"The Ties That Bind"

An Analysis of the Establishment of a European Immigration Policy

by

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Abstract:

European member states have historically refused to admit that they are nations of migration. Current socio-economic factors are forcing them to re-evaluate that viewpoint. The decision to amend immigration policy to aptly reflect the multicultural reality of the modern European state is supported by the European Union institutions.

The Union of European states began with the 1957 Treaty of Rome and has expanded to include fifteen nations representing over 370 million citizens. Since the launch of the Treaty of Rome immigration issues have remained open for discussion, and while they have never entered the realm of core issues they have been attended to at each Summit and Intergovernmental Conference from the aforementioned Treaty of Rome to the 2001 Conference on Migration.

At the 1997 Amsterdam Conference the European Union, with the support of its member states, called for the establishment of a common European immigration policy by 2004. Thus, national policies must be combined with each other to create legislation that protects the national sovereignty of member governments while appropriately addressing the needs of EU citizens and third country nationals.

In this work I argue that the European Union will successfully launch its common immigration policy, with member support, by 2004. I draw this conclusion via an analysis of EU immigration legislation and a country-based analysis, which addresses the needs and expectations of three Union members: Britain, Germany and Finland, with regard to immigration policy and involvement in Union legislation. It is my conclusion that the institutional and legal foundation has been established upon which to establish Europe's common immigration policy.
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Chapter 1: Introduction

A boatload of migrants drifts at sea; a man is detained at the border in possession of explosives; your taxi driver is a doctor from the Indian subcontinent; and members of the Forbes 500 are migrants, or children of migrants who speak of meagre beginnings as new ‘Americans’. There is no escaping the effect that migration has had on the Western world. And yet, it is safe to say that the average person pays little attention to migration trends or ‘pull’ and ‘push’ factors stimulating migration.

Inquiring as to what stimulates migration, we receive the following response: it is the promise of a better life, full of new possibilities and unlimited opportunity, that inspires individuals to emigrate. Economic hardship can cripple a person’s sense of accomplishment and worth, and in reaction to this loss individuals may choose to emigrate rather than remain ‘imprisoned in poverty’ with no way out. While economic hardship tends to be a slow development in society, affecting individuals and the national economy, political unrest can strike at any time and in any country. Civil wars, international conflicts, and totalitarian governance may all stimulate emigration. Although economic stability is important, I believe that individuals can live in poverty as long as the system under which they are governed is stable. Political stability provides piece of mind and instils faith that the situation will improve; instability is enough to drive even the most ardent national supporters away. And while political and economic stability are the
foundations upon which the system operates, the true test of a nation's strength lies in an examination of its social system. Access to education, health care, and quality of life are key to the development of a nation and its people. Uneducated, unhealthy citizens do not prosper and they may emigrate in search of the social benefits and stability they require. The fact that governance, economic stability and social protections are prevalent in most if not all developed countries hastens emigration.

It would be incorrect, however, to assume that each developed nation possesses the same degree or type of stability. While the United States provides economic stability and the potential for unstoppable economic gain, it lacks social protections. In contrast, New Zealand's political system is an outstanding example of political stability. Meanwhile, Canada is known for its social protections, although it has an unstable economy, and a sometimes-volatile political system. European nations have dedicated themselves to economic, social and political stability. They grant their citizens social protections that safeguard the individual from 'the cradle to grave'. These social benefits, in conjunction with a 'rule of law' governance system and an open and free market economy, entice migrants from near and far.

Except in particular instances, European states, most of which refuse to see themselves as countries of immigration, are displeased with the way in which they attract migrants. These countries still see themselves as 'sender' nations;
this is an unrealistic perspective considering that Europe is currently home to over twelve million immigrants (Geddes 2000: 9). This number is expected to rise as the gulf between have and have not states expands. In addition to the above mentioned 'pull' factors, European states are additionally attractive because of heritage and geography. France, Britain, Spain and Holland are all former colonial powers. Thus their languages and cultures are understood outside Europe. Although very few states are still under colonial rule most colonised countries are economically, politically or socially unstable and as such their citizens look to their former rulers for assistance. North Africans are migrating to France, Indians and Caribbeans are moving to Britain, and Spain is facing an influx of Moroccans and Tunisians; in addition to Polish citizens who are claiming heritage rights in Germany, arising from past border conflicts. In response to this repatriation, many European governments have special immigration provisions addressing the unique relationship between coloniser and colonised. This, along with the fact that a close relationship exists in the first place makes European countries the target of immigration.

