriorating economic situation in Spain at that time and ensuing high levels of unemployment, employers reported very low numbers of labour shortages. Therefore, facilitating and harmonising labour migration policies was naturally not the top priority for employers.

Even though the Postfunctionalist literature remains silent about the constraining effects of socio-economic (rather than identitarian) politicisation, the low levels of politicisation at the time of the negotiations suggest that the Spanish government acts according to the ‘Client Politics Mode’ in any case. However, as employers did not position themselves regarding the

Seasonal Workers Directive, the prerequisites to speak of such a business-friendly policy making mode are absent.

The comments of Spanish delegation regarding the proposal were very balanced - neither outright restrictive nor liberal. Again, Spain extensively commented on the provisions related to 'equal treatment' suggesting a socio-economical (rather than cultural-identitarian) motivated criticism of the proposal. It can be seen in light of growing unemployment among both Spanish citizens and foreign-born living in Spain. Spain's suggestion sought to increase the rights of seasonal workers primarily to protect national citizens from social dumping. Hence, again, as expected by cleavage theory and Postfunctionalism, identitarian concerns do not surface in the Spanish policy position.

This moderate position of the Spanish government - neither suggesting a clearly supportive nor opposing stance - is likely to be related to both the absence of strong employers' interests in the proposal, low politicisation at the time of the negotiations and a general lack of mobilisation along cultural-identitarian lines.

6.3.3. The Intra-Corporate Transfer (ICT) Directive, July 2010

The national context

When the Commission introduced the proposal for the ICT Directive, intra-corporate transfers were regulated in Spain under the Organic Law 4/2000. The work permit was linked to the duration of work, but limited to one year, with the possibility of a one year extension and required at least one year of prior work with the company (Council, 2010a, p. 75). Before the EU Directive was adopted in 2014, the Organic Law 4/2000, and therefore also the regulations concerning intra-corporate transfers was reformed twice in Spain. First, in the light of severe unemployment, the Royal Decree 557/2011 sought to restrict immigration to Spain in general. Therefore, also the provisions for intra-corporate transferees were relatively restrictive. It did allow transfers for training purposes anymore, and the permit was only issued if the vacancy could not be covered by a person already residing in Spain (Camas Roda, 2018, p. 126; Ministerio de Empleo Y Seguridad Social, 2015, p. 21).

Levels of Politicisation

The ICT Directive was proposed at the same time as the Seasonal Workers Directive (see chapter 0). In the months preceding the introduction of the directives, the EU and immigration

was not politicised in the Spanish public. Hence, we can expect the ‘Client Politics Mode’ to dominate the government’s preferences.

Position of Spanish Government

On the one hand, the Commission’s endeavour to facilitate intra-corporate transfers of third country nationals within the EU coincided with a worsening economic recession and extremely high levels of unemployment in Spain – especially among immigrants (Arango, 2013, p. 1). On the other, it also corresponded with the new Spanish policy agenda, which sought to boost international mobility and to select potential migrants according to their contribution to the Spanish economy and economic growth (Camas Roda, 2018; Elorza Guerrero, 2017; Ministerio de Empleo Y Seguridad Social, 2015). Hence, the Spanish government hoped that the ICT Directive and intra-EU mobility “could generate significant advantages for Spanish enterprise” (Ministerio de Empleo Y Seguridad Social, 2015, p. 83). Hence, the directive was supported by the Spanish government as it allows for intra-EU mobility (Ministerio de Empleo Y Seguridad Social, 2015, p. 41). It was perceived as “a good excuse for Spain to extend even more the scope for accepting foreign professionals” (Camas Roda, 2018, p. 125).

Overall, the Spanish government sought to liberalise the directive’s provisions on the policy-dimension, while a few comments were also of restrictive nature. With regard to the scope of the directive, the Spanish delegation requested an optional wording that would allow member states to also accept applications of persons already residing legally in a member state (Council, 2010d, p. 20, f.n. 61). It supported the mandatory prior employment of at least 12 months with the undertaking before a worker can be transferred under the ICT Directive to a European member state. Later attempts by other member states to shorten the period of prior employment to six months were opposed by Spain (Council, 2011j, p. 16, f.n. 48). Similar to the Seasonal Workers Directive, Spain demanded to improve the equal treatment of transferees with national workers, by adding also ‘working conditions, including pay and dismissal as well as health and safety at the workplace’ to the list of rights that transferees enjoy (Council, 2011b, p. 3). Furthermore, on the polity-dimension, Spain opposed full harmonisation of intra-corporate transfer schemes. It preferred to keep more liberal, national mobility schemes in place, “whereby a TCN who will not be eligible under this directive could benefit from the mobility frame” (Council, 2011k, p. 9, f.n. 23).

Interim Conclusion

As outlined in Chapter 6.1, the legislation adopted in September 2013 in Spain implied a paradigm change. It formulated exceptions from the Organic Law 4/2000 and its restrictive reform in 2011 for selected immigrant groups, which are considered as an integral part of the internationalisation of the Spanish business. These groups of migrants *inter alia* include intra-corporate transferees. The reform pre-empted and transposed many regulations of the ICT Directive, that were still negotiated in the Council. Hence, the ICT Directive was to some extent already implemented nationally before it was even adopted at the EU level (Ministerio de Empleo Y Seguridad Social, 2015, pp. 12, 79). It illustrates the urgency with which the Spanish government sought to facilitate the immigration of ‘economically desirable’ workers. Camas Roda (2018, p. 137) maintains that the “Spanish legislation concerning intra-corporate transfer regulations for third country nationals was ground-breaking” because it “was a way of attracting talent and resources to Spain following the economic recession that began in 2008”, in the course of which “economic migrants were granted important privileges in both conditions of entry to Spain and in entry procedures”.

Compared to the Seasonal Workers Directive, that was negotiated in parallel (see chapter 0), the government was more enthusiastic about the ICT Directive. The Spanish ministry for Labour and Social Security concluded that during the negotiations “Spain has played a leading role for Europe” (Ministerio de Empleo Y Seguridad Social, 2015). However, once more, as Spanish employers did not take a position on the Commission’s proposal, we cannot speak of a ‘Client Politics Mode’. However, the directive fit the overall macroeconomic policy agenda of the Spanish government that sought to achieve economic recovery by internationalising the Spanish economy and labour market. Accordingly, the Spanish position on the ICT Directive reflects arguments related to economic growth and competitiveness, claiming that the liberalisation and harmonisation of labour migration is economically beneficial to the member states. But, time and again the socio-economic critique of European integration from the left shines through, as Spain stressed once more the importance of ‘equal treatment’ to protect national citizens from unfair competition but also to strengthen the rights of migrant workers. It hints at social-economic argumentation about fears of unemployment and falling wages (Hoeglenger et al., 2012).

6.3.4. The Revision of the EU Blue Card, June 2016

The national context

Only with the implementation of the Blue Card Directive in 2011 into national law, the concept of highly qualified immigration has been introduced to Spanish law. Before that, no differentiation has been made on the grounds of the qualification background of migrants. Yet, employers continued to rely on the ‘Large Companies Unit’ rather than the Blue Card to attract highly skilled foreign workers, because the application procedure is faster and it does not require labour market tests (Finotelli, 2013, pp. 334, 344). However, as the name suggests, the ‘Large Companies Unit’ is reserved for ‘large companies’, which meant that “the requirements set out for companies where particularly difficult to fulfil, since the number of employees or the investment volume had to be considerably high” (Iglesias Sánchez, 2013, p. 69f.). Also, immigration to Spain continued to be mostly low-skilled, with only 8.7 per cent of the Spanish migrant labour force having higher qualifications (Finotelli, 2013, p. 342).

As mentioned above, in the aftermath of the economic crisis, the Spanish legislation on immigration underwent a paradigm change, by going beyond the traditional labour market-oriented approach. The Spanish government adopted a deliberately selective immigration policy approach, which was explicitly geared towards economic growth and competitiveness. To this end, immigration policy was meant to “internationalise the economy, boost the presence of foreign companies, attract talent and foreign investment to Spain, de-seasonalise and diversify the Spanish tourism sector and remove barriers to foreign entrepreneurship and investment in business projects with an impact on job creation” (Ministerio de Empleo Y Seguridad Social, 2015, p. 4). At the time when the Revision of the EU Blue Card Directive was negotiated in the Council, the Spanish government had already successfully implemented Act 14/2013, which sought to put the paradigm change into effect. Inter alia, it exempted highly qualified migrants from the labour market test.

In the light of this paradigm change, also the transposition of the EU Blue Card Directive into national law underwent an evaluation. The relevant Spanish ministries disapproved some of the current Blue Card regulations, for instance the “use of an excessively rigid definition of highly qualified professional that required higher education qualifications” as well as the “establishment of excessively high wage limits: 1.5 times the average wage” (Ministerio de Empleo Y Seguridad Social, 2015, p. 20). Also, it was criticised that the Spanish legislators implemented the Blue Card more restrictive than required. Inter alia, the Spanish labour market

test, the so-called ‘National Employment Situation’ was still extensively applied, with only few exceptions, while other member states such as Germany abolished labour market tests for highly qualified migrants (Ministerio de Empleo Y Seguridad Social, 2015, p. 16). The main criticism was that Spain, unlike other member states such as the Netherlands, “opted not to establish a more favourable parallel national system, as permitted by the directive” (Ministerio de Empleo Y Seguridad Social, 2015, p. 20). Accordingly, “the system has not been effective in attracting talent as expected” (Ministerio de Empleo Y Seguridad Social, 2015, p. 20).

Levels of Politicisation

The Revision of the Blue Card was proposed in the aftermath of the Schengen Crisis and the British Brexit vote. After years of very strong EU politicisation due to the Euro Crisis, the graph shows a steady decline of politicisation from 2014 onwards. However, the values remain above the investigation period mean and strongly fluctuate around the time when the Commission introduced the proposal in June 2016. Similarly, also the index for the politicisation of immigration shows a strong increase and continuous fluctuation, mirroring the increasing salience of immigration in the public due to the Schengen Crisis. Hence, with relatively strong politicisation, we expect a strong moderating effect of politicisation on the preference formation of the Spanish government.

Position of the Spanish Government

Spain was very much in favour of the Commission’s proposal as it fit the government’s overall policy strategy to attract mostly high skilled labour migrants to the Spanish labour market (Interview Rep_ES). Spain was therefore also strongly involved in the negotiations and was among the main supporters of the Commission’s draft proposal in the Council. Mostly it sought to liberalise and harmonise admission conditions and defend them from restrictive attempts by other member states, such as Germany.

For Spain, the main added value of the Commission’s proposal was the aspiration to fully harmonise the Blue Card at the EU level, as it would render the system “more powerful at the international level” (Interview Rep_ES). The comment below by a representative of the Spanish government during the negotiations illustrates the perceived stronger dependency of Spain on a common, harmonised effort to attract highly skilled labour migrants:

“It is obviously more powerful a system that is harmonised, that is common for the 27, 28 European countries, than rather fragmented in 27 or 28 different systems. And that was the most obvious reason for the directive. Almost all of the EU countries have their national systems. Ours

was working well but was of the size of Spain and our labour market; was not EU size. When you are playing in the international arena with the US or even Canada, [...] you really need to have size and be attractive. And this goes through having a European system. That was our view” (Interview Rep_ES).

Hence, as the interviewees reported, Spain prioritized the goal to fully harmonise the Blue Card, including facilitated intra-EU mobility; other details, such as skills requirements and salary levels were of secondary importance (Interview Rep_ES). It reflects the perceived strong dependence of Spain on a common EU policy to attract highly skilled labour migrants.

Regarding admission criteria, Spain took a very liberal stance. It strongly supported the Commission’s attempt to replace the concept of ‘highly qualified worker’ with ‘highly skilled worker’, the latter being defined as someone who either graduated from university (three year programme) *or* have at least three years of relevant professional experience (Council, 2017b, pp. 2, 4, f.n. 1; 7). Against the restrictive pressure from other member states, Spain opposed any changes and insisted on the original more liberal and harmonised wording of the proposal: first, the lower threshold of three years of professional experience should be applicable and second, recognising professional experience as a substitute for higher education should be mandatory for member states (Council, 2017c, p. 26, f.n. 34). It argued that especially in the information and technology sector, employees often do not acquire formal educational qualifications (Interview Rep_ES). Furthermore, Spain supported lower salary requirements in general (Council, 2016b, p. 30, f.n. 49; Interview Rep_ES), and a lower upper threshold in specific, arguing that 2.0 times the average gross annual salary in the Member State concerned is too high (Council, 2017b, p. 36, f.n. 71). Also, it demanded a faster reply to applications, at the latest after 60, instead of 90 days of the date of submission (Council, 2016b, p. 40, f.n. 74). The necessary duration of a work contract should be lowered from six months to 90 days (Council, 2017a, p. 31, f.n. 54). Regarding the rights of Blue Card holders, Spain demanded a rapid and flexible system that allows access to the Spanish labour market in case of job change without an authorisation, hence, supporting a more liberal and generous design (Council, 2016a, p. 45, f.n. 92). Spain opposes the Commission’s attempt to fully harmonise admission schemes for highly skilled labour migrants. According to Spain, parallel national schemes should be allowed, however, only if they entail more liberal provisions than the EU Blue Card.

Only few comments sought to restrict the directive. Spain insisted that labour market test should be at least optional for member states to implement. In addition, it opposed to include beneficiaries of international protection as well as family members of EU citizens into the scope of the Directive (Council, 2016b, pp. 25, 38, f.n. 32, 70).

Interim Conclusion

Time and again, Spanish employers' organisation did not comment on the Commission's proposal. Hence, we cannot conclude that Spain acted according to the 'Client Politics Mode'. However, we can conclude that it did not act according to the 'Mass Politics Mode'. At the time of the introduction of the proposal, domestic politicisation of both the EU and immigration were high. In countries with a politicisation according to the cultural-identitarian logic, we would expect governments to respond to anti-immigrant and Eurosceptic position that prevail in parts of the public. However, as outlined in Chapter 2.2.1, politicisation in Spain follows a socio-economic logic. Hence, it is expected that cultural-identitarian arguments do not surface in the government's policy positions on labour migration policies at the EU level.

And indeed, despite strong domestic politicisation of both the EU and immigration, and despite the lack of pressure from employers' organisation, the Spanish government fully supported the Commission's proposal. Even more so, Spain was one of its main advocates in the Council. It perceived the Spanish dependence on a common EU effort to attain its policy goal of attracting highly skilled labour migrants to be very high. The arguments brought forward by representatives of the Spanish government were therefore economically motivated, putting facilitated labour migration at the EU level into the context of economic growth and international competitiveness.

The Postfunctionalist literature remains silent of what to expect in times of high politicisation in a country dominated by mostly a socio-economic opposition to European integration. The findings suggest that socio-economic concerns related to the protection of the domestic work force do not mirror in the policy positions of governments any stronger in times of heightened politicisation – even at times of economic hardship and high unemployment. Instead, the sub-case study suggests that the 'Zeitgeist' of neoliberal competition states has found its way to Spain and - under growing international competition for the 'best and the brightest' - Spain follows its lead despite the lack of employers lobbying efforts.

6.3.5. The Employer Sanction Directive, May 2007

The national context

Due to the economic boom following the country's accession to the EU and a thereto related growing demand for unskilled, cheap labour in the construction, agriculture and tourism sector (see Figure 7), irregular immigration to Spain mushroomed. This development was not

effectively inhibited by the Spanish government. The literature names mostly two reasons for this lenient Spanish policy approach towards irregular migration and illegal employment:

First, Spanish policy-makers were lacking the political will to control and sanction employers effectively; the black economy in Spain was of great importance in certain regions and sectors. Many businesses could only survive in an increasingly European and international competitive environment if production and therefore labour costs would remain low. Hence, employers were dependent on cheap labour provided by irregular migrants (Moreno, 2004, p. 23). A common argument is therefore that the Spanish government did not dare to impinge strict labour market controls on well-organised and influential employers, which linked their competitiveness to the country's economic growth. Second, the Spanish state was considered to not only lack the will but also the capacity to effectively control immigration and the labour market. It did "not possess the administrative infrastructure and bureaucratic capacity to maintain a more active or stringent immigration policy – helping to explain why there are so many irregular migrants in Spain in the first place" (Maas, 2010, p. 238). Therefore a common approach to handle irregular migrants and their illegal employment in Spain was to carry out extraordinary processes of regularisation (Balch, 2010, p. 67). By doing so, the Spanish government ignored appeals from other EU member states, "which claimed that Spain was harming efforts to develop a more robust common European policy concerning irregular immigration" (Maas, 2010, p. 237).

At the time of the negotiations, employers' sanctions in Spain were regulated in Article 36 and 50 of Ley Orgánica 4/2000. It foresaw fines between 6000 and 60.000 Euro for each irregular migrant hired by an employer. Sanctions in Spain are treated as administrative fines, and only under severe aggravating circumstances as a criminal offence that can also lead to imprisonment (Cinco Dias, 2008; European Commission, 2007a). While employer sanctions were developed already in the 1990s, they were rarely enforced (Balch, 2010, p. 71). It was also observed at that time, that employers often got sanctioned year after year, without changing their habit of hiring irregular migrants (European Commission, 2007a, p. 84).

Levels of Politicisation

In the months prior to the introduction of the proposal of the Employer Sanction Directive in May 2007, the EU was not strongly politicised in the Spanish public. The index for the politicisation of immigration shows medium-high politicisation, but remained below the standard deviation 1, and therefore does not qualify as 'high levels of politicisation'. Hence, the

directive lies somewhere in-between, and we can expect neither a ‘pure client politics mode’ nor a ‘pure mass politics mode’.

Position of the Spanish Government

Spain, among other Southern European “countries under the biggest pressure from clandestine migration” (EUobserver, 2008), fiercely supported the Commission’s proposal against the resistance of a group of Central and Northern European member states, including Germany. Spain advocated in particular for tough criminal penalties against employers of irregular migrants (EUobserver, 2008). The then Spanish Minister for Labour and Immigration, Celestino Corbacho took the view that those needed to be penalised that take advantage the most from the phenomenon of irregular migration and exploit them the most – in that case the employers (Cinco Dias, 2008; Deutsche Presse-Agentur, 2008; EFE Newswire, 2008). Therefore, the illegal employment of irregular migrants needs to be treated and sanctioned as a crime. He supported the harmonisation of minimum sanctions as well as a minimum level of yearly inspections of employers at the EU level (EFE Newswire, 2008).

During the negotiations, Spain showed a strong presence by supporting the Commission’s proposal and defending it against the attempts of other member states, who tried to soften sanctions and the obligations of member states and employers. The Spanish delegation was eager to toughen sanctions against employers and to strengthen the rights of the exploited, irregular migrants. Spain proposed to expand the scope of the directive to also include third country nationals that entered the member state regularly, but who were employed illegally (Council, 2007b, p. 2, f.n. 2, 2007a, p. 6, f.n. 6). At the same time, however, it wished to exclude private individual employers from the scope (Council, 2007c, p. 23, f.n. 92). Spain furthermore suggested stepping up the obligations of the employers, as they should be required to report both the date of beginning and expiry of the work permit to the competent institutions (Council, 2007c, p. 5, f.n. 18). Taking into account the financial weakness of illegally employed irregular migrants, Spain supported the Commission’s provision that employers should not only be obliged to pay back outstanding remunerations to the former employee, but also cover the costs for other outstanding contributions, such as taxes, social security contributions and administrative fines (Council, 2007b, p. 9, f.n. 24).

Also, the Spanish delegation suggested providing explicitly for the opportunity to renew the residence permit for the illegally employed, especially if the third country national has been granted access to the labour market. In addition, before the return of an irregular migrant is

enforced, they should be granted enough time to introduce the back-payment claim (Council, 2007c, p. 20, f.n. 82).

Interim Conclusion

Despite the lack of data on the interests of Spanish employers in the proposal, we can conclude that the Spain took a position in the Council that most employers would naturally oppose; Spain sought to toughen sanctions against employers, increase their obligations and strengthen the rights of irregularly employed. Hence, we cannot speak of a ‘Client Politics Mode’ of preference formation. While the overall policy goal was to fight irregular migration, the Spanish government sought to strengthen the rights of irregular migrants vis-à-vis the employers. Hence, socio-economic concerns related to European integration and immigration dominate the preferences of the Spanish government, despite only medium-strong levels of politicisation. Spain’s strong support for the proposal can be derived from the strong presence of illegally employed irregular migrants in Spain and its wish to ‘download’ more effective and restrictive legislations from the European to the national level.

6.4. Conclusion

Spain was included in this dissertation as a minor case study. It is of interest to examine whether the expected clash between mass public interests and client politics plays out equally in Spain as in the ‘usual suspects’ of older immigration countries of North Western Europe, where European integration and immigration are politicised along the lines of national identity and sovereignty and employers have developed a solid interest for labour migration from outside the EU. By contrast, Spain differs from Germany and the Netherlands (the main case studies) in two regards: firstly, in Spain, due to a different national conflict structure, the EU and immigration are predominantly politicised along socio-economic, rather than cultural-identitarian lines. Accordingly, Postfunctionalism expects politicisation *not* to unfold its constraining effect on the Spanish government (as it would be expected in a country with an opposition to the EU and immigration motivated by cultural-identitarian topics). Secondly, unlike most North Western European member states, Spain’s experience with immigration is relatively young. As a ‘recent host country’, “Spain’s emerging immigration regime has been characterised by weak immigration regulation, insufficient immigration programmes and cumbersome recruitment procedures” (Finotelli, 2013, p. 333). It begs the question what role employers play not only for the design of national immigration policies, but also for the

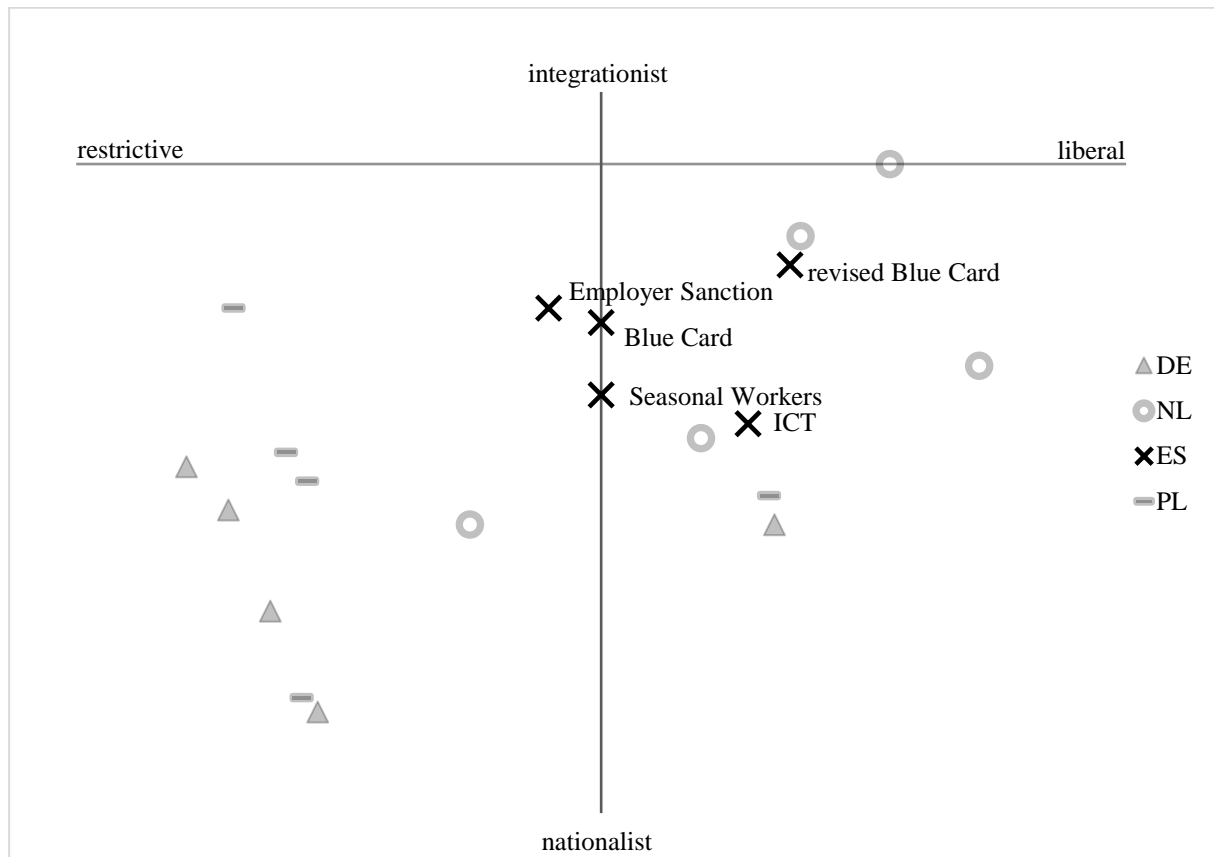
government's preferences regarding legislative proposals at the EU level. One could expect that employers seek to download more effective and liberal immigration schemes from the EU to the national level or increase the international visibility and attractiveness of Spain as a country of immigration by establishing a more comprehensive EU-wide labour migration scheme.

Spain's policy positions regarding the five draft directives are plotted in a two-dimensional negotiations space in Figure 9. The preferences of the government on the policy-dimension (reflecting the preferred content of the directives) lie scattered between the lower-left and the lower-right hand quadrant and are therefore neither clearly restrictive nor liberal. In the case of the Employers Sanctions Directive restrictive comments slightly outweigh liberal comments, whereas the governmental positions on first Blue Card Directive, and the Seasonal Workers Directive are perfectly balanced. The positions regarding the ICT Directive and in particular the revision of the Blue Card are predominantly liberal. On the polity-dimension, the Spanish government sought to increase national discretion the most regarding the Seasonal Workers Directive and the Employer Sanction Directive, while it did less so in the case of the Blue Card Directive, its Revision and the ICT Directive.

The analysis of this case study set out to explain what determines these positions in the two-dimensional space. Does the government respond to the interests of Spanish employers, acting according to the 'Client Politics Mode', as expected by Liberal Intergovernmentalism? Does strong politicisation of the EU and immigration unfold a constraining effect on policy-makers, prompting them to respond to mass public interests more strongly? And what do mass public interests involve if opposition to the EU is motivated by socio-economic rather than identitarian concerns?

The 'Client Politics Mode' cannot explain the Spanish policy positions regarding EU labour migration policies. Whereas Spanish employers are strongly and actively involved in national labour migration policy-making, they pay only scant attention to legislative processes in this policy field at the EU level. The main employers' organisation CEOE did not show any interest in the directives proposed by the Commission (Interview Rep_ES). Only in certain instances did smaller employers' organisation, such as the AETIC representing the tech industry, position themselves regarding a proposal. Due to the lack of interest in EU legislation on the side of Spanish employers, we cannot speak of a 'Client Politics Mode'.

Figure 9: Spanish Policy Positions during the Council negotiations of EU labour migration policies in a two-dimensional negotiation space.



Source: own illustration and data (see chapter 3.2.2)

However, we can examine whether the government reverts to the ‘Mass Politics Mode’ instead. In a country where European integration and immigration are mostly politicised along the lines of national identity or sovereignty, we would expect the government to use the leeway provided by an ‘ignorant business’ to serve the communitarian interests prevailing in parts of the electorate. In that case, the position of governments would move clearly into a more restrictive and nationalist direction as anticipated by the ‘Mass Politics Mode’. However, as argued by cleavage theory, this is not the case in Spain, where globalisation and related issues such as European integration and immigration are contested according to a socio-economic distributional logic and are mostly voiced by the old communist left. As a result, concerns related to national identity and sovereignty do not surface in the Spanish policy positions. Moreover, as “cultural and economic issues amalgamated in one single left–right dimension” (Hutter et al., 2018, p. 10), criticism levelled against proposals was often motivated by both the attempt to protect migrant workers from exploitation *and* the domestic labour force from social dumping. Hence, the findings seem to support the assumptions made by the cleavage literature; socio-economic motivations, especially those of the economic left, explain Spanish scepticism

towards European integration better than identarian concerns. However, the findings do not suggest that socio-economic concerns surface stronger in times of heightened politicisation. Rather, they are a constant concern of the Spanish government throughout almost all policy positions. One could even argue that socio-economic concerns from the economic left are slowly replaced by socio-economic concerns from the economic right, despite stronger politicisation of the EU; the economic right pictures facilitated and utilitarian labour migration management in the light of economic growth and international competition, as argued in the following paragraph.

Interesting are the Spanish positions regarding the ICT Directive and the Revision of the Blue Card. In both cases, the government was among the main advocates of the Commission's proposals and supported harmonisation and liberalisation. How can we explain this policy position if not by growing pressure from Spanish employers and employers' organisations? As posited by Moravcsik, secondary to the specific interests of producers, also broader macroeconomic preferences of the government can determine the policy position (Moravcsik, 1998, p. 447f.). While the initial reaction to the economic crisis in Spain was to curtail immigration to the national labour market in 2011, Spanish policy-makers soon changed their tactic. Instead, Law 14/2013 for the support of entrepreneurs and their internationalisation implied a paradigm change in the Spanish labour migration management, acknowledging that 'immigration policies are increasingly becoming an element of competitiveness' (Law 13/2013, own translation). Hence, Spain increasingly adapts an 'utilitarian' concept of labour migration management, which is already prevailing in most North Western European member states. In doing so, selective immigration is perceived as "an issue of economy, linked to the competitiveness of Spanish companies and, ultimately, of Spanish economy itself". The Spanish government considered "boosting international mobility" (Ministerio de Empleo Y Seguridad Social, 2015) as a means to attain its overall macroeconomic policy goals: economic growth and recovery. To do so, Spain believed that a harmonised EU scheme is "more powerful at the international level" (Interview Rep_ES). Accordingly, arguments in favour of the proposals were economically motivated, seeing labour migration at the EU level primarily as a tool to achieve economic growth and international competitiveness. Hence, despite the lack of employers' lobbying efforts, the Spanish government perceived to be strongly dependent on a concerted European effort to achieve its macroeconomic policy goals. Accordingly, the Spanish governments seek to 'download' liberal immigration policies from the European to the national level, but more importantly, it strives to increase the signalling effect of a European concerted effort to attract more labour migrants.

Thus, it might be both the lack of employers' enthusiasm for EU legislation *and* the lack of cultural-identitarian motives that explain Spain's balanced positions (neither clearly restrictive nor liberal) of the Spanish government regarding EU labour migration policies. Hence, I suggest two tentative conclusions deriving from the Spanish case study: First, as expected by the Postfunctionalist body of literature, this case study has found that the politicisation of the EU and immigration has no constraining effect on governments in a country where the EU and immigration are politicised according to a socio-economic logic. Consequently, concerns related the protection of migrant workers and the domestic labour force from social dumping reflected more often in the Spanish preferences than identitarian concerns. In 2019, the newly emerging right-wing populist party VOX won seats in the general elections to the Spanish parliament. It suggests that both the Spanish conflict structure and political space are under change (Vidal & Sánchez-Vítores, 2019a, p. 94). It remains to be seen whether these changes influence the moderating effect of politicisation and trigger a constraining effect on the Spanish government. Do more cultural-identitarian rather than socio-economic concerns surface in the policy positions of Spanish governments in times of heightened politicisation, if policy-makers are under pressure from a newly established challenger party on the conservative pole of a (potentially newly emerging) cultural dimension?

Second, the overall Spanish support of the Commission's endeavours in the field of labour migration does not derive from the pressure of employers. Instead, it seems to be the overall neoliberal 'Zeitgeist', which incentivises the Spanish government to follow suit and join the international competition 'for the best and the brightest'. While Spanish employers support the government's efforts at the national level (and remain silent with regard to EU legislation), the government believes that Spain is best placed to compete in a highly competitive environment, if it integrates into a more comprehensive, European labour migration scheme. Hence, as expected by Moravcsik, perceived strong dependence on a European policy increases the likelihood of a member state to support integration. However, it is not the pressure from employers, but the government's broader macroeconomic policy goals that explain the preferences of the Spanish government. Hence, we see a 'Client Politics Mode without Clients'.

7. Case Study: Poland

The second minor case study examines the preference formation of Polish governments. Poland was included in this dissertation for two reasons: first, for the research field of immigration policy-making it is of profound importance to go beyond the ‘classic immigration countries’ of North Western Europe when analysing and understanding the preferences of member states with regard to the harmonisation of EU labour migration policies. Do governments and employers of an ‘emigration country in transition’ see an ‘added value’ in the management of labour migration policies in general, but even more so at the European level? And how does this shape the government’s policy position? Second, the Postfunctionalist literature begs the question how the moderating effect of politicisation plays out in a country where the national political conflict structure is fundamentally different to North Western European member states. The communist past prevented the establishment of a strong socio-economic dimension in the political space. Instead, “it is the cultural dimension that has divided the Polish political space since the regime transition. In other words, the public debate has been mainly culturally defined” (Sałek & Sztajdel, 2019, p. 189).

7.1. Polish immigration history: immigration in times of emigration

Even though in-migration to Poland has increased steadily since the beginning of the 1990s, the Polish immigration population is still marginal and the migration balance continues to be negative (Fihel, Kaczmarczyk, & Stefanska, 2012, p. 78). This is even more the case since the country’s EU accession in 2004, which initiated a new wave of Polish labour emigration to the labour markets of North Western European member states between 2007 and 2009 (Iglicka & Ziolek-Skrzypczak, 2010, p. 23f.; Triandafyllidou & Gropas, 2007; Unterschütz, 2016, p. 161). Hence, the country is widely considered as a “country of emigration” (Segeš Frelak, 2015, p. 53), or a “country in transition”, as it is “caught in-between sending, receiving and being a place of transit for migrants” (Triandafyllidou & Gropas, 2007, p. 363). An estimated 92,574 non-European residence-card holders lived in Poland in 2009, accounting for 0.24 per cent of the whole population, which is the lowest share in an EU member state. Most non-European migrants in Poland originate from its eastern neighbouring countries with a similar cultural background, notably Ukraine, Belarus and Russia, but also from China, India, Vietnam, Turkey and Armenia (Iglicka, 2008; Iglicka & Ziolek-Skrzypczak, 2010, p. 3; Unterschütz, 2016, p. 161).

Top-down Europeanization of Polish immigration law

In particular after the fall of the Berlin Wall, changing the political, economic and social situation in Poland drastically in the late 1980s, migration to and from Poland was in flux⁴⁶. Consequently, Poland became a transit-country for citizens of the USSR's successor states while at the same time emigration from Poland continued, with steady short-term and permanent migration of Poles to Austria and Germany (Menz, 2009b, p. 216; Zogata-Kusz, 2015).

Given the low numbers of immigrants and asylum seekers arriving in Poland and the lack of economic demand to change this, migration management was naturally rudimental and not the top priority of Polish policy-makers (Iglicka, 2007, p. 263; Unterschütz, 2016, p. 162). Instead, Polish immigration policies were to a great extent shaped in a top-down manner, imposed by requirements and obligations related to the Polish accession to the EU or stemming from unilateral pressure from the neighbouring country Germany (Menz, 2009a, p. 225). Whereas the “pace of legislative change was relentless” (Menz, 2009b, p. 229) in the field of immigration around the date of Polish accession to the EU in 2004, it was mostly related to citizenship, visa requirements, residence, borders, asylum and refugee policies (Menz, 2010; Unterschütz, 2016, p. 164; Zogata-Kusz, 2015, p. 80). In contrast, “little legislative activity ensued regarding labour migration” up to 2009 (Menz, 2009b, p. 232).

Economic growth and labour shortages

Menz (2009b, p. 232) observes that during the first decade of the century, “the Polish government does not yet see the need for specific high skill labor recruitment programs unlike other Central European governments, [...] and neither is there much appetite among employers”. Accordingly, the legislative change in 2004, referred to as the ‘Act on Promotion of Employment and Institutions of the Labour Market’ facilitated labour market access for only a small group of workers, such as language teachers, pharmacists and foreign spouses (Menz, 2009b, p. 232).

In 2006, however, with labour shortages increasingly surfacing, Poland permitted workers from Russia, Belarus and Ukraine to work in the Polish agriculture sector for three months within a six-month period, without having to acquire a work permit. This simplified employment

⁴⁶ Both in- and out-migration in most communist countries of the former USSR was highly restricted. A wave of Polish political emigration was triggered by a repressive martial law introduced in 1981 (Gropas & Triandafyllidou, 2007, p. 361).

procedure for foreign workers from the East, based solely on ‘employer’s declaration of intent to employ a foreigner’ (hereafter referred to as ‘employers’ declaration’), has been extended to all sectors of the economy in 2007, to six months within a period of 12 months in 2008, and to citizens from Moldova and Georgia in 2008 and 2009 respectively (Fihel et al., 2012, p. 71; Iglicka & Ziolk-Skrzypczak, 2010). As this short-term labour migration was primarily directed towards seasonal work, it mostly attracted low-skilled workers to the Polish labour market (Zogata-Kusz, 2015). In addition, the government reformed and simplified “the multi-staged, time-consuming and quite expensive” application procedure for third country nationals that require a work permit (Kępińska & Kindler, 2014, p. 274).

Around the same time, a more comprehensive political debate about (labour) immigration started off in 2007. Several factors triggered it: First, the Commission’s (failed) attempt to initiate a general directive on economic migration at the European level in 2005 raised the issue of labour migration and reverberated at the domestic level. Second, whereas the global economic crisis slowed down the Polish economy for a short time⁴⁷, Poland did not plunge into a severe economic recession, unlike most other EU member states (Iglicka & Ziolk-Skrzypczak, 2010; Sałek & Sztajdel, 2019, p. 197). The combination of out-migration of mostly young Poles, declining birth rates and continuing economic growth implied a labour shortage at the domestic labour market, which employers increasingly reported to be the main impediment to economic growth (Kaczmarczyk & Okólski, 2008, p. 618). In addition, employers reported first positive experiences with the simplified ‘employers’ declaration’ to fill labour shortages of low skilled workers.

The Polish government responded with a first comprehensive governmental strategy entitled ‘The Polish migration policy: current state of play and further actions’. It is considered as “one of the most important events concerning Poland’s migration policy” (Fihel et al., 2012, p. 70). It was elaborated by the inter-ministerial committee on migration, established in 2007 to advise the prime minister on issues of immigration and integration. The document was approved by the Polish Council of Ministers in 2012. Regarding labour migration, the document advised policy-makers that “Poland should be more open for immigrants with skills needed on the Polish labour market and not causing integration problems” (Fihel et al., 2012, p. 70).

⁴⁷ The annual gross domestic product (GDP) growth leaped from 4.9 per cent in 2008 to 1.8 per cent in 2009 (Worldbank, 2020).

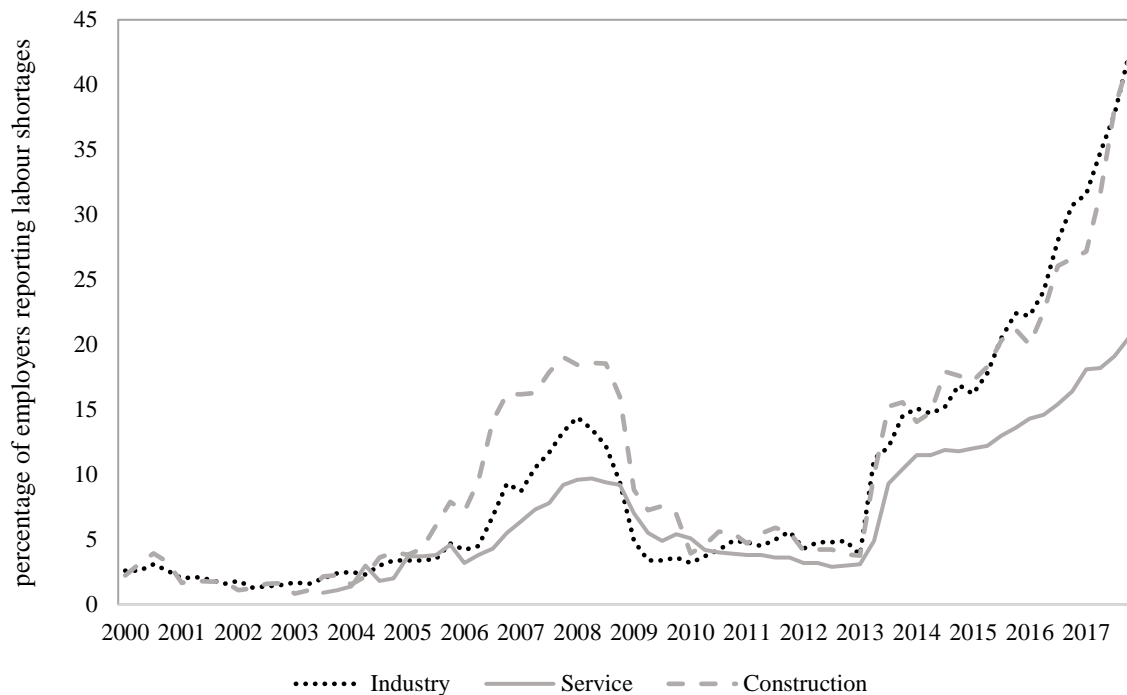
While the issued work permits more than doubled from around 18.000 in 2008 to 44.000 in 2014, the main entrance scheme for labour migrants continued to be the ‘employers’ declaration’, targeting citizens from the neighbouring countries for low skilled work (Unterschütz, 2016, p. 163). Hence, “beliefs, expressed at the a century that the region was smoothly transitioning into an immigration region appear to have been premature” (Maroukis, Iglicka, & Gmaj, 2011, p. 138).

7.2. Independent and moderating variables

7.2.1. Independent Variable: Employers’ Interests

As symptomatically for an economy in transition, the Polish labour market was characterised by high oversupply of labour. Consequently, unemployment reached 20 per cent in 2002. However, numbers dropped quickly with the accession to the EU in 2004 and plunged to 7.1 per cent in 2008, both due to large-scale out-migration and an increase in the employment rates from 44 to 50 per cent between 2004 and 2008 (Eurostat, 2020b; Kaczmarczyk, 2019, p. 95). Due to the steady growth of the Polish economy, coupled with an aging population, labour shortages increasingly surfaced. Figure 10 below plots labour shortages reported by employers of different sectors of the Polish economy. It clearly illustrates the growing demand for labour after the EU accession in 2004, mostly in the construction sector, but increasingly also in the producing industry and the service sector. During the short-term economic slowdown in the context of the financial and economic crisis starting in 2009, also the reported labour shortages experienced a steep drop in 2009, before sharply rising across all sectors to unprecedented levels from 2013 onwards. It is not surprising therefore that employers increasingly identify labour shortages as the main obstacle for economic growth (Kaczmarczyk & Okólski, 2008, p. 618).

Figure 10: Poland: percentage of employers reporting labour shortages as limiting production



Source: own illustration based on the BCI data (European Commission, 2020)

As stated by Menz (2009b, p. 198), the Polish business lobby was only “slowly though steadily developing an appetite” to liberalise labour migration. Yet, labour shortages can no longer be ignored. Accordingly, Polish employers are increasingly pushing Polish policy makers to facilitate access to foreign labour forces and, as a consequence, are by now actively involved in shaping migration policies at the national level (PKPP Lewiatan, 2008b). Hence, the employers’ lobbying efforts are considered an important factor for the development of Polish labour migration policies (Kicinger & Kloc-Nowak, 2008, p. 23; Zogata-Kusz, 2015, p. 172). Zogata-Kusz (2015, p. 201) posits that the introduction of the national ‘employer’s declaration’, for instance, was initiated and later reformed due to increasing pressure from Polish employers. She observes “the existence of client politics in the Polish labour immigration policy” (Zogata-Kusz, 2015, p. 201). The ‘employer’s declaration’ though targets at low skilled migration. At the time when the Commission developed its Policy Plan on Legal Migration in 2005, the Polish employers’ appetite to facilitate labour migration of high skilled workers at the national or European level was still in its infancy (Menz, 2009b, p. 232). Furthermore, the EU’s legislative activity in the policy field receives only scant attention by Polish employers’ organisations. Only one of the four organisations positions itself actively with regard to the Commission’s policy proposals, while the others remain silent or are indifferent.

The landscape of Polish employers' organisations is highly fragmented, "organizationally divided and lacks organizational coherence, but shares an ideational lacklustre attitude towards new instruments in labour migration" (Menz, 2010, p. 42). More generally, the influence of Polish business organisations is considered to be relatively low, as also corporatist structures are less developed than in other member states (Jahn, 2016). In the Tripartite Commission, replaced in 2015 by the Social Dialogue Council, four employers' organisations are represented: Business Centre Club, Polish Crafts Association (Polish: Związek Rzemiosła Polskiego), Employers of Poland (Polish: Pracodawcy RP) and Polish Confederation of Private Employers 'Lewiatan' (Polish: Polska Konfederacja Pracodawców Prywatnych Lewiatan) (Polakowski, 2013, p. 7).

7.2.2. Independent Variable: Conflict Structure and Mass Public Interests

In general, as in most post-Communist member states of the EU, the Polish party system is poorly institutionalised. Parties have weak roots in the society and "have remained largely unconsolidated, whether that applies to party elites, their electorates or the relationship between the two" (Markowski & Tucker, 2010, p. 526). Moreover, it is argued that cross-cutting cleavages such as religion and region continue to play an important role and hinder the institutionalisation of the Polish party system. The same token, Polish parties enjoy programmatic flexibility to mobilise on newly emerging structural conflicts (Kriesi, 2016, p. 38)

As outlined in the theoretical chapter, the drivers of politicisation vary across member states as they originate from different national political conflict structures. Due to the fundamentally different historical developments related to the communist legacy in Central and Eastern Europe, the two societal transformations had no (or a very different) impact on the Polish political conflict structure and on Polish party competition compared to member states in Northern and Western European. The cultural revolution of the 1960s and 1970s that triggered a value change and subsequently the first transformation of the cultural cleavage in North Western European countries had no significant impact on the Polish society and political conflict structure. At that time, Poland was still under the communist regime, which prevented social movements to manifest freely. The second transformation in the form of the denationalisation process was paralleled by the political and economic transformation of post-Communist Poland. Hence, the process of globalisation was seen in the light of the overthrow of the Communist regime and political independence from the former Soviet Union.

The socio-economic dimension deriving from the class conflict, structuring the political space in North Western European member states into the traditional left-right divide, is weak in Poland as in most Central and Eastern European member states⁴⁸. Despite the high salience of economic issues linked to the market reform in the years to follow, parties and politicians relied on messages relating to national identity, culture, democratisation and westernization rather than socio-economic issues (Coman, 2017, p. 250). One prominent explanation of the Polish bias towards identity politics and the absence of economic disputes claims that historically, the “attention to the question of national identity is deeply rooted in Polish society. Therefore, the parties’ rhetoric is simply a reflection of this inherent theme” (Sałek & Sztajdel, 2019, p. 202). Another account instead focuses on the Communist legacy, arguing that Polish parties seek to prove their disassociation from socialism and therefore enjoy only a narrow programmatic leverage on the economic dimensions. Mainstream parties on the left and the right converged on a position supporting liberal market reforms. Accordingly, they seek to delineate themselves from each other on cultural, rather than socio-economic terms⁴⁹ (Coman, 2017, p. 251; Hutter & Kriesi, 2019a, p. 19; Sałek & Sztajdel, 2019, p. 192).

Moreover, the Polish market transformation brought forth losers and winners (Coman, 2017, p. 250): the former include elderly people and farmers in the rural area that struggled to adopt the new political and economic reality, while the latter encompasses well-educated, younger Poles, living in urban areas with a better economic climate (Sałek & Sztajdel, 2019, p. 192). Hence, the economic cleavage can be better perceived as a regional cleavage separating the winners in the urban centres from the losers in the rural areas of Poland (Sałek & Sztajdel, 2019, p. 192). Therefore, the conflict between winners and losers of the system transformation has been “incorporated into a broader identity-related conflict, which had been subdued since 1989 and resurfaced forcefully” (Sałek & Sztajdel, 2019, p. 198) in the beginning of the 2000s. The importance of the socio-economic dimension for the structuring of the political space in Poland continues to be of limited relevance (Coman, 2017, p. 250; Fomina & Kucharczyk, 2016, p. 66; Sałek & Sztajdel, 2019, p. 209). Instead, cultural issues dominate and divide the Polish political

⁴⁸ As Lipset (1994, p. 15) noted in the immediate years after the fall of the Communist regime, that in most Central and Eastern European countries “[i]ronically, the capitalist-worker conflict is as yet the weakest, perhaps because a capitalist class and an independently organized working class do not yet exist”.

⁴⁹ In addition, the classical left-right division also coincides with the parties’ position regarding the influence of the church on Polish politics and society. While the left is secular or even anticlerical, the parties on the right have strong ties to the Catholic Church. Accordingly, “major conflicts between the left and the right have been associated with the clash between church and state – conflicts concerning abortion, religious education in schools and the place of religious symbols in the public space” (Sałek & Sztajdel, 2019, p. 191).

conflict structure and party system (Kriesi, 2016, p. 38; Sałek & Sztajdel, 2019, p. 189). ‘New cultural’ issues, such as cultural liberalism and nationalism, are highly salient and politicised during recent election campaigns⁵⁰.

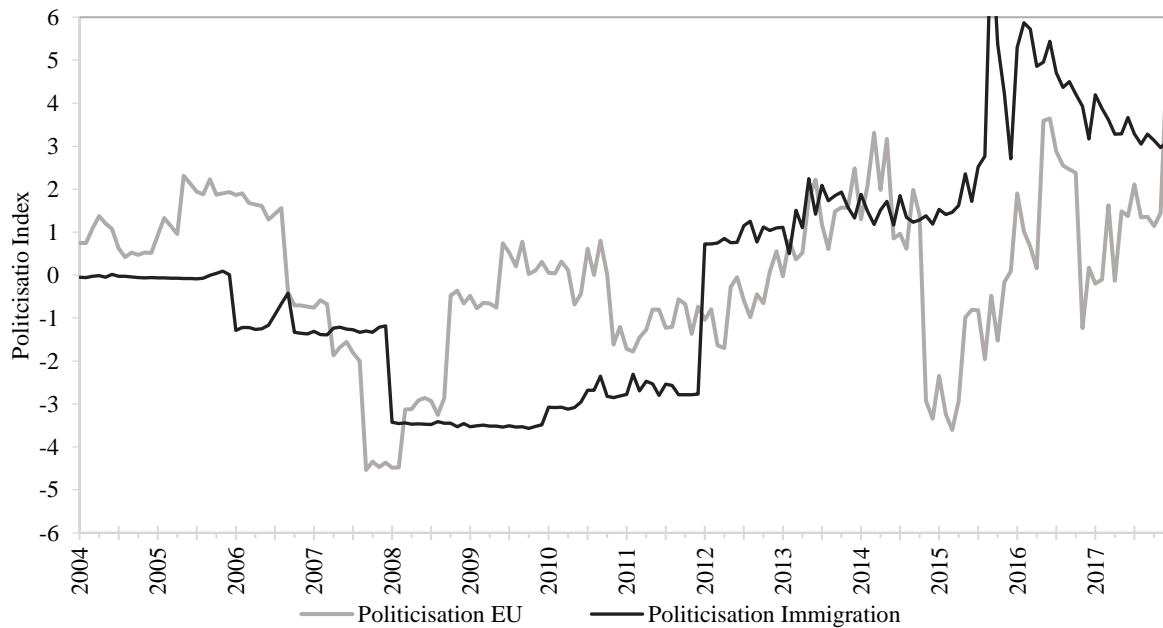
Since the Schengen Crisis in 2015, the cultural dimension has absorbed issues of immigration and European integration and the two mainstream parties used both topics to re-strengthen their cultural and identity-related position (Szałek & Sztajdel, 2019). The Law and Justice Party (PiS) sets the Eurosceptic tone and claims to represent the ‘true’ Polish identity, to protect “Poland’s culture, tradition and heritage from a perceived external, non-Christian threat” (Kriesi, 2016), while it blames other political actors of the centre and centre-left to submit to external actors such as the EU and Germany (Szałek & Sztajdel, 2019). The Schengen Crisis eventually pressured parties to position themselves not only on issues of immigration but also whether they are pro- or anti-European (Krzyżanowski, 2018; Pisciotta, 2016; Sałek & Sztajdel, 2019, p. 193). Hence, opposition to the EU and immigration, as it is surfacing more recently in Poland, is therefore motivated by cultural-identitarian concerns similar to North Western EU member states, rather than socio-economic concerns (Kriesi, 2016; Pisciotta, 2016). Following the Postfunctionalist literature, we should observe in Poland a similar ‘constraining dissensus’ on the Polish government as anticipated in North Western European member states. In times of strong politicisation, identitarian concerns are expected to surface in the policy positions of the Polish government more strongly and eventually trump issue-specific interests of employers.

7.2.3. Moderating Variable: Levels of Public Politicisation

According to the theoretical framework, politicisation is expected to moderate whether governments act according to the ‘Client Politics Mode’, representing the issue-specific interests of employers or the ‘Mass Public Mode’, and are steered by mass public interests.

⁵⁰ The importance of the identity-related and cultural divide for the Polish political space was re-enforced by the “consolidating duopoly of the two main actors, PiS and PO”, which led to an “increasing dominance of the ‘us’ versus ‘them’ dichotomy expressing the conflict between transition losers and winners” (Szałek & Sztajdel, 2019, p. 213). While the Civic Platform (PO) promotes a modern image of Poland, which is pro-European and culturally liberal, representing the ‘winners of the regime transformation’, the PiS party draws an image of Poland that is nationalistic, religious and traditional, appealing to the ‘reform losers’. Given Polish emigration and the perception of the EU accession as a solution to the Polish problems, European integration and immigration did not play a great role in structuring the Polish political conflict structure and party system (Kriesi, 2016, p. 38).

Figure 11: Politicisation indices in Poland



Source: own illustration and data (see chapter 3.2.1)

The EU politicisation index, as plotted in Figure 11, is fluctuating strongly during the investigation period and does not uncover a positive or negative long-term trend. While politicisation was slightly positive in the years following the Polish accession to the EU, politicisation levels dropped dramatically to its lowest levels end of 2007. Between 2009 and 2012, the politicisation index hovers around the investigation period mean. Probably also because Poland was not as severely hit by the Euro Crisis as other EU member states, the EU was only strongly politicised among the citizenry at that time. Only from 2013 onwards does the politicisation index suggest a clear politicisation of the EU among Polish citizens, reaching strongly positive values in March 2014, which is related to EU's attempt to mediate in the conflict surrounding the Russian annexation of Crimea, and in May 2014 due to the elections to the European Parliament. End of 2014, beginning of 2015, the index drops considerably to negative values, which mostly derives from low levels of polarisation among the citizenry, before rising continuously and reaching unprecedented levels in the course of the Schengen Crisis, the Brexit referendum and the subsequent negotiations.

The Polish politicisation index for immigration shows that immigration was only weakly politicised in Poland between 2004 and 2012. The index starts with medium levels of politicisation at the start of the investigation period, before dropping to negative values from 2006 onwards. It confirms the observation made by Zogata-Kusz (2015, p. 90) that in Poland “the question of migration had not been politicised. The only matters present in public debate

concerned the outflows of Poles looking for a job abroad. Sporadically, the issue of repatriation was publicly referred to”. In 2012 the index for the first time reaches positive values and exceeds the standard deviation 1, which would then qualify as ‘high levels of politicisation’. It can be attributed to a growing polarisation of opinion among the citizens, triggered by an increasing public and political debate about the necessity of labour migration and the government’s first comprehensive strategy approved by the Polish Council of Ministers in 2012. While no Syrian refugee has reached Poland in 2015, migration started to be increasingly politicised at the national level following the Schengen Crisis. In particular the EU’s decision to relocate asylum seekers from Greece and Italy to other European member states was highly contested in the public and political arena in Poland (Segeš Frelak, 2015).

I expect that the effect of politicisation is strongest when both EU and immigration are politicised simultaneously and weakest in times when both are de-politicized. The Employer Sanction Directive and the initial Blue Card Directive were proposed at a time when both indices suggest a very low politicisation of the EU and immigration in Poland. Hence, we expect the Polish government to act according the logic of the ‘Client Politics Mode’ and respond primarily to the interests of employers. In the 12 months before the Commission proposed the Seasonal Workers Directive and the ICT Directive in July 2010, immigration was still very weakly politicised in Poland, while the politicisation of the EU was on the rise. However, the index hovers around the mean value of the investigation period. Taken together, we can still speak of a weak politicisation. In the months preceding the introduction of the revised Blue Card Directive by the Commission in June 2016, the index for EU politicisation is fluctuating strongly, suggesting a medium high politicisation at that time. The graph for the politicisation of immigration instead shows unprecedented high levels of politicisation in the Polish public. Hence, we can expect the government to act according to the ‘Mass Politics Mode’, which anticipates that sovereignty and identity concerns surface strongly in the Polish policy position.

7.3. The Polish policy preferences regarding EU labour migration Directives

In the following subsections I examine the extent to which politicisation moderates the responsiveness of the Polish government to either the employers’ interests, following the ‘client politics mode, or the interests of a more communitarian-minded public (‘Mass Politics Mode’) when negotiating EU labour migration policies in the Council.

7.3.1. The Blue Card Directive, October 2007

The national context

In the years preceding the Commission's Blue Card proposal, the economic situation in Poland improved considerably⁵¹. As a result, the share of reported labour shortages by employers in Poland, as plotted in Figure 10, has grown steadily since 2004. It is therefore not surprising that Polish employers repeatedly urged policy makers to satisfy the greater demand for labour (PKPP Lewiatan, 2008b; Zogata-Kusz, 2015, p. 113). At the time when the Commission proposed the Blue Card the political debate about labour immigration in Poland just kick-started. However, a debate, let alone a policy that dealt specifically with attracting highly skilled workers to the Polish labour market was absent at that time. Hence, foreign highly skilled workers entered the Polish labour market via the regular admission scheme. The procedure for employers to receive such a work permit for foreign workers continued to be highly restrictive and cumbersome and “only confirmed the restrictive character of Polish labour immigration policy” (Zogata-Kusz, 2015, p. 102), despite a new ministerial regulation issued in 2006 to facilitate the admission of foreign workers (Kępińska & Kindler, 2014, p. 274). Applying for a work permit requires a two-step procedure; first, the employer has to deliver its wish to hire a foreign worker to the prefect of the district, in which the employer is located in. Second, the prefect must deliver comprehensive information to the governor, on the basis of which the latter will make a decision. To make sure that the employer is actually suffering from shortage of staff, the regulation for instance specified that the “prefects should analyse the registers of unemployed and job offers reported to the labour offices but also publicise the offer among people who were neither unemployed nor looking for a job” (Zogata-Kusz, 2015, p. 105).

Levels of Politicisation

In the 12 months before the Commission introduced the draft directive in October 2007, EU politicisation was relatively low, witnessing a stark drop from a medium low politicisation in December 2006 to the lowest levels in September 2007. Despite some first cautious attempts at the national level to set off a public and political debate about liberalising labour migration to Poland, the politicisation of immigration among the wider citizenry was low in the 12 months

⁵¹ The annual GDP growth increased from 3,5 per cent in 2004 to 7 per cent in 2007 (Worldbank, 2020), the unemployment rate dropped from 19 per cent to 9 per cent in the same period (Eurostat, 2020b) and the labour market was relatively tight with a job vacancy ratio of 2 (Eurostat, 2020a).

preceding the introduction of the proposal. Therefore, overall, the politicisation of both issues was low.

Employers' Interests

In the early 2000s, the Polish business lobby was only “slowly though steadily developing an appetite” (Menz, 2009b, p. 198) for labour migration. Yet, the introduction of the national ‘employer’s declaration’, for instance, was a first result of this growing ‘appetite’. It was initiated due to increasing pressure from Polish employers (Zogata-Kusz, 2015, p. 172). However, it mostly targeted low-skilled migrants, whereas the employers’ enthusiasm for highly skilled labour migration was limited (Menz, 2009b, p. 232). Nevertheless, the number of published statements by the Polish employers’ organisation Lewiatan dealing with the Commission’s Blue Card proposal clearly shows that the legislative activity at the EU level did not go unnoticed. Lewiatan published three press statement in 2008, elaborating the employers’ interest in highly skilled labour migration, and the strengths and weaknesses of the Commission’s proposal (PKPP Lewiatan, 2008a, 2008c, 2008d). Lewiatan referred to the draft directive as “one of the most important legal acts regarding the European labour market” (PKPP Lewiatan, 2008c). It welcomed the proposal as a “crucial step towards increasing the attractiveness of the European Union as a workplace for highly qualified employees”, given the fact that “in the current situation, Europe does not have enough power to attract the most talented employees, scientists and engineers” compared to countries such as the US or Japan (PKPP Lewiatan, 2008c). Hence, the Polish employers acknowledged the interdependence of EU member states in their endeavour to render the EU more attractive for highly skilled labour migrants from third countries and to achieve the EU’s common policy goal as expressed in the Policy Plan on Legal Migration from 2005. Accordingly, it “strongly appeals to the Polish Government to take a position that promotes the employment of highly qualified employees from outside the EU” (PKPP Lewiatan, 2008d).

On the policy-dimension, Lewiatan sought to defend the liberal content of the Commission’s proposal. Inter alia, Lewiatan agreed with the Commission’s definition of the term ‘higher professional qualification’, because in their view an “employee with higher qualifications is not only a person with higher education, but also an employee with specialized skills” (PKPP Lewiatan, 2008a, 2008c). The employers’ organisation proposed also to extend the period of validity from two to three years.

A common critique, also raised by the employers of other member states, was the salary threshold for highly qualified third country nationals. Lewiatan demanded that the remuneration should be comparable to that of a domestic employee holding a similar job position. This is because, first, high thresholds would lead to unequal treatment of national and foreign high skilled workers, and second, a threshold three times the minimum monthly gross remuneration, as suggested by the Commission, would create high costs for employers and therefore considerably decrease the incentive to hire a third country national (PKPP Lewiatan, 2008a, 2008c). However, in contrast to employers of other member states, Lewiatan rejected any threshold to be set at the EU level in general, arguing it would “violate the principle of subsidiarity” (PKPP Lewiatan, 2008c).

Lewiatan opposed full harmonisation of migration policies targeting at highly skilled third country nationals. Parallel national admission schemes should be possible, if they offer more favourable solutions for access to the labour market than the Blue Card. The employers’ organisations draw the attention also to the fact that with the implementation of the Blue Card, third country nationals would have more favourable admissions than citizens of certain EU member states, as the transition periods for most of the new member states were still in place and in the case of Romania and Bulgaria until 2014.

Preferences of the Polish Government

While the employers’ organisation Lewiatan showed great enthusiasm for the Commission’s proposal, the Polish government appeared to have little interest. The then Deputy Minister of Labour and Social Policy Kazimierz Kuberski, argued that Poland might not even be a target country of immigration anyway (Wojteczek, 2007). Hence, the government did not expect an ‘added value’ of the Blue Card. The perceived dependence was therefore low. Accordingly, compared to the Employer Sanction Directive, which was negotiated in parallel, the Polish delegation team was less actively involved in the negotiations and contributed only a few comments.

In general, the Polish government showed discontent with the idea that member states would facilitate access for specific third country nationals to their labour markets, while transitional working arrangements were still in place for Polish citizens in countries such as Germany. Hence, in those member states, Polish citizens would have a disadvantage compared to highly skilled third country nationals. Therefore, the Polish delegation team, alongside other Central and Eastern European member states, demanded that ‘the principle of the ‘Community

preference' should be a compulsory one' meaning that member states should be obliged to give preference to Union citizens (Council, 2008a, p. 18, f.n. 48; Friðriksdóttir, 2016, p. 113).

Regarding the admission criteria Poland entered scrutiny reservations on the provision that higher education could be replaced by 'at least three years of professional experience'. Poland suggested restricting the criterion by increasing the necessary period of prior professional experience to five years instead (Council, 2008a, p. 5, f.n. 13; Eisele, 2013, p. 6; Friðriksdóttir, 2016, p. 103). Only in one regard had the Polish government similar demands as the employers; it supported the Commission's suggestion that the Blue Card should be valid for two years, proposing even to add 'at least two years' (Council, 2008a, p. 16, f.n. 40; Friðriksdóttir, 2016, p. 111). While the Polish delegation took the view that permitting only one period of unemployment would be too restrictive (Council, 2008d, p. 15, f.n. 30), it demanded that the Blue Card should be withdrawn if the Blue Card holder applies for social assistance during unemployment, which would render the regulations less favourable (Council, 2008b, p. 20, f.n. 60). It furthermore required that family members, when moving to a second member state, have to show that they are in possession of a sickness insurance and stable and regular resources (Council, 2008b, p. 31, f.n. 98). The Polish government supported a later version of the draft, which would allow member states to keep both more liberal as well as more restrictive national admission schemes in parallel. Hence, Poland preferred optional and therefore weak harmonisation.

Interim Conclusion

Since politicisation of both the EU and immigration were low in the months before the introduction of the Commission's proposal, we would expect the Polish government to act according to the 'Client Politics Mode'. The fact that Lewiatan published three statements dealing specifically with the Commission's proposal exemplifies the employers' growing attentiveness towards first, workers with higher educational qualifications and second, the EU's activities in this specific policy field. Overall, Lewiatan supported the Commission's draft directive, argued against any attempts of member states to restrict regulations, or demanded to liberalise them further. It illustrates the perceived dependence of Polish employers on a harmonised approach at the EU level on the one hand, to render the EU more attractive for highly skilled labour migrants vis-à-vis its competitors such as the US, but also, to download more liberal admission schemes to the national level, where no specific schemes for this group of labour migrants existed. Despite low levels of public politicisation, Lewiatan's demands and enthusiasm were not at all represented by the Polish government during the negotiations. The

Polish delegation made only few comments and suggestions during the negotiations. While the government supported the employers' plea for an extension of the Blue Card period of validity, it did not take up the demands related to liberalising admission criteria. If at all, Polish representatives sought to restrict it further.

Due to the lack of enthusiasm for the proposal, deriving also from the perceived low added value of the directive for Poland and the weak dependence on a harmonised scheme, we cannot speak of a 'Client Politics Mode'. While the Polish government lacked enthusiasm for the proposal, it also did not try to prevent it. Hence, the absence of a 'Client Politics Mode' does not automatically suggest a governmental behaviour according to the logic of the 'Mass Politics Mode'. Instead, the findings rather suggest that the Polish government was in general indifferent regarding the proposal and its provisions. This most likely derives from the fact that at that time, the national process to discuss and liberalise labour migration policies has just kick-started. National policies mostly targeted temporary and low-skilled labour migration from neighbouring countries.

7.3.2. The Seasonal Workers Directive, July 2010

The national context

As discussed above, in general the Polish admission schemes for labour migrants from third countries are highly restrictive. Exempted from the cumbersome application process for a work permit are workers from the neighbouring countries that seek to come to the Polish labour market for a limited period. Under pressure from employers, Polish policy-makers addressed the problem of intensifying labour shortages initially in 2006. It did so by allowing workers from the neighbouring countries Russia, Belarus and Ukraine to work in the Polish agriculture sector for three months within a six-months period without having to go through the process of applying for a work permit. Instead, the 'employer's declaration' is registered in the labour offices of the relevant district. Pressured by employers, the scope of the regulation has been extended to all sectors of the economy in 2007, to six months within a period of 12 months in 2008, and also to citizens from Moldova and Georgia in 2008 and 2009 (Fihel et al., 2012, p. 71; Iglicka & Ziolk-Skrzypczak, 2010; Zogata-Kusz, 2015, p. 146ff.).

This comparatively liberal regulation, targeting mostly low-skilled temporary and seasonal labour migrants, has "been the most discussed element of Poland's labour market access policy" (Zogata-Kusz, 2015, p. 147). The asymmetry in the restrictiveness of admission regulations for

seasonal workers compared to the long-term permits for workers from other countries clearly illustrates the dependence of the Polish economy on seasonal workers. Also, the regulation has been very well received by employers, with almost 550.000 employers' declaration registered between September 2006 and the end of 2010, which exemplifies the high demand for low skilled workers in Poland (Zogata-Kusz, 2015, p. 146).

Levels of Politicisation

The Seasonal Workers Directive, that was negotiated at the same time as the ICT Directive, was proposed by the Commission at a time of low politicisation of both the EU and immigration. While the index for the politicisation of immigration indicate the lowest values of the investigation period, the index for EU politicisation is hovering around the mean value indicated by 0 in Figure 11. Again, we would expect the government to use the low public scrutiny to serve the interests of business and employers, according to the 'Client Politics Mode'.

Employers' Interests

The Polish employers' organisation Lewiatan criticised that current Polish admission schemes for seasonal workers from third countries are too restrictive and complex, making "it difficult to quickly meet the needs of employers and adversely affects the legality of temporary employment" (PKPP Lewiatan, 2010b). However, it acknowledged the facilitated procedure of the 'employers' declaration' that has been established in Poland in 2006. Yet, it disapproved the regional scope of the scheme, that is limited to third country nationals from Russia, Belarus, Ukraine, Georgia and Moldova (PKPP Lewiatan, 2010b).

Regarding the Commission's draft directive, Lewiatan published a detailed statement, expressing its general support for the Commission's endeavour to facilitate admission to European labour markets for the purpose of seasonal work. However, it suggested liberal changes of certain provisions, and, above all, vast national discretion in the form of optional harmonisation that would allow the national employers' declaration to co-exist (PKPP Lewiatan, 2010b). Hence, the employers were keen on keeping the highly flexible and non-bureaucratic national scheme, as they considered it as very effective. At the same time, they sought to 'download' a scheme for seasonal workers from the EU level, that would allow Polish employers to also employ seasonal workers from third countries other than Poland's neighbouring countries. Hence, due to this incoherent view on the necessity and desirability of an EU scheme, we can speak of medium strong dependence on a harmonised EU scheme.

On the policy-dimension, employers disapproved with the Commission's definition of 'seasonal work' as work 'under one or more fixed-term work contracts', as it would severely limit the necessary flexibility, which is crucial for seasonal work. Lewiatan also challenged the definition of seasonal work as an activity depending on the passing of the seasons. More specifically, it regarded the wording 'during which labour levels are required that are far above those necessary for usually on-going operations' as too vague and restrictive. There might be seasons where demand is high, but not 'far above' the usual (PKPP Lewiatan, 2010b).

The employers' organisation furthermore disapproved that "the draft directive introduces very restrictive rules regarding the conditions for lodging a request for residence and work of a seasonal worker" (PKPP Lewiatan, 2010b). The documents that are required to obtain a work permit (proof of accommodation, a valid work contract or a binding job offer) are too comprehensive. Moreover, Lewiatan deemed the sanctions that employers are facing in case they violate the directive's regulations as too restrictive. Instead, sanctions should only be applicable for severe violations, for instance in case of repetitive employment of irregular migrants and should only be treated as administrative fines (PKPP Lewiatan, 2010b).

On the polity-dimension, Lewiatan preferred a low level of harmonisation. Whereas the directive should outline the broad criteria for the application procedure, employers demanded the detailed regulations regarding work and residence of seasonal workers to be left to national authorities. In addition, it requested to leave the decision of how long seasonal workers are allowed to stay and work to the member states. In any case, it should be possible to exceed the maximum six months as determined in the Commission's draft directive. In a similar vein, Lewiatan demanded that the directive provides a separate article that allows member states to keep or implement parallel national admission schemes targeting temporary or seasonal work that contain more liberal provisions (PKPP Lewiatan, 2010b).

Hence, Polish employers welcomed the proposal in order to extend the geographical scope of their national scheme, which is only limited to seasonal workers from the neighbouring countries, but at the same time it showed low dependence, as it was fearing strong harmonisation and more restrictive regulations than currently in place at the national level.

Policy Position of the Polish Government

The Polish government was highly sceptical about the Commission's draft directive. Like the employers, also the government's greatest concern was that the directive would constrain Poland from keeping their national admission scheme for temporary work that facilitates access

of third country nationals from neighbouring countries considerably. In a comment to the Counsellors, the Polish delegation stated that the “Polish major concern is to assure effectively the influx of migrants needed for seasonal work. It is of utmost importance because according to demographic projections in a relatively short time Poland may encounter the problem of shortage of labour force” (Council, 2012a). However, the Polish government feared that the attractiveness of Poland as a country for seasonal workers will be severely diminished, if the EU will agree on a harmonised directive; under common standards third country nationals will prefer to work in member states with a higher minimum wage than Poland. It exemplifies strong dependence of the Polish economy on accessing cheap labour for seasonal work. At the same time, the Polish government perceived the Polish dependence on a common EU policy as weak, because first, it considered its unilateral policies as more efficient and attractive and second, feared for increased competition for seasonal workers between EU member states. Hence, allowing Poland to retain its facilitated access for neighbouring countries would be an important measure to compensate for the Polish salary disadvantage and fight labour shortages (Council, 2012a). Therefore, Poland expressed its wish to include the following wording in the directive: “This Directive shall not affect the right of Member States to adopt or retain more favourable provision [...]. Such more favourable provisions may be applied to nationals of specific third countries that are determined by Member State” (Council, 2012b). Hence, the provision must include the possibility to retain on the one hand, liberal admission procedures, however, on the other hand, applicable only for a restricted scope based on certain countries of origin.

As the employers, the Polish delegation expressed discontent with the definition of seasonal work, demanding to leave the decision of what is considered as seasonal work to the member states. Besides its attempts to limit harmonisation, Poland mostly made restrictive comments during the negotiations. For example, it expressed its wish to delete the provision, according to which Member State shall grant the third country national whose application for admission has been accepted every facility to obtain a long-stay visa (Council, 2011f, p. 11, f.n. 35). Also it sought to extend the list of grounds of refusal (Council, 2010e, p. 9, f.n. 31). Regarding the rights of seasonal workers and equal treatment, seasonal workers should not be entitled to family and unemployment benefits and equal treatment should be limited to contribution-based benefits.

Interim Conclusion

The Seasonal Workers Directive seeks to harmonise the employment of temporary workers from third country nationals for the purpose of seasonal work. The dependence of Polish

economy on temporary workers to perform labour intense jobs that do not require formal (higher) education was considered very high. The position of Polish employers towards the Commission's draft directive is ambivalent. On the one hand, employers generally supported the draft because the scope of the directive includes all third country nationals and not just workers from Poland's neighbouring countries. Employers therefore suggested to liberalise certain provisions of the directive. On the other hand, employers feared that the directive would render the admission of seasonal workers more restrictive compared to the national 'employers' declaration'. Consequently, besides the suggestion to liberalise certain regulations, the key request of employers was to keep the national admission scheme

Given the low politicisation at the time of the negotiations, the theoretical framework expects the Polish government to act according to the 'Client Politics Mode' and represent the interests of the employers' organisations. Coupled with medium dependence of Polish employers on a harmonised scheme at the EU level, we expect the Polish government to limit EU harmonisation and liberalise the content. Yet, unlike Polish employers, the Polish government perceived the Polish dependence on an EU framework to be low. Just like the employers, the government raised concerns that an EU scheme would overrule the liberal national scheme that allows a simplified process to hire temporary workers from the neighbouring countries. However, unlike employers, it did not approve to liberalise the EU provisions. Poland expected that a common and liberal scheme would increase the competition for temporary workers between EU member states and was concerned that this would severely jeopardise Poland's competitive advantage, as seasonal workers would choose to work in a member state with higher living standards and higher minimum wage than in Poland. Accordingly, Poland sought to prevent liberalisations on the policy-dimension and fiercely disputed extensive harmonisation on the polity-dimension (as also demanded by Lewiatan).

The actual negotiation outcome did not satisfy the Polish demand for low harmonisation. Accordingly, Poland, together with the Czech Republic and the Netherlands voted against the directive in the Council. Poland and the Czech Republic published a common statement, maintaining that

"criteria for admission, access to labour market and workers' rights of seasonal workers can be sufficiently regulated at the national level. Seasonal workers accepted in one Member State do not influence labour market in other Member States, since on the basis of this directive they do not have the right to intra-EU mobility. Therefore, legislation at the EU level is not necessary. In contrast, the long and complicated procedure set up in this directive may hinder the flow of seasonal workers and result in shortages of labour force, in particular in Member States that rely on third country seasonal workers, especially in the agricultural sector" (Council, 2014).

This comment clearly illustrates the sceptic stance of the Polish government towards the harmonisation of regulations concerning seasonal work performed by third country nationals. The main reason behind the rejection of the directive seems to be Poland's perceived low dependence on an EU scheme, as the policies established at the national level were considered sufficient and effective to meet the demands of the Polish economy. It confirms Moravcsik's expectations.

However, the position is also in line with sovereignty and identity-related concerns prevalent in parts of the Polish public. The Polish government demand that member states should be able to maintain or establish more liberal national schemes that only apply to citizens of certain countries, can be economically motivated, as Poland wants to maintain its competitive advantage stemming from its 'employers' declaration'. However, it also speaks to Poland's "long-lasting political concerns about the maintenance of national and cultural identity" which is why Poland prioritises labour migrants from 'culturally similar' neighbouring countries (Maroukis et al., 2011, p. 138).

7.3.3. The Intra-Corporate Transfer (ICT) Directive, July 2010

The national context

Poland did not have a specific admission scheme at the national level regulating the transfer of third country nationals between branches of companies. Hence, if employers sought to transfer foreign workers to a company branch situated in Poland, they had to utilise the regular admission scheme for third country nationals. The procedure for employers to receive such a work permit for foreign workers continued to be highly restrictive and cumbersome.

Levels of Politicisation

The levels of politicisation in the 12 months prior to the introduction of the ICT proposal by the Commission were low. According to the theoretical framework, we expect the Polish government to represent the interests of employers.

Employers' Interests

In the second half of 2011, when the ICT Directive was still under negotiation, Poland held the presidency of the Council. PKPP Lewiatan therefore published a report evaluating the Polish agenda for the presidency and concluded that the Polish government is in line with the demands and expectations of Polish business in almost all points. However, it stated that "only in one

case, government priorities do not reflect the issues considered crucial by the business community. The program of the Polish Presidency [...] does not mention the problems the European labour market is facing” (PKPP Lewiatan, 2011a; own translation). PKPP demands “a determined and targeted migration policy” (PKPP Lewiatan, 2011b; own translation), in order to balance out the increasing outmigration of Poles. Accordingly, it is in the interests of Poland that the Polish government push forward the Commission’s ICT Directive while holding the presidency of the Council (PKPP Lewiatan, 2009, 2011b).

In general, Lewiatan supported the Commission’s endeavour to facilitate intra-corporate transfers, as it responds to the needs of entrepreneurs operating in and outside the EU (PKPP Lewiatan, 2010a, 2010c). It stated that the ICT Directive would constitute “a partial solution to the problems related to the lack of sufficiently high skilled employees in the EU, which are necessary to allow further development of enterprises and to increase their economic competitiveness” (PKPP Lewiatan, 2010c). Hence, due to the lack of a similar scheme at the national level and the cross-border aspects of intra-EU mobility, the dependence of Polish employers on a harmonised scheme was high.

However, Lewiatan discussed in a detailed statement several points of the Commission’s proposal that, in their view, require to be changed to facilitate the transfers of employers between branches of corporations. The first point of critique that Lewiatan raised is that the proposal lacks a recital that allows member states to maintain or introduce more liberal regulations for intra-corporate transfers at the national level in parallel to the EU Directive. Hence, on the polity-dimension, Lewiatan again opposed full harmonisation.

On the policy-dimension, a point of critique was the definition of ‘managers’ and ‘specialists’ as suggested by the Commission. Both were considered to be too narrowly defined. The definition of managers as proposed would limit the directive’s application only to top-level managers and therefore exclude team or project managers. Also, it challenged the proposal’s focus on technical knowledge only, while other expertise and qualifications were ignored. Lewiatan opposed that at least 12 months of prior employment. Such a restrictive regulation would significantly limit the application of the directive, especially “in the case of emerging markets and economies, where, as a rule, there is a high turnover of employment” (PKPP Lewiatan, 2010c; own translation). Hence, Polish employers suggest decreasing the period of prior employment to six months for managers and specialists and to three months for trainees. Article 6 (3), which allows member states to reject an application on grounds of volumes of admission of third country nationals, was considered to contradict the overall motivation of the

directive, which is supposed to facilitate access of much needed specialists to a sub-branch of a company. Employers welcomed that the directive seeks to facilitate family reunification. However, it criticised that practically family reunification is severely hampered by the directive's provisions restricting the access of family members to the national labour market. Lewiatan argued that this "makes the transfer within the company less attractive and discourages the professional mobility of highly qualified employees" (PKPP Lewiatan, 2010c; own translation).

Position of Polish Government

The Polish government did not show a great interest in the Commission's draft directive. First, no official statement has been published wherein the Polish government took a stance on the proposal; second, the Polish delegation was hardly actively involved in the negotiations. Compared to the parallel negotiations of the Seasonal Workers Directive, Poland made only few comments expressing its discontent with the Commission's ICT proposal. Accordingly, no statement of the Polish government explicates the perceived dependence of Poland on a harmonised EU directive in this policy field. Coupled with seemingly little interest of the government in the proposal in general, I conclude that dependence was neither high nor low, but neutral.

None of the extensively elaborated demands of the Polish employers were reflected in the policy position of the Polish government during the negotiations. While Poland suggested that also third country nationals already residing in a member state should be included into the scope of the directive (Council, 2010d, p. 20, f.n. 61), all other comments brought forward by the Polish delegation were seeking to restrict the content of the directive. For instance, Poland requested that the list of grounds for refusal is extended. Accordingly, also third country nationals figuring in national lists of alert or the Schengen Information System should be excluded from admission (Council, 2010d, p. 10, f.n. 30). The government supported the provision which allows member states to request a proportionate and reasonable fee from applicants for handling the application (Council, 2010c, p. 26, f.n. 75). Also, Poland expressed its wish, that the time a third country national spent in the territory of a member state as an intra-corporate transferee should not be added to the time necessary for a long-term residence permit (Council, 2010c, p. 20, f.n. 60).

Interim Conclusion

The employers' lengthy discussion of the Commission's draft directive demonstrates the increasing appetite of Polish employers for first, labour migration, second, highly skilled labour

migration in particular and third, the EU's legislative activity in this policy field. The employers considered the Polish dependence on a common EU framework for ICTs to be high, sought to liberalise its content and harmonise national regulations, however, allowing for more liberal admission provisions at the national level. Due to the low politicisation of the EU and immigration at the time of the negotiations, we would expect the 'Client Politics Mode' to prevail. The theoretical framework anticipates that the Polish government responds to the enthusiasm of the Polish employers when negotiating the ICT Directive in the Council.

The few comments that were made by the negotiation team mostly sought to restrict the content. Hence, despite low levels of politicisation, none of the employers' elaborated demands and their general enthusiasm for the proposal was represented by the Polish government. Therefore, we cannot speak of a 'Client Politics Mode'. The restrictive position on the policy-dimension hints at the 'Mass Politics Mode' instead. However, compared to the elaborated statement of employers, the participation rate of the Polish government during the negotiations was very low. It therefore seems that the Polish government was generally indifferent regarding the facilitation of intra-corporate transfers.

7.3.4. The Revision of the EU Blue Card, June 2016

The national context

At the time when the revision of the EU Blue Card was negotiated in the Council, the public and political debate about the necessity and desirability of labour mobility from outside the EU gained momentum in Poland. This is also reflected in an increasing coverage of the topic in Polish media, reporting about the negative consequences of labour shortages for the country's economic growth (Business Insider Polska, 2018b, 2018c, 2018e, 2018f). Due to the continuously positive economic situation, an aging society and persistent out-migration of Polish citizens, the labour market increasingly registered labour shortages of skilled or specialised workers (Segeš Frelak, 2018, p. 4). Figure 10 clearly illustrates that labour shortages reported by Polish employers rose steadily from 2013 onwards, reaching unprecedented levels across all sectors in 2016. Workers from third countries have become increasingly indispensable in other sectors than agriculture and construction, such as the service sector which often requires certain educational qualifications (Segeš Frelak, 2018).

While the Blue Card was negotiated in the Council, several reforms were implemented at the national level that sought to meet the employers' demands; however, employers were

dissatisfied with the legislative changes. Polish labour migration schemes continued to prioritise temporary seasonal migration and was lacking a national scheme targeting in particular highly skilled labour migrants. Also, with only 18 Blue Cards issued in Poland in the years 2012 to 2014, the Blue Card was hardly a relevant scheme for highly skilled migrants in Poland (Business Insider Polska, 2016; Segeš Frelak, 2018).

Levels of Politicisation

In the months preceding the introduction of the revised Blue Card by the Commission in June 2016, the index for EU politicisation is fluctuating strongly, suggesting a medium high politicisation at that time. The graph for the politicisation of immigration instead shows unprecedented high levels of politicisation in the Polish public. Hence, we can expect the government to act according to the ‘Mass Politics Mode’, which anticipates that sovereignty and identity concerns surface strongly in the Polish policy position

Employers’ Interests

Several statements by the Polish employers’ organisations Pracodawcy RP and Lewiatan illustrate the employers’ growing demand for a coherent Polish migration policy (PKPP Lewiatan, 2016, 2018a, 2018b, Pracodawcy RP, 2018a, 2018b). The employers argued that “the inexorable demographic change and the current state of the Polish labour market calls for an urgent development of a of a long-term migration policy that unfortunately our country currently does not have” (Pracodawcy RP, 2018a). Polish employers increasingly adopted the line of argument already prevalent in other EU member states; they draw a rhetorical link between liberalised economic migration policies on the one hand and economic competitiveness and the prospects of Polish economic growth on the other. They argue that labour shortages hamper economic growth as it “is difficult to expect investments to be implemented as planned, since there is no one to carry them out. In addition to unstable and incoherent laws, the labour shortage is one of the main reasons for the persistently low level of domestic private investment” (Pracodawcy RP, 2018b). Hence, Pracodawcy RP emphasised that “the lack of hands to work is not only the problem of employers, but also the entire Polish economy. The shortage of personnel results in the lack of continuity in the functioning of companies, and consequently may even lead to a drop in GDP” (own translation Pracodawcy RP, 2018b).

Surprisingly, the employers’ organisation Lewiatan did not publish a policy statement on the Commission’s proposal to revise the Blue Card Directive, as it did for the other proposals on

labour migration covered in this study. There are two likely explanations for this inconsistency: Firstly, a common concern of Polish employers was the increased competition with other EU member states for labour migrants (Business Insider Polska, 2018a). When for instance Germany introduced a new immigration policy for skilled workers, Polish employers were sounding the alarm bells, fearing that workers from Ukraine would choose legal employment in Germany over illegal employment in Poland (PKPP Lewiatan, 2018c). Employers argued that Ukrainians, just like labour migrants in general, “are interested in stability and long-term employment, as well as much higher salaries than they can get in Poland, which is why the advantage of cultural and linguistic identity between Poland and Ukraine fades into the background” (own translation Pracodawcy RP, 2018b, p. 1). To prevent out-migration of irregular migrants, employers demanded from the Polish government “to streamline procedures for hiring foreigners, to offer them permanent residence and even a path to citizenship” (the local, 2019). Hence, an explanation for the lack of interest on the side of the employers for the reform of the EU Blue Card might be that they feared increased EU-internal competition for labour migrants if other member states implement a more liberalised EU Blue Card at the national level. Secondly, at the time of the negotiations, immigration and migration policy was highly politicised and contested at the national level. This is exemplified by the dismissal of the deputy minister of investment and development. The reason behind was his statement that “the influx of immigrants to our country must increase to maintain economic growth”. This is also because “the prosperity of countries has been achieved by [the migrants]” (Business Insider Polska, 2018d). The more surprising it is, that employers’ organisation dares to speak out in favour of more migration, however, focusing mostly on eastern neighbouring countries. Hence, both the controversy as well as the increased competition for migrants might explain why the employers remained silent on the revision of the Blue Card. However, both explanations are an educated guess.

Position of the Polish Government

As Polish employers did not communicate their position regarding the Revision of the Blue Card, no statement can be made on whether the preference formation of the Polish government follows the ‘Client Politics Mode’. However, when analysing the Polish policy position on the Commission’s draft proposal, we can evaluate whether identity and sovereignty-related concerns surface. The ‘Mass Politics Mode’ is also expected by the theoretical framework, given the strong politicisation of immigration and the EU at the time of the negotiations.

Almost all comments of the Polish government during the Council negotiations sought to restrict the content of the policy as well as the level of harmonisation. Compared to the negotiations of the first Blue Card Directive in 2007, the Polish delegation was much more actively involved in the negotiations of the revision. However, I cannot derive from the data whether Poland considered its dependence on a harmonised effort to be high or low. No explicit comment has been made by the government that would reveal whether the Polish government deems the Blue Card as necessary to acquire the policy goal of attracting high skilled labour migrants to the Polish labour market. I therefore conclude that dependence was neither high nor low, but neutral.

Most comments of the Polish delegation centred on the salary threshold, skills, and educational requirements. Poland demanded that labour migrants should be required to have the specific skills that are actually relevant for the job position in question (Council, 2016b, p. 29, f.n. 45). The delegation expressed doubts concerning the feasibility of assessing professional skills in practice. Therefore, recognising professional skills as equivalent to educational qualifications should be optional for member states (Council, 2016b, pp. 22, 23, f.n. 25, 27). Also the minimum professional experience should be extended to five instead of three years (Council, 2016b, p. 28, f.n. 42). Regarding the salary level, Poland agreed to a minimum threshold of 1.0, however, demanded that no upper limit should be set, so that member states could choose freely a more restrictive threshold than other European member states according to their needs (Council, 2016b, p. 30, f.n. 49). At a later point of the negotiations, when the Commission's revised proposal implied a 1.5 upper threshold, Poland demanded to increase it to 1.7 (Council, 2017b, p. 35, f.n. 70).

Concerning the rights of highly skilled labour migrants, the Polish delegation expressed its wish to restrict labour market access for highly skilled migrants, as labour market tests should be possible to use during the first two years (Council, 2016b, p. 44, f.n. 84). Also, regarding the intra-EU mobility of Blue Card holders, Poland did not consider a simple communication of the intent to relocate to another member state as sufficient. Instead, a new application should be necessary in the second member state (Council, 2016b, p. 44, f.n. 84). On the polity-dimension, Poland required that the directive should clearly state that member states can introduce or maintain national schemes for admitting highly skilled third country nationals. Hence, like Germany, Poland demanded optional harmonisation (Council, 2016a, p. 28, f.n. 45).

The comments thus far all sought to restrict admission conditions and rights for Blue Card holders and decrease the harmonisation of national standards. Yet, two comments by the Polish

government are particularly interesting: First, Poland opposed the 3-year period for acquiring EU long-term resident status, arguing that the time is too short for a person to get integrated into the host society (Council, 2016b, p. 51, f.n. 105). Second, the only comment made by Poland aiming at a liberalisation of the directive demands that third country nationals, who have ‘acquired their professional qualification in the EU should be granted better and more flexible conditions as they are better integrated in the Member States’ (Council, 2016b, p. 31, f.n. 52). All the other comments seeking to restrict admission conditions can be easily justified by economic motives, such as the protection of the domestic labour market or welfare state. Yet, the straightforward reference to migrant integration as a prerequisite for facilitated access to the national labour market or the lack thereof as reason to deny long-term residency touches clearly on questions of identity rather than economy. The Polish government bluntly states that it prefers those labour migrants that are – in their view - more likely to be already well ‘culturally and socially accustomed’ to the host society. Less well integrated migrants are considered to pose a threat to the national identity. Hence, both comments are heavily shaped by cultural-identitarian motives. Such unambiguous references to identity-related concerns are rare to find in Council minutes. Coupled with the overall restrictive position of the Polish government on both the policy-dimension and the polity-dimension, it hints at a ‘Mass Politics Mode’ of preference formation.

Interim Conclusion

Politicisation of the EU and politicisation of immigration reached unprecedented levels in Poland at the time of the Council negotiations. It mirrors the highly contested debate about both issues at the national level, which increasingly discussed immigration in the context of European integration, blaming the latter for the former. While the debate was mainly triggered by the Schengen Crisis and the arrival of asylum seekers from the Middle East at the EU’s borders, the political discourse was not limited to forced migration. Instead, the dismissal of the deputy minister due to his statement that Poland should facilitate labour migration shows that any immigration to Poland was highly disputed in the public and political arena (Business Insider Polska, 2018d).

Similar to the German case, the sub-case study seems to suggest that high politicisation of immigration and the EU has also a direct effect on the position of employers. Whereas German employers reformulated their policy position on the revision of the Blue Card in a more cautious manner, Polish employers did not publish a comment on the proposal at all. While they were involved in the debate about national immigration policies. A likely explanation is that the

increasing contestation at the national level of both European integration and immigration. Against the background of the deputy minister's dismissal, any political statement regarding the necessity of first, facilitating labour migration and second, and harmonisation at the EU level, deemed to be political dangerous.

Given the lack of data on the employers' side we cannot evaluate to what extent the government represented the employers' demands. The policy position of the Polish government was highly restrictive and sought to limit harmonisation. In particular the two comments referring to the desirability of well-integrated labour migrants rather over very clearly illustrates the underlying concerns of the government related to identity. In national policies, the Polish government prioritises immigration from countries with a similar cultural background, at the European level they seek to create advantages for labour migrants that they consider to be already well accustomed to and integrated in European societies. Hence, the policy position of the Polish government is a very clear case of a 'Mass Politics Mode', where cultural-identitarian surface strongly in the policy positions of member states. As argued by Hoeglenger et al. (2012, p. 234), such a blunt "publicly voiced nationalist opposition to immigration" is rare to find as it "risks being discredited as discriminatory and racist" (Hoeglenger et al., 2012, p. 234). However, in case of the revised Blue Card Directive, it is not surprising that the government acted accordingly. First, the theoretical framework expects the 'Mass Politics Mode' to dominate the policy position of member states, as levels of politicisation of immigration were unprecedentedly high. Second, and more importantly, the government was not under pressure from right-wing populist parties at that time, but instead, a moderately Eurosceptic and populist party, the PiS, was in government itself during that time. Hence, the 'Mass Politics Mode' in the case of the Polish position is not a 'anticipatory representation', where a government fears electoral sanctions in the upcoming elections if it makes unpopular decisions in Brussels. Rather, it is a 'promissory representation' (Mansbridge, 2003), where the (populist) government seeks to keep the (communitarian) promises it had made during prior election campaigns.

7.3.5. The Employer Sanction Directive, May 2007

The national context

As discussed before, undeclared employment is often put on a level with irregular migration and vice versa. However, the nexus between the two is not that straightforward in Poland. The Polish shadow economy, for instance, was considered to account for 27 per cent of the yearly GDP between 1990 and 2005, compared to 23 per cent in Spain. However, compared to the

Spanish labour market, in Poland undeclared work is still mostly carried out by Polish citizens. Hence, the nexus between irregular migration and undeclared work is existent, but weaker (Maroukis et al., 2011, p. 137).

Nevertheless, the restrictive immigration policies, in combination with economic growth, an aging society and increasing out-migration of Polish citizens, “created favourable conditions for illegal employment, in particular in a country where the enforcement of the instruments for combating illegal employment leaves a lot to be desired” (Zogata-Kusz, 2015, p. 114). The estimated numbers of irregular migrants diverge widely and are assumed to lie somewhere between 50 and 300 thousand in 2005 (Kicinger & Kloc-Nowak, 2008). Other sources estimate between 100 and 500 thousand yearly irregular migrants in Poland (Iglicka, 2007, p. 269). Kicinger and Kloc-Nowak (2008, p. 7) assume that there were (or still are) more irregular than regular migrants in Poland, which also results from the fact that the access to legal work permits was still very restrictive at that time in Poland. Most of the irregular migrants are considered to be visa-over stayers of the three-months-tourist-visa), and lately also increasingly workers who arrive with fake ‘employers’ declaration’ certificates (Maroukis et al., 2011, p. 138f.). Irregular migrants in Poland work in similar sectors as legally employed migrants, notably in the domestic service industry but also construction and agriculture, and come from the same countries, particularly the Ukraine (Maroukis et al., 2011, p. 136).

In general, the Polish society is said to “show a high level of social acceptance for the undertaking of illegal employment both in Poland and abroad”⁵² (Kicinger & Kloc-Nowak, 2008, p. 6). In addition, as most (irregular) migrants originate from the neighbouring countries and therefore from culturally not so distant environments, “makes them ‘invisible’ both to the authorities and the local communities” (Maroukis et al., 2011, p. 139).

Polish law sanctions both the illegal employed (who is not in possession of a work permit) as well as the employer. Beside the financial sanctions, the employer is not allowed to apply to hire a foreigner with a work permit in the future. However, both the controls as well as the sanctions were deemed ineffective. First, this is argued to derive from a “policy of silent tolerance” and a system that is weak on purpose (Kicinger, 2009, p. 87). In a similar vein, Menz argues that “it is not always clear whether the relatively lax enforcement at the local level is politically motivated or simply a function of administrative incapacity” (Menz, 2010, p. 42).

⁵² This popularity and acceptance of unregistered employment derives from a general distrust of Polish citizens towards authority and any regulations imposed by authority, which in turn was shaped as a reaction to the communist regime (Kicinger & Kloc-Nowak, 2008, p. 7).

Second, on the side of the employers, the “preventive efforts have not overcome the economic incentives to illegal work. The cost of labour is extremely high in Poland, regardless of the period of work involved” (Kicingier & Kloc-Nowak, 2008, p. 23).

Levels of Politicisation

The Employer Sanction Directive was proposed at a time when both politicisation indices suggest a very low politicisation of the EU and immigration in Poland

Employers' Interests

In general, the Polish employers' organisation PKPP Lewiatan supported the Commission's proposal to sanction employers of irregular migrants as a “legitimate project” (PKPP Lewiatan, 2007b). However, the paper does not allow to interfere the perceived dependence on an EU-wide directive. Interestingly, in contrast to the employers of other member states, Polish employers did neither criticise that the administrative burden nor the sanctions are too excessive and disproportionate. Constituting infringement was also not an issue of critique. In contrast, the Lewiatan showed dissatisfaction that the scope of the directive only targets the illegal employment of irregularly staying foreigners, however, not the illegal employment of legally staying foreigners (PKPP Lewiatan, 2007a, 2007b).

Yet, it also pointed out certain flaws that would disproportionally increase the risks for business. First and foremost, as the employers of other member states, one of the regulations criticised most strongly by the Polish employers is Art. 9 that holds main contractors and any intermediate subcontractors liable to pay sanctions and back payments, if the subcontractor who infringed the rules is unable to pay. Lewiatan argues that first, it is impossible for main contractors to monitor the employment decisions of their subcontracts; Second, this provision would necessitate that companies disclose sensitive information to contractors that are also competitors on the (labour) market (PKPP Lewiatan, 2007b).

Position of the Polish Government

Poland defended the interests of employers (of illegally employed irregular migrants). Most comments made by the Polish delegation aimed at lowering the employers' obligations and weaken the sanctions. The only restrictive comment mirrored the employers' demand that the scope of the directive should include third country nationals who had entered the territory of a Member State legally but are illegally employed (Council, 2007a, p. 4, f.n. 2)

Other than that, the Polish delegation expressed concern regarding the administrative burden, which the Commission's proposal would create for Polish employers (Council, 2007b, p. 5, f.n. 13). Deputy Minister of Labour and Social Policy, Kazimierz Kuberski, stressed that the sanctions are too excessive (Wojteczek, 2007). Therefore, like Germany, Poland demanded during the negotiations that treating infringement as a criminal offence should be optional for member states (Council, 2007b, p. 12, f.n. 38). In addition, it criticised the provision that would allow member states to close the work sites of employers temporarily or even permanently if they infringed with the law (Council, 2007b, p. 11, f.n. 35). This, so the argument, would also risk the jobs of the legally employed staff. Representing the employers' concerns, the Polish delegation took the view that main contractors should only step in to pay the imposed sanctions if the subcontractor is unable to do so (Council, 2007b, p. 11, f.n. 36). The Polish delegation questioned the feasibility that back payments of outstanding remunerations and any outstanding taxes and social security contributions should be made by the employer, arguing that "the intervention of the national authorities goes too far in a private-law-related issue" (Council, 2007b, p. 8, f.n. 21).

Besides the level of sanctions for employers, Kuberski also criticised that the Directive "will mean the necessity of creating a huge control apparatus" (Wojteczek, 2007). Similarly, the demanded target of yearly inspection was also subject of the criticism of Krzysztof Lewandowski, the head of the migration policy department of the Ministry of Interior and Administration, which he considered as "unrealistic" (Jakubczak, 2008). Hence, the Polish delegation communicated their discontent concerning any percentage of companies to be inspected yearly due to the very high administrative burden it would entail, suggesting that it could be replaced by a qualitative criterion that would focus on e.g. sensitive sectors (Council, 2007b, p. 16, f.n. 59).

Interim Conclusion

The main point of criticism for Polish employers was related to the directive's provision that the main contractor can be held liable for its subcontractors in case the latter are found guilty for illegally employing irregular migrants. Poland represented this demand of employers in its policy position during the negotiation. In the end, Poland voted in favour of the directive, however, it continued to be dissatisfied with the compromise regarding the liability of main contractors. Hence, it published a statement concerning the directive, stating the following:

"Poland would emphasise that personal liability is one of the foundations of the legal system. It believes that no person should ever automatically be held liable for any breaches of the law by

others, when there was no opportunity for a normally diligent person within the nature of a particular legal relationship to know that any irregularity has taken place” (Council, 2009).

It can be understood as a signalling responsiveness to Polish employers, indicating that their criticism is heard by the government.

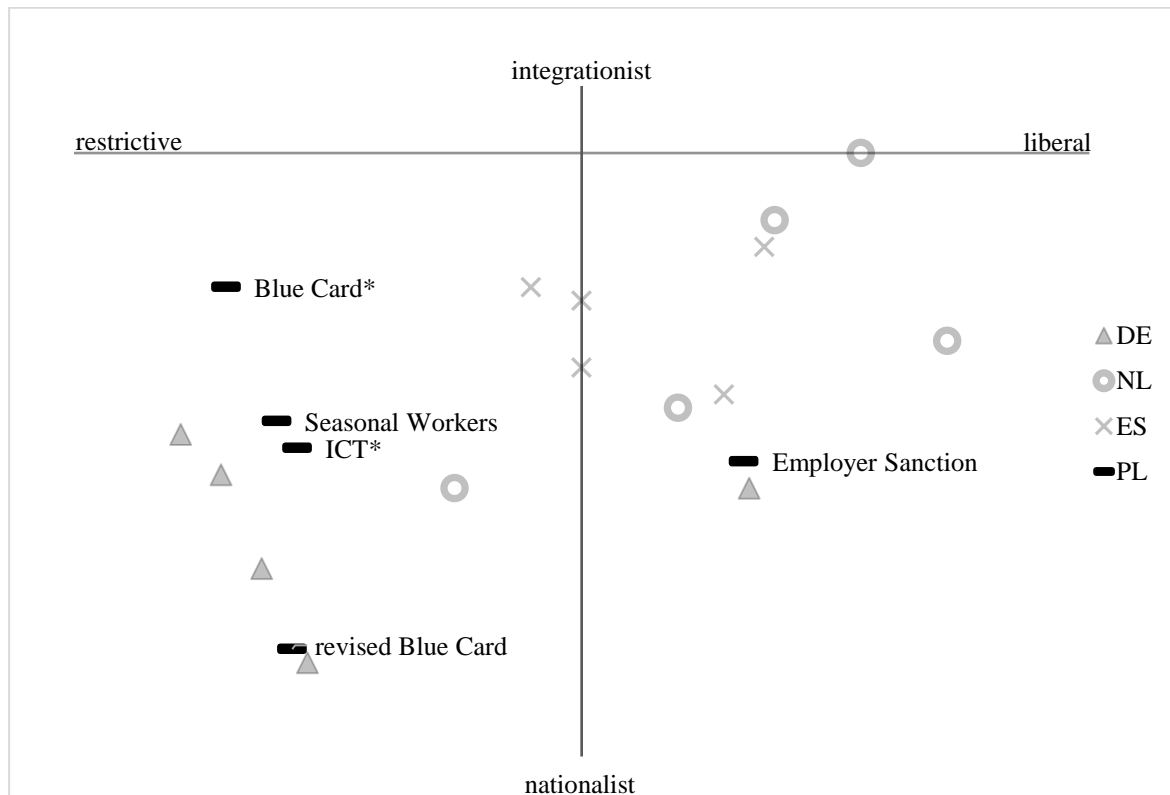
Other than that, Poland went beyond the employers demands. Most comments made by the Polish delegation aimed at lowering the employers’ obligations and weakening the sanctions. Hence, we can conclude that the Polish policy position on the Employer Sanction Directive followed the logic of ‘Client Politics’, as expected by the literature due to the low levels of politicisation. The reason why Poland in this case followed the negotiations and the interests of employers so closely might be explained by the fact that the Polish economy continued to be strongly dependent on the work of irregular migrants. A strict control of employers would threaten the competitiveness of the Polish economy on the European market, as costs of labour was extremely high.

7.4. Conclusion

Figure 12 plots the policy positions of the Polish government in a two-dimensional negotiations space. All Polish positions related to legal labour migration are located in the lower left-hand quadrant, suggesting that the Polish government predominantly sought to restrict admission criteria and rights of labour migrants as well as limit harmonisation. More importantly, however, in the case of the ICT Directive and the initial Blue Card, the Polish participation rate in the negotiation was very low. Therefore, both policy positions in the Figure below are marked with a *, meaning that the calculation of the position is based on less than 10 comments in the Council minutes.

This minor case study sought to analyse the determining factors behind these policy positions of the Polish government. Postfunctionalism would expect that the mediating effect of politicisation is particularly strong in Poland. Accordingly, in times of heightened politicisation, the ‘Mass Politics Mode’ would anticipate that the preferences of Polish governments are dominated by public concerns related to national sovereignty and identity. Liberal Intergovernmentalism instead expects that governments reflect the issue-specific interests of Polish employers.

Figure 12: Polish Policy Positions during the Council negotiations of EU labour migration policies in a two-dimensional negotiation space.



Source: own illustration and data (see chapter 3.2.2)

Polish employers increasingly developed an appetite for labour migration from third countries (Menz, 2009b, p. 198). Constant economic growth, an aging society and continuous out-migration of Poles to other EU member states led to severe labour shortages in Poland. The extensive comments of the employers' organisation Lewiatan on the Commission's proposals exemplify the growing attention of employers towards the EU's legislative activity in the field of labour migration. Employers were mostly enthusiastic about the Commission's proposals, seeking to download more liberal and extensive labour migration schemes from the EU to the national level. However, the other three main Polish employers' organisations remained silent on the Commission's proposals. Hence, we can conclude that the (increasing) interest of Polish employers in (EU) labour migration policies was still in its infancy.

The Polish government did not respond to the Lewiatan's enthusiasm for EU legislation targeting highly skilled labour migration, in particular regarding the initial Blue Card and the ICT Directive. Even though the government's stance on both proposals was rather restrictive and nationalist, the overall effort by the Polish government to change the proposal so was limited. Hence, the Polish government seemed to be indifferent and accordingly neglected the employers' demands. Hence, we can neither speak of 'Client Politics' nor 'Mass Politics'. There

are three likely explanations for these findings: First, this sceptical and at times indifferent attitude parallels the predominant position of the Polish government towards high skilled labour migration in general. As observed by Menz, the Polish government “does not yet see the need for specific labour recruitment programmes” and “is extremely reluctant to implement a full-scale labour migration policy or even revive and remodel a briefly functional bilateral labour agreement with Ukraine” (Menz, 2010, p. 44). Hence, given the low enthusiasm for labour migration in general as a ‘country of emigration in transition’, it is not surprising that this is also mirrored in the Polish indifferent position towards legislation at the EU level. Second, as mentioned in the research design, compared to Germany, the Netherlands and Spain, Poland shows only weak corporatist arrangements (Jahn, 2016). Furthermore, the landscape of Polish employers’ organisations is highly fragmented. Only one of the four big employers’ organisations represented in the Social Dialogue Council expressed its interest in the harmonisation of labour migration policies. The other organisations remained silent. Hence, one explanation for the observed indifference on the side of the government might be that the influence of Polish employers is considered to be relatively weak in general. Third, and that relates to the observations in the following section, as an economy in transition, Poland was mainly dependent on migration into low-skilled occupations in the construction and agricultural sector. Hence, the overall dependence on facilitating high skilled labour migration was low.

In contrast to the directives targeting high skilled migration, however, the Polish government showed a strong participation during the negotiation of the Seasonal Workers Directive and the Employer Sanction Directive. The former targets temporary migrant workers and the latter irregular migrants. At that time, the Polish economy was strongly dependent on the workforce of both regular and irregular migrants occupying low-skilled jobs (see Figure 10). Accordingly, the Polish government was actively involved in the negotiations and more willing to defend the interests of employers. In the case of the Seasonal Workers Directive, Poland (as a country with relatively low living standards) feared to lose out in the competition for seasonal workers, if all member states implement a common liberal admission scheme. Hence, Poland wanted to keep its competitive advantage inherent in the very liberal ‘employers’ declaration’ and sought to prevent the EU directive. A likely explanation for the government’s opposition to serious sanctions for employers of irregular migrants is also the strong dependence of the Polish economy on the shadow economy and illegal employment to remain internationally competitive.

While the negotiations of the first Blue Card Directive did not catch much of the Polish government's attention, Poland's position on the revised Blue Card Revision is a clear case of 'Mass Politics'. At that time, domestic politicisation of both EU and immigration was very strong. Moreover, both EU and immigration were discursively linked in the public debate, as the EU was mostly contested *because* of immigration and being held responsible for facilitating migration. The employers' organisation Lewiatan did not communicate its position regarding the revised proposal, which might be due to the tense political climate at that time, which rendered any comments regarding the facilitation of immigration at the EU level politically dangerous. In any case, identity-related concerns surfaced strongly in the government's policy position towards the revised Blue Card, which cannot only be explained by strong levels of politicisation, but also by the fact that an openly Eurosceptic populist party was in government at that time.

In sum, it seems that the restrictive and at times indifferent position of the Polish government can be best explained by the weak (yet, increasing) demand for (highly skilled) labour migrants on the side of employers and a generally limited influence of business on governmental policy positions. In addition, the Polish case study further confirms the expectations that governments will limit harmonisation and restrict admission conditions if the government (and employers) fears that harmonised policies will undermine effective unilateral policies and increase European competition for labour migrants that the economy is highly dependent on (as in the case of the Seasonal Workers Directive). Hence, the findings are in line with Moravcsik's 'Client Politics Mode' which anticipates that governments tend to limit harmonisation if issue-specific dependence is considered to be low (confirms Expectation 1.2).

However, at the same time, the cultural-identitarian logic underlying the increasing politicisation of immigration and European integration in Poland, points in the same direction and helps to explain the sovereignty and identity concerns that surface in the Polish policy positions. A clear indicator for communitarian concerns is that first, Polish governments seeks to privilege 'well-integrated labour migrants' in EU legislations. Second, Poland is wary that harmonised schemes would override national policies that specifically target citizens of 'culturally similar' neighbouring countries. It confirms the observations of Maroukis et al. (2011, p. 138) which consider "the long-lasting political concerns about the maintenance of national and cultural identity" in central and eastern countries as the cause for the prioritization of "policies towards diasporas living in neighbouring countries and the return of the co-ethnics over the economic migration of foreigners".

Hence, the expectations of the Postfunctionalist Theory and Liberal Intergovernmentalism do not contradict each other in the case of Poland. Instead, they seem to complement or reinforce each other. Low issue-specific dependence allows the Polish government to take a restrictive and nationalist position towards the harmonisation of labour migration policies at the EU level.

8. Conclusion and Discussion

Postfunctionalism draws a daunting picture for European integration. Against the backdrop of an increasing politicisation of the EU, scholars expect the public to exert a ‘constraining dissensus’ on policy-makers, followed by a “downward pressure on the level and scope of integration” (Marks & Hooghe, 2009, p. 21). It challenges the optimistic lens of Moravcsik’s Liberal Intergovernmentalism, where member states represent the interests of the strongest economic interest groups and decide to cede authority to the European level when functionally necessary. It begs the question whether Moravcsik’s pluralist understanding of preference formation is still valid (Kleine & Pollack, 2018; Moravcsik, 1998). Based on the empirical and theoretical literature, this thesis set out to test the Postfunctionalist challenge against the expectations of Moravcsik’s Liberal Intergovernmentalism.

To study the moderating effect of politicisation on the responsiveness of governments, I chose the policy field of labour migration policy for two reasons: first, as observed by Favell and Hansen (2002, p. 581) at the turn of the century, immigration “has become an issue central to the future of Europe; perhaps the central issue”. The recent Schengen Crisis and the Brexit referendum has underlined the importance of this intimate link, that reverberates strongly in the public of European member states. It is therefore of great empirical relevance to study the closer coupling of two highly sovereignty and identity-sensitive issues, that both run along the cultural-identitarian dimension of the globalisation cleavage and are contested and mobilised by the same (right wing) populist actors. Second, to study whether “mass politics trumps interest group politics when both come into play” (Marks & Hooghe, 2009, p. 18), EU labour migration policies is the ideal policy field. It increasingly raises issue-specific interests of employers, that seek to strengthen their competitive advantage in the ‘global battle for brains’ by framing labour migration as indispensable for economic growth, competitiveness and innovation and by pressuring governments to liberalise labour migration policies. At the same time, and related to the first point, it is a highly sovereignty and identity-sensitive policy field where governments are under pressure from right-wing populist actors to keep electoral fortunes in mind when deciding on potentially ‘unpopular’ policies both at home and in Brussels. Hence, EU labour migration carries a high potential for politicisation. More importantly, mass politics and client politics occur in tandem and are likely to clash.

I posed the question whether and to what extent the level of politicisation of European integration and immigration moderates upon the responsiveness of member states to issue-

specific interests of employers or to the mass public. After having developed a time-consistent quantitative measurement of politicisation of the EU and immigration, I subsequently investigated qualitatively whether the level of politicisation impacts the preferences of governments regarding EU labour migration policies.

I found in answer to the research question that the evidence for a moderating effect of politicisation of the EU and immigration is weak. Instead, whether governments support strong harmonisation and liberalisation at the EU level is to a large extent dictated by the issue-specific dependence of employers and the government on a common EU policy in the field of labour migration. In turn, if the dependence is low, because unilateral policies are considered to be sufficient or more effective to attract labour migrants to the domestic labour market, governments are sceptical of EU harmonisation. Nevertheless, identity politics are not irrelevant, but surface often in the policy positions of certain member states. However, I argue, it is not heightened politicisation but primarily the ‘shadow of an ignorant business’ (deriving from low issue-specific dependence) that incentivises governments to serve the sovereignty concerns of the communitarian parts of their electorate more prominently.

After having analysed the preferences of four EU member states regarding the harmonisation of labour migration policies, this chapter assesses the findings comparatively and embeds them into the broader scholarly debate on the responsiveness of governments in Brussels and the effect of an increasing politicisation of the EU and immigration on EU policy-making.

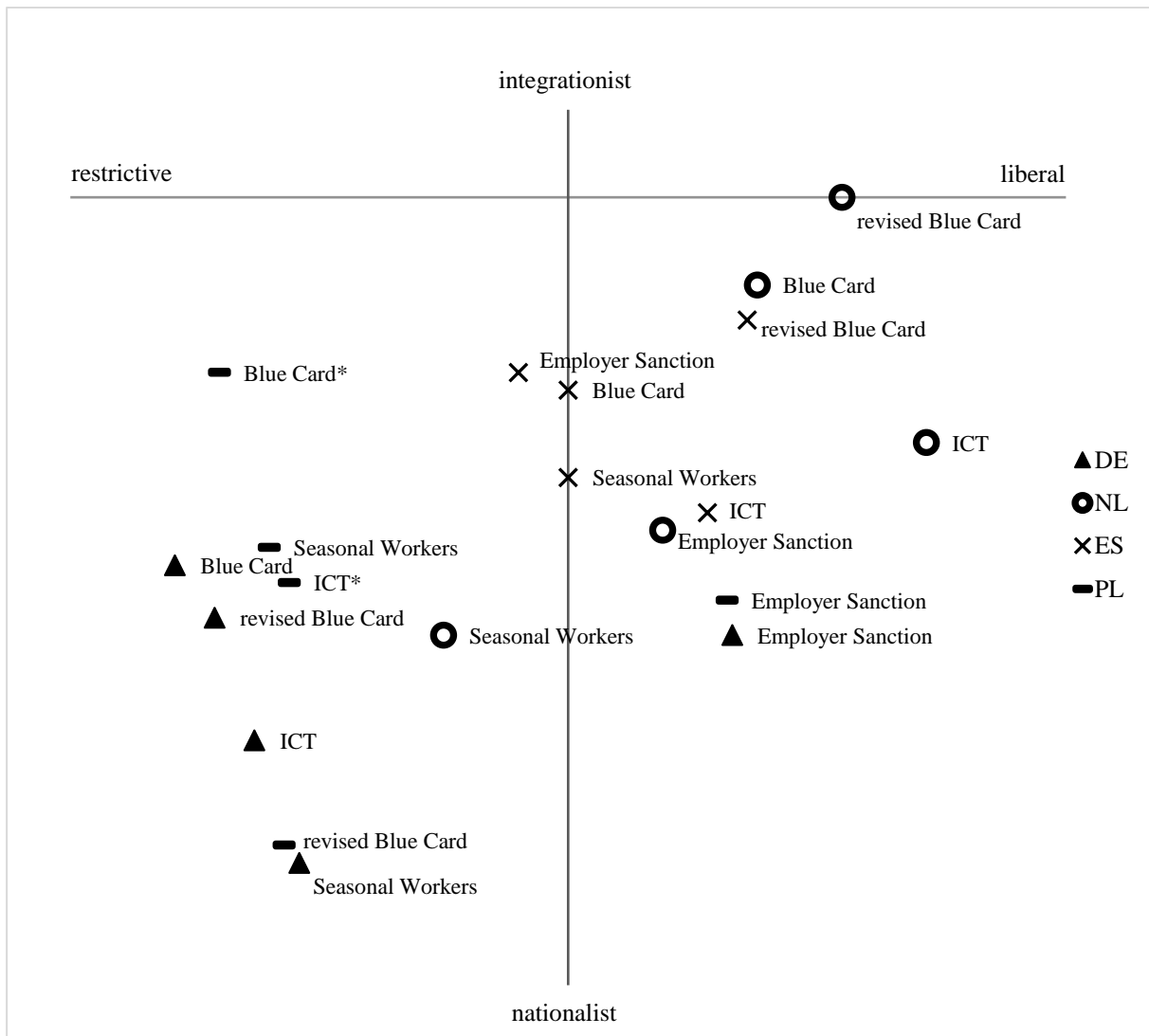
8.1 Cross Case Comparison

In this thesis, I unpacked the black box of governmental preferences regarding EU labour migration policies in greater detail. I did so by first, looking at the initial negotiation positions of member states and not the outcome of the negotiations; second, by assessing the interests of governments on two-dimensions: the policy-dimension (restriction or liberalisation of migration policies) and the polity-dimension (harmonised or national standards); and third, by overcoming theoretical divides and examining governmental responsiveness to both the mass public *and* issue-specific interests of business.

Figure 13 below plots the position of governments regarding the Commission’s proposals in a two-dimensional negotiation space. While the negotiation positions of a member state vary within countries depending on the directive under discussion, major differences can be observed

between member states. It is therefore of importance to shed light on the country-specific particularities that can explain these vast across-country differences.

Figure 13: Member States' Policy Positions during the Council negotiations of EU labour migration policies in a two-dimensional negotiation space.



Source: own illustration and data (see chapter 3.2.2)

While Germany is plotted on the far left of the chart, suggesting a restrictive and nationalist position, the Dutch positions on the policy-dimension are diametrically opposed. The negotiation positions of Poland are closer to the sceptical positions of Germany, while Spain lies somewhere in-between. The differences between the member states' positions are more pronounced on the policy-dimension than on the polity-dimension. None of the governments sought to substantially increase harmonisation compared to the level proposed by the Commission's draft directives (indicated by the intersection of the axes in Figure 13). Instead, most policy positions are located in the lower quadrants of the negotiation space, suggesting

that overall governments tend to decrease (rather than increase) harmonisation. However, governments do so for different reasons: Spain and the Netherlands generally support strong harmonisation to achieve an ‘economies of scale effect’ (and are overall closer to the ‘integrationist side’ in Figure 13). Yet, if they fear that European provisions render already existent or future national legislations more restrictive, they seek to increase national discretion. They do so also to maintain or establish a competitive advantage in the ‘battle for brains’ vis-à-vis the other member states. Poland and Germany, in contrast, seek to increase national discretion (and decrease harmonisation) for the sake of national sovereignty or to allow for the possibility to keep or implement more restrictive national legislations.

Main case studies

The main country cases of this dissertation are Germany and the Netherlands. In both countries, European integration and immigration run along the cultural dimension of the globalisation cleavage and are mostly politicised and mobilised along the lines of national sovereignty and identity, rather than socio-economic considerations. Postfunctionalism and the literature on politicisation would therefore expect that governments - under conditions of strong politicisation of the EU and immigration - serve the communitarian interests of the ‘globalisation losers’ according to the ‘Mass Politics Mode’; building on the notion of ‘anticipatory representation’ governments fear that ‘unpopular’ decisions in Brussels could potentially echo later in election results, even more so if right wing populist parties are present and successful at the national level. The indices for both the Netherlands (see Figure 5) and Germany (see Figure 2) indicate fluctuating levels of politicisation of the EU and immigration over the period of investigation (2002-2017). Accordingly, assuming there is a moderating effect of politicisation upon the responsiveness of governments, we would expect strong variation of the positions within countries. However, Figure 13 suggests that the positions are clustered by countries, and that the Dutch and German preferences diverge strongly. The Netherlands has adopted predominantly liberal and integrationist positions, which is best explained by the logic of ‘client politics’. In diametrical opposition, the German policy positions are located in the lower-left quadrant of the negotiation space.

The findings of this dissertation do not provide strong evidence for a moderating effect of politicisation upon the responsiveness of governments. Instead, this research seems to identify the issue-specific dependence on a common EU approach in the field of labour migration policies as the main explanation for the member states’ divergent positions. Dutch employers, located in a relatively small labour market with a small language area, anticipate to create an

‘economies of scale effect’ when integrating into a comprehensive, harmonised EU admission scheme for third country nationals. By doing so, they hope to strengthen their competitive position in the ‘global battle for brains’. My findings show that - as expected by Moravcsik’s Liberal Intergovernmentalism - the governments of the Netherlands broadly agree with the employers’ view that harmonisation of labour migration policies has an ‘added value’ for the Dutch economy. Accordingly, they respond to the demands of strong national business interests and represent the employers’ demands for a concerted EU effort. The Netherlands does so despite at times unprecedented levels of politicisation, as in the case of the revised Blue Card proposal, which coincided with the Schengen Crisis and the British Brexit referendum. If employers perceive themselves to be less dependent on a common policy or expect disadvantages from it, as in case of the Seasonal Workers Directive (located in the lower-left quadrant of Figure 13), the Dutch government rejects harmonisation and liberalisation. The Netherlands was even induced to vote against the directive, despite the Council’s informal ‘culture of consensus’ (Heisenberg, 2005; Novak, 2013).

Surprisingly, contrary to the Postfunctionalist expectations, my findings suggest that communitarian concerns related to national sovereignty and identity of the ‘globalisation losers’ do not surface in the Dutch policy positions at all. The government followed broadly the interests of employers throughout all negotiations of legal labour migration policies, irrespective of the level of politicisation and success of established right-wing populist parties at the time of the negotiations. There is clearly no evidence of a moderating effect of politicisation. Instead, employers’ interests trump mass public interests’ when both come into play.

In stark contrast to that, German employers mostly believe that unilateral policies are more effective in meeting the economy’s labour demands. Due to the size, attractiveness and visibility of the German economy, employers in Germany have a relatively advantageous position compared to their competitors in the Netherlands in the ‘global battle for brains’. In combination with the anticipated (sovereignty) costs related to EU harmonisation, such as greater competition between EU member states and a decreasing impact on the policy design, German employers in general do not see an added value of an EU labour migration scheme to reach their policy goal of attracting labour migrants. Hence, while they prefer liberalisation, they mostly seek for its implementation at the national level and oppose strong EU harmonisation in the field. Communitarian attitudes prevalent in parts of the German electorate

clash with employers' interests on the policy-dimension (restricting vs. liberalising labour migration), but not on the polity-dimension (preferring national over harmonised schemes).

Accordingly, the German government seeks to prevent (strong) harmonisation of labour migration policies in Brussels. The relatively weak dependence on a common EU policy provides German policymakers the leeway first, to satisfy employers' demands at the national rather than the European level, and second, to represent communitarian interests in the Council instead. As a result, communitarian concerns surface much more strongly in the German policy positions - however, independently of the level of politicisation. Sovereignty concerns and lack of trust in the admission decisions of other member states are a constant feature of the German policy position on EU labour migration policies. Hence, strong politicisation is not a necessary condition for the German government to serve mass public interests in Council negotiations.

Yet, in line with the expectations of Postfunctionalism and recent literature on policy responsiveness, the German case does suggest a moderating, yet weak effect of politicisation; Politicisation reinforces the representation of sovereignty concerns in the German policy position: when unprecedented high levels of politicisation of both the EU *and* immigration coincide, coupled with the rise of a newly emerging right-wing populist party, the potential electoral costs for the German government multiply. Accordingly, in the case of the revised Blue Card, the German government was wary to make an 'unpopular' decision in Brussels. As a result, it did not only seek to limit harmonisation, but it outright rejected any agreement, leading to a standstill of the negotiations for a revised Blue Card. It is a clear case of a "downward pressure on level and scope of integration", as postulated by Marks and Hooghe (2009, p. 21). But again, employers' and mass public interests clashed mostly on the policy-dimension (regarding the degree of liberalisation) and not so much on the polity-dimension (the level of harmonisation): while employers did hope for further liberalisation, they outright rejected full harmonisation. Once more, the employers' demands for liberalisation were satisfied through legislative change at the national level. 'Unilateral Client Politics', enabled by low issue-specific dependence, allow the government to follow 'Mass Politics' in Brussels.

Similar strong levels of politicisation in the Netherlands, however, did not have the same effect on the Dutch government. Instead, the Dutch delegation was one of the main supporters of strong harmonisation and liberalisation, diverting only from the integrationist position when restrictive pressure of other member states became too dominant. The most likely explanation, again, is the perceived stronger dependence of the Dutch government on a common EU policy.

A comparison of the Dutch and the German country analyses seems to turn the Postfunctionalist challenge upside down: it is not low politicisation and an ‘ignorant public’ that provides member states the leeway to represent issue-specific interests of employers. Rather, it is ‘ignorant business’, deriving from low issue-specific dependence, that offers member states the opportunity to respond to communitarian attitudes held by parts of the electorate (in Germany). Yet, if mass public interests and business interests clash (because issue-specific dependence is perceived as high), employer interests trump mass public interests (in the Netherlands) – contrary to the Postfunctionalist expectations.

Minor case studies

Spain and Poland were added as minor case studies to the analysis of this dissertation. They differ from Germany and the Netherlands in their immigration experience; Spain turned recently from a country of emigration to one of the main immigration destinations in Europe, while Poland is still more an emigration than an immigration country, yet with a growing interest in establishing and reforming national labour migration policies. Both countries differ in their stance to coordinate policies at the EU level: while Spain increasingly endorses European-wide labour migration schemes to attract economic migrants to its labour market, Poland is highly sceptical of harmonisation at the EU level.

According to the literature, the Spanish contestation of the EU follows a socio-economic distributional logic and criticism is mostly voiced from the old communist left. Besides European integration, also immigration is integrated into the traditional economic left-right dimension of the globalisation cleavage. And indeed, the Spanish policy positions reflect more socio-economic concerns related to immigration and European integration from the Left than in countries with a cultural-identitarian logic of politicisation. These include references to the protection of the domestic workforce from social dumping but also the protection of labour migrants from exploitation. This is also illustrated in the case of the Spanish position on the Employers Sanctions Directive. Spain supported severe penalties for employers who were found guilty of exploiting irregular migrants. More importantly, the government thought to strengthen the rights of migrants vis-à-vis their employers. The Postfunctionalist literature remains silent of what effect of politicisation to expect if it is not politicised according a cultural-identitarian logic. The Spanish case does not allow to make a statement whether the government acted according to the ‘Client Politics Mode’, as Spanish employers did not comment on the EU’s legislative activity in this field. The balanced positions of the Spanish government regarding the Blue Card and the Seasonal Workers Directive, located in the centre

of the policy-dimension in Figure 13, might be precisely related to both the lack of employers' enthusiasm for EU legislation *and* the lack of cultural-identitarian motives.

Yet, an interesting finding derives from the Spanish case: at a time of severe economic hardship and unprecedented high levels of unemployment, the Spanish government implement a paradigm change in order to boost the competitiveness and internationalisation of the Spanish economy; It endorsed to shift the Spanish migration management towards a more utilitarian and selective approach both at the national as well as the European level, by integrating into a harmonised EU-wide labour migration scheme. The positions regarding the ICT Directive and the reformed Blue Card Directive are therefore located on the right side of the negotiation space, indicating a liberal position (see Figure 13). Accordingly, Spain justified its policy positions increasingly in the context of economic growth and international competitiveness, rather than social protection. It did so despite high levels of politicisation (as in the case of the revised Blue Card) and the lack of employers' lobbying efforts. The findings therefore suggest that strong politicisation does not reinforce prevailing socio-economic concerns. Instead, an increasing issue-specific dependence on a concerted EU effort to attract high skilled labour migrants and to achieve a competitive advantage for Spain in the global 'battle for brains' explains why we observe 'Client Politics without Clients'.

The Polish policy position are mostly located in the lower-left quadrant of Figure 13. In Poland, European integration and immigration are in recent years very strongly mobilised and politicised along cultural-identitarian lines. As both employers and the government only recently discovered labour migration as a means to fill growing labour shortages at home, it is not surprising that Poland exhibits a sceptical and at times indifferent attitude towards (high skilled) labour migration and the Commission's attempts to harmonise regulations at the European level. While parts of the employers increasingly approach the government to harmonise labour migration policies at the EU level, their impact on the governmental positions seems to be negligible, which is probably also related to weak corporatist structures in Poland. The indifference and weak influence on the side of employers is reinforced by the cultural-identitarian contestation to the EU and immigration. As a result, identity- and sovereignty concerns reflect very strongly in the government's policy position, even more so (and not very surprisingly) when a populist party is in government, as in the case of the revised Blue Card. Instead, unilateral policies that target citizens of 'culturally similar' neighbouring countries are considered to sufficiently meet the Poland's growing demand for mostly low-skilled labour

migrants. Hence, the Polish case study again confirms the hunch that weak issue-specific dependence provides governments the leeway to follow mass public interests at the EU level.

Hence, when comparing the findings of the minor case studies it seems again that both Postfunctionalism and Liberal Intergovernmentalism complement each other when explaining preferences of governments regarding EU labour migration policies. The Spanish shift towards liberal utilitarian and harmonised labour migration policies was certainly enabled by the lack of cultural-identitarian contestation of the EU and immigration at the domestic level. In contrast, the lack of enthusiasm on the side of Polish employers (and their weak influence on the Polish government), coupled with an increasing contestation of both EU and immigration along the lines of identity and sovereignty seems to explain why Poland remains on the nationalist-restrictive side of the negotiation space.

8.2 The Key Findings: Mass Politics in the shadow of an ‘ignorant business’

In a nutshell, I propose – and my findings show – that the evidence for a moderating effect of politicisation on the responsiveness of governments to mass public interests or issue-specific interests of employers is weak. Three notions derive from my research instead (as summarised in Table 17 below):

The first main finding that can be inferred from the comparative assessment of the empirical cases is that governments’ preferences regarding the harmonisation of national policies reflect largely the issue-specific dependence on a common EU policy, as expected by Liberal Intergovernmentalism (Moravcsik, 1998). Hence, when employers have an overall strong interest in liberalising labour migration policies and the government is dependent on a European concerted effort to reach this policy goal, the relevant government supports harmonisation and liberalisation at the EU level (confirms Expectation 1.1). In particular, the evidence from the case study on the Netherlands (coupled with the results from the German case study) seems to suggest that in case of strong dependence Moravcsik’s ‘Client Politics’ prevail. Hence, contradicting Postfunctionalist expectations, ‘economic interests trump mass public interests when both come into play’ in times of heightened politicisation (rejects Expectation 2). If, however, employers (or the government) perceive themselves not to be dependent on a common EU policy, the member state tends to object to strong harmonisation at the EU level (and prefers liberalisation of migration policies at the national level) (confirms Expectation 1.2). This is the case, it appears, when unilateral policy options are considered effective and attractive by

employers (or the government) or when European legislation is expected to involve more costs than benefits. High costs are anticipated for instance when employers fear for a competitive disadvantage in the ‘battle for brains’ between member states by integrating into a common and liberal scheme or when they fear to lose political influence on the management of migration and the policy design. As a result, it seems, that “the downward pressure on the level and scope of integration” (Marks & Hooghe, 2009, p. 21) derives to a large extent from employers’ scepticism towards harmonisation.

The second main finding of this dissertation is that strong politicisation of the EU and immigration is *not* a necessary condition for governments to act according to the ‘Mass Politics Mode’. ‘Minimum’ sovereignty concerns can echo in the policy positions of governments independently from the level of politicisation. However, the case studies also indicate that this is more likely the case in countries where the contestation of the EU and immigration follows a cultural-identitarian (rather than socio-economic) logic and where the overall issue-specific dependence on a common EU policy is considered to be low (upper-right cell of Table 17).

My third main finding suggests that in those member states with a more cultural-identitarian contestation of the EU and immigration as well as a low issue-specific dependence there is also evidence for a moderating, albeit weak effect of politicisation on governmental responsiveness. Already prevailing concerns related to sovereignty and identity are reinforced and echo even stronger. If decision-making in Brussels is under public scrutiny, governments are more likely to fear for their electoral fortunes. Moreover, the threat to be held accountable for their decisions increases when challenger parties are present to disseminate the government’s stance at the EU level. Yet, a note of caution is due here: in the case of the two policy positions that indicate a moderating effect of politicisation (the policy positions of Germany and Poland regarding the revised Blue Card Directive), unprecedented strong levels of politicisation of the EU and immigration coincided with the emergence of a populist right wing party (in Germany) and with a populist party in government (in Poland). As both domestic politicisation and the success of the populist parties were certainly mutually reinforcing, we cannot conclude whether we would have also observed the ‘Mass Politics Mode’ without one or the other. Nonetheless, the Dutch case certainly illustrates that the presence of a right-wing populist challenger party is not sufficient for identity politics to trump employer interests if issue-specific dependence is considered strong.

Table 17: Summary of findings

	Strong dependence on EU policy	Weak dependence on EU policy
Cultural-identitarian logic	<ul style="list-style-type: none"> - Governments tend to support strong harmonisation and liberalisation at the EU level - No moderating effect of politicisation - Economic interests trump mass public interests (Client Politics Mode prevails) - Confirms expectations of Liberal Intergovernmentalism 	<ul style="list-style-type: none"> - Governments tend to object to strong harmonisation and liberalisation at the EU level or are indifferent - Strong politicisation is not a necessary condition for Mass Politics - Moderating, yet weak effect of politicisation - Unilateral Client Politics allow for Mass Politics at the EU level - Economic interests and mass public interests reinforce each other - Confirms expectations of both Liberal Intergovernmentalism and Postfunctionalism
Socio-economic logic	<ul style="list-style-type: none"> - Governments tend to support strong harmonisation and liberalisation at the EU level - No moderating effect of politicisation on the prevalence of socio-economic concerns - Confirms expectations of Liberal Intergovernmentalism and Postfunctionalism 	-

Challenging the Postfunctionalist Challenge?

My findings contribute to the nascent debate about the consequences of politicisation for state preferences. To date, only few studies sought to define clear and testable predictions about the consequences of politicisation, and have systematically tested them empirically (Bressanelli et al., 2020; de Wilde et al., 2016; Grande & Hutter, 2016a, p. 16; Hobolt & Wratil, 2020; Hooghe & Marks, 2017, p. 126; Kleine & Pollack, 2018; Moravcsik, 2018; Schimmelfennig, 2020; Wratil, 2018; Zürn, 2016). Drawing on Postfunctionalism and the literature on cleavage transformation, it was hypothesised that in member states, where the contestation of the EU (and immigration) are integrated into the cultural dimension of the globalisation cleavage, politicisation is the key mechanisms that brings us from Moravcsik's insulated 'Client Politics' to the Postfunctionalist 'Mass Politics'.

Speaking to this literature, my results generally confirm the expectation that communitarian concerns are more likely to be represented by member states, where the contestation of the EU

(and immigration) follows a cultural-identitarian logic (upper-right quadrant of Table 17). In said countries, certain (right wing populist) actors at the national level frame European integration and immigration primarily as a threat to national sovereignty and identity. As a result, the governments of the relevant member state are under greater electoral pressure to appease the anxieties of parts of their electorate in Council negotiations, anticipating that these constituencies would otherwise be mobilised by right-wing challenger parties. Thus, sovereignty and identity concerns of governments do surface in the preferences of governments according to the ‘Mass Politics Mode’; yet, for that to happen, politicisation is not a necessary condition as suggested by my findings. However, ‘anticipatory representation’ is reinforced in times of unprecedented strong politicisation. Hence, in answer to the research question, it appears that the evidence for a moderating effect of politicisation upon the responsiveness of governments is weak.

Moreover, it seems that governments are more likely to act according to the ‘Mass Politics Mode’ if employers are sceptical of or indifferent about EU harmonisation. Accordingly, I argue that ‘the shadow of ignorant business’ provides governments the leeway to serve mass public interests at the EU level. The findings of this research suggest adding low issue-specific dependence as a scope condition for politicisation to take its moderating effect on governmental preferences in countries with a cultural-identitarian logic of EU contestation. In these cases (upper-right quadrant of Table 17), the expectations of the Postfunctionalism and Liberal Intergovernmentalism are not contradicting but complementing (or even reinforcing) each other. Often, employers are sceptical of strong harmonisation of policies at the EU level, fearing for increased competition between member states or a diminishing influence on the policy design. Governments then gladly use the leeway provided by an ‘ignorant business’ to serve communitarian interests prevailing in parts of their electorate.

Liberal Intergovernmentalism and the ‘battle for brains’

At first glance, the EU’s Area of Freedom, Security and Justice seems to be an unlikely policy-field for Moravcsik’s pluralist account of preference formation, due to its distance from commercial interests of economic interest group politics (Schimmelfennig, 2018, p. 1585). Accordingly, there also remains a paucity of theoretical and empirical accounts in the tradition of the Liberal Intergovernmentalism. Yet, I have demonstrated that the sub-field of labour migration policies targeting third country nationals has the potential to spark strong issue-specific interests of business and incentives governments to act according to the ‘Client Politics Mode’.

Applying Moravcsik's theoretical lens turned out to be a fruitful approach to fill the research gaps on the Europeanisation of labour migration policies. By studying employer interests both on the policy- as well as the polity-dimension, this dissertation contributed to our understanding of the preferences of both employers and governments towards the harmonisation of labour migration policies. The results seem to illustrate that the low level of harmonisation in the field of EU labour migration policies is to a great extent related to the highly asymmetric functional pressure to cooperate (as expected by Moravcsik's Liberal Intergovernmentalism). Whether or not member states see a functional necessity or 'added value' to integrate, depends on how they perceive their position in the global (but also European) competitive environment that characterises the 'battle for brains'. Employers and governments of smaller and open economies or those of 'new immigration countries' seek to create an 'economies of scale effect' when integrating into a more comprehensive, and internationally more visible EU-wide labour migration scheme. Yet, competitive dynamics increasingly unfold not only between regions, but also within the EU. The fact that 'new immigration countries' in the East and South are increasingly incentivised by global competition to catching up with the utilitarian and selective migration management of North Western European member states will certainly reinforce this dynamic in future. While harmonisation is seen as a means to strengthen the competitive advantage with established immigration destinations such as the US and Canada, it can also be perceived as increasing competition between member states. Accordingly, member states with a more powerful position in the global competition for talent are discouraged from establishing a labour migration schemes at the EU level (2005, p. 20). Hence, strong harmonisation is to a large extent impeded by an EU-internal 'battle for brains'.

Overcoming the theoretical divide and 'going full cycle'

While my results confirm Moravcsik's expectation that high dependence mostly positively affects the integration preferences of governments, they also show that identity politics do complement employer interests. While Liberal Intergovernmentalism can also theorise governments as gatekeepers for preferences of the electorate if salience is high, it mainly "attributes salience and political mobilization to the certainty and distribution of (economic) integration gains" (Kleine & Pollack, 2018, p. 1498). Yet, this research has illustrated that the 'Mass Politics' that complement 'Client Politics' in EU negotiations of labour migration policies follow mainly identity-related (rather than economic) anxieties of the public. My findings suggest that identity politics do not necessary constrain governments from following employer interests, as 'Mass Politics' mostly seem to surface when the employers are 'ignorant'

or sceptical themselves. Yet, identity-related concerns might have the potential to reinforce the governments' opposition to harmonisation. The negotiations of the Blue Card Directive for instance indicate that low issue-specific dependence coupled with strong politicisation in some member states decreases the willingness of the relevant governments to compromise severely. Hence, in these cases, 'Mass Politics' do not change the initial policy positions of governments. Yet, they limit the governments' willingness to divert from their initial policy positions for the sake of finding a compromise with other member states. Hence, in combination, low issue-specific dependence and high politicisation might lead to a more pronounced 'downwards pressure on the level and scope of integration' than when both occur individually.

This observation points at the necessity to study the Postfunctionalism and Liberal Intergovernmentalism in tandem - throughout the whole policy cycle and across all three-stages of Moravcsik's model of EU policy-making (de Wilde & Rauh, 2019). How are disputes settled (or not settled) during the negotiations in times of strong politicisation (Hobolt & Wratil, 2020)? Does high politicisation reinforce „asymmetric interdependence” (Moravcsik, 1998, p. 3) in the Council to such an extent that it impairs the member states' ability to compromise and conclude agreements? Do member states negotiate vast national discretion and weak harmonisation to signal responsiveness to the electorate, allowing them to implement the directive later in a more business-friendly and liberal way at the national level, when public scrutiny is low? Furthermore, to move the research field on preference formation and policy responsiveness forward, we need to overcome theoretical divides and integrate different theoretical schools. This dissertation exemplifies the importance to consider both mass politics and issue specific interests when studying EU policy-making in the Council.

As suggested by my findings, the preferences of governments in EU labour migration policies follow broadly the issue-specific dependence and interests as articulated by the business community. More importantly, this research argues that governments are more inclined to serve communitarian concerns related to sovereignty and identity, when business is 'rationally ignorant or sceptical' about legislative activities at the EU level. Hence, these findings beg the question whether a Postfunctionalist Union, where citizens are no longer ignorant about their governments' decisions in Brussels, incentivises governments to follow business interests where necessary, and implement a 'communitarian backlash' both on the polity- as well as policy-dimension in areas that do not raise immediate and concentrated interests of the business community. Thus, further research is required to investigate whether the functional necessity

to respond to business interests in certain areas leads to more pronounced identity politics in others.

This certainly relates to other sub-fields of Justice and Home Affairs, such as asylum, border protection and terrorism, as they raise less manifest and concentrated interests of the business lobby and are therefore prone to restrictive pressure from the communitarian parts of the electorate. However, it can also be extended to other fields, such as the Europeanisation of social policies, where business interests might not be only indifferent, but rather outright opposed to greater harmonisation. Coupled with communitarian concerns, which are raised and mobilised by right-wing populist actors, governments might be inclined to restrict the harmonisation of standards. It is therefore a likely policy field to observe similar dynamics as in EU labour migration policies, where both business interests and the concerns related to sovereignty and identity generate a pronounced 'downward pressure on the level and scope of integration'. In extending this thought, it has significant implications for the future path of European integration that is likely to be dominated by business interests in certain areas, and by communitarian identity politics in others, leaving only limited room for debates about socio-economic distribution relevant for the broader public or minority groups.

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Annex I: Development of Search Strings for Media Salience

In a pilot study I applied both complex search strings similar to that of Boomgaarden & Vliegenthart (2009) as well as more simple ones (Hjorth, 2016; Hopkins, 2010). For German speaking newspapers the following search string was constructed inductively and produced an output of articles broad enough to capture also more specific issues of the policy field and specific enough to exclude articles that are not related to the policy field at all:

- EU ODER EG ODER „Europäisch* Union“ ODER „Europäisch* Gemeinschaft“ ODER „Europäisch* Parlament“ ODER „Europäisch* Kommission“ ODER „Europäisch* Rat“ ODER „Rat der Europäischen Union“ ODER „Gerichtshof der Europäischen Union“ ODER „Europäisch* Zentralbank“
- Immigra* ODER migrant* ODER migration* ODER einbürger* ODER einwander* ODER zuwander* ODER asyl* ODER Aufenthaltsgenehm* ODER Familienzusammenführung* ODER Flüchtling* ODER Geflüchtete* ODER Arbeitserlaub*

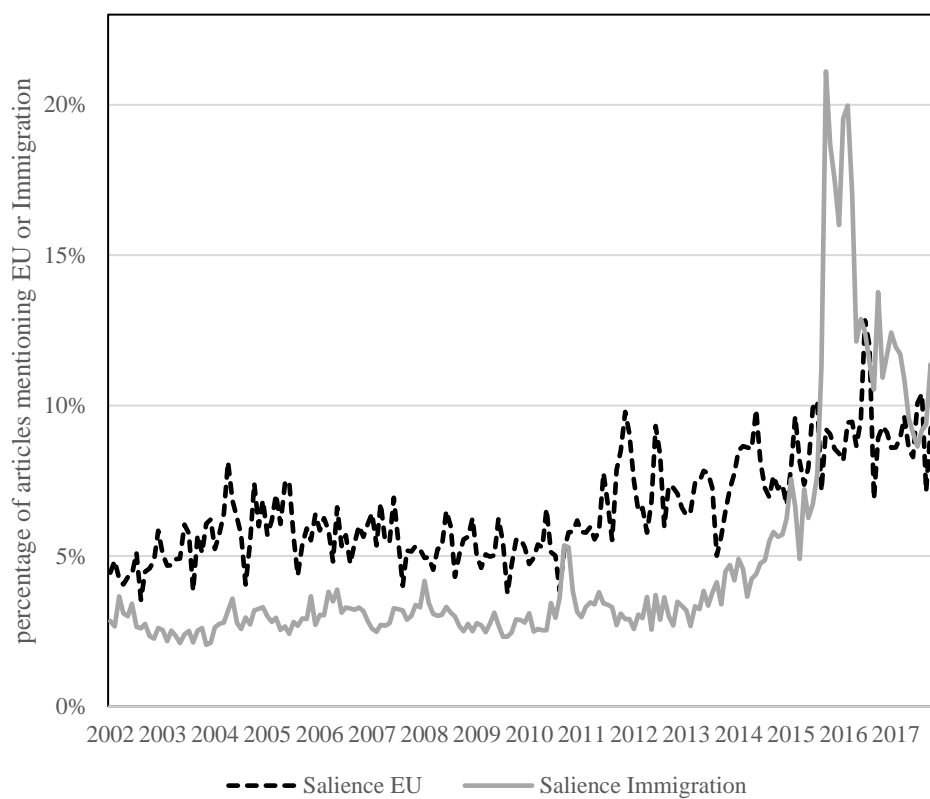
Similar country-specific search strings have been developed for the Netherlands and Spain.

As the Polish debate on migration is often shaped by the experience of outmigration in particular to the UK, I developed a search string that excludes articles referring to UK and Poles:

- Imigrant! OR Imigrac! OR Imigranc! OR Migrant! OR Migranc! OR Migrac! OR Azyl! OR Uchodźc! OR Kart! polaka AND NOT (Bryt! AND (Polak OR Polka OR Polakiem OR Polacy OR Polki OR z Polski))

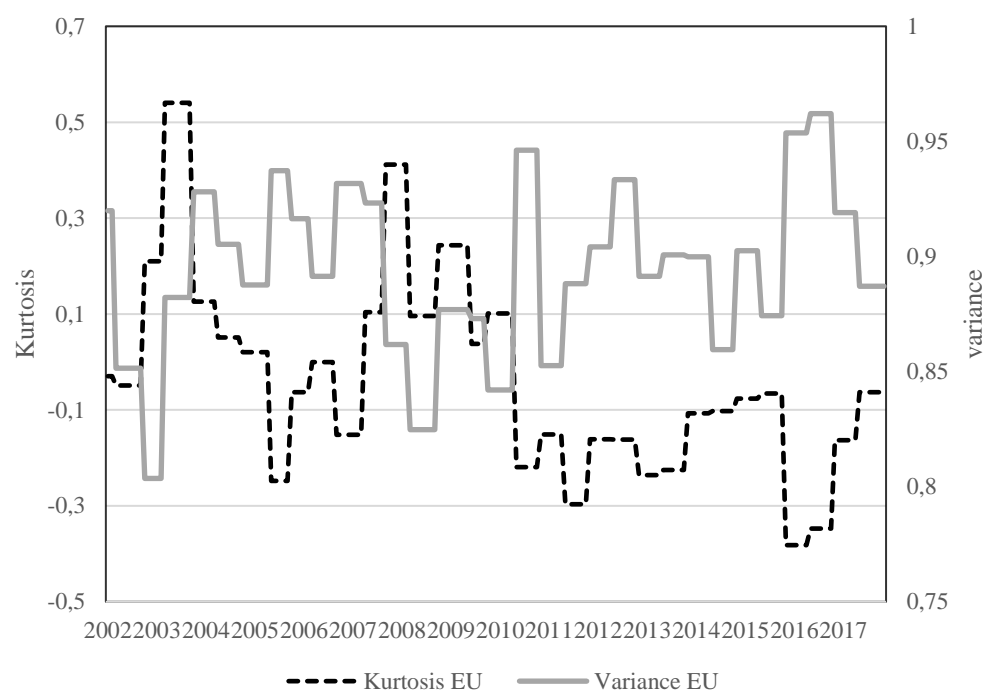
Annex II: Germany: Salience, Variance and Kurtosis

Figure 14: Germany: Salience of EU and Immigration in the newspaper FAZ



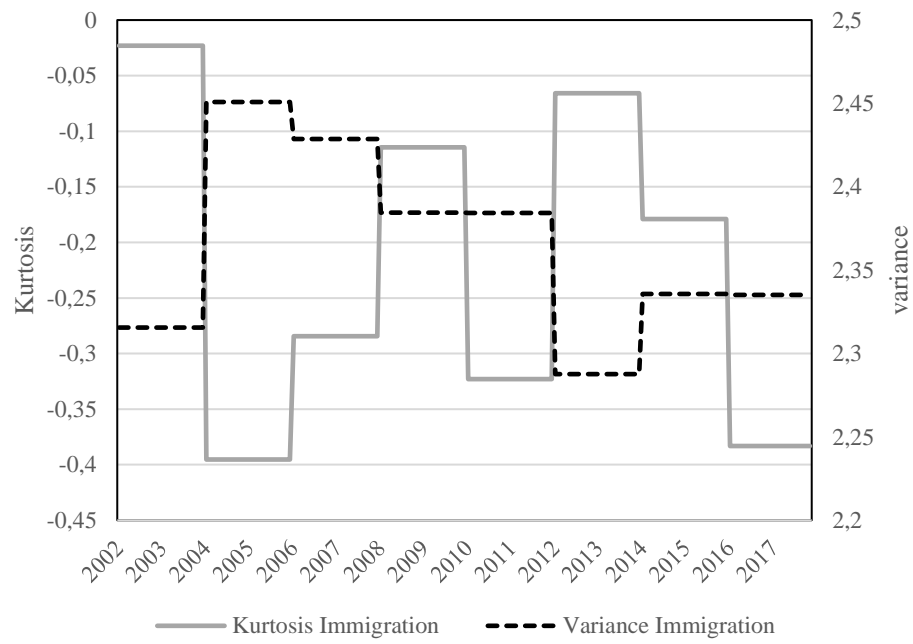
Source: own illustration and data (see chapter 3.2.1)

Figure 15: Germany: Kurtosis and Variance of public opinion on EU



Source: own illustration and data (see chapter 3.2.1)

Figure 16: Germany: Kurtosis and Variance of public opinion on immigration



Source: own illustration and data (see chapter 3.2.1)

Annex III: List of Interviews

Interview Employer_DE:	Interview with a representative of the German employers' organisation Bundesverband der Deutschen Arbeitgeber, Berlin, August 2019.
Interview Employer_EU:	Interview with a representative of the Confederation of European Business, Brussels, June 2019.
Interview Employer_NL:	Interview with a presentative of a Dutch employers' organisation, Brussels, June 2019.
Interview Rep_NL:	Interview with a presentative of a Dutch Ministry for Security and Justice, phone interview, August 2020
Interview Rep_ES:	Interview with two representatives of the Permanent Representation of Spain to the EU, Brussels, June 2019.
Interview Expert_ES:	Interview with a policy expert on Spanish migration policy and former advisor to the Prime Minister's Cabinet, phone interview, March 2020.