Geographically Western Europe is within driving, walking and sailing distance of some of the world's most economically, politically and socially unstable nations. As a result, EU border states in particular and all European governments in general face a steady flow of migrants—approximately one million per year—searching for a better life (TLC 2). With its historical ties, geographical proximity,
economic prosperity and political stability, Europe entices migrants from around the world.

Europe-bound migrants are met, for the most part, with a chilly reception. A majority of European states, very exclusive in nature, would rather not admit that they need migrants. Nevertheless, current technological labour market shortages demand that European nations entice highly skilled migrants. Furthermore, the aging population faces a crisis that could be resolved, according to some demographers, by an influx of skilled migrants willing to work in Europe on a temporary basis. In response to these labour market and demographic trends, European nations are beginning to change their attitudes toward migrants; it is becoming clear that Europe needs immigrants and as such nations are more willing to do what is necessary to grant entry.

However, nation states are no longer working alone. Originally established to provide economic stability, the European Union is a political and social powerhouse. It wields influence and control over a variety of issues, including immigration, and while member states are only beginning to address the advantages of immigration, the EU is a long-time supporter of economic migration. Beginning in 1957 with the Treaty of Rome and continuing into the present day it is clearly evident that the Union is dedicated to the principles and issues of European immigration, which include access to various labour markets, equal treatment for Europeans throughout Europe and secure borders.
The 1997 Amsterdam Treaty signifies the pinnacle of this dedication; during the Amsterdam Conference the EU voiced its support for a common immigration policy addressing the principles of free movement; rights for European and non-European citizens; and the establishment of a border security system. This policy is intended to work in conjunction with a common asylum policy, which will not be discussed in this work. This was a conscious decision based on the fact that asylum issues vary greatly from those of immigration. Thus, this work will examine the establishment of a common immigration policy as outlined in the Amsterdam Treaty. I will argue that the EU and its member states are keen and, by all indications, able to implement this policy by 2004. After an analysis of European immigration legislation is reviewed, it becomes evident that the Treaties, Acts, Agreements and Conference publications addressing immigration issues provide a solid foundation upon which to effectively implemented a European immigration policy.
Chapter 2: The Treaty of Rome

The Treaty of Rome is a complicated and vital document that creates a union of nations based on economic growth and stability. The Second World War left Europe in economic, physical and emotional ruin. In order to avoid any future bloodshed on European soil, an agreement needed to be reached among European nations. Under particular scrutiny was the relationship between Germany and France. Because of its involvement in Europe during and after WWII, the United States had a vested interest in the development of a peaceful union, and therefore monitored relations between the two European superpowers (Baun 10). As noted by Michael Baun,

> efforts of European countries to integrate and forge supranational ties were strongly supported by the United States, which saw these ties as a way to strengthen the alliance against Soviet expansionism while at the same time providing a more prosperous business and trading partner across the Atlantic (12).

The first step toward uniting European nations was the 1951 establishment of the European Coal and Steel Community (ECSC), supported by Germany, France, Luxembourg, Belgium, Holland and Italy (Koslowksi 113). The ratification of this agreement placed their coal and steel industries under supranational control.

After the success of the ECSC, members decided to take steps toward the creation of a European defence community. However, because of France's refusal to ratify the agreement, discussions were terminated (Baun 12). At the 1955 ECSC conference in Messina, the six members of the Community
nevertheless agreed to expand their relationship beyond coal and steel and to create a Common Market. This required the elimination of all internal tariff barriers between members, and the creation of a customs union for trade with non-members (Baun 13). It was upon these foundations that the 1957 Treaty of Rome was signed, thereby establishing the European Economic Community (EEC). In addition to creating a customs union, the Treaty of Rome also established the free movement of workers. Article 48.1 of the Treaty states that, "Freedom of movement for workers shall be secured within the Community" (3/1/§48.1).

The wording of this Article is intentional, as Rey Koslowski notes,

freedom of movement within the Community was not conferred to individuals given their status as citizens of member states, but rather as 'workers' (121).

With the ratification of the Treaty of Rome workers gained access to the most profitable labour markets within Europe, and the right to travel throughout the Community for work. Interestingly, however, the Treaty of Rome does not define 'worker', but leaves the term open to interpretation. Thus, citizens and member states are free to decide who does and does not fit the category.

Although the legislation does not go so far as to define the term 'worker', it does outline their rights within the Union. Workers are permitted to accept offers of employment; move freely within the EEC to accept these offers; remain in a member state in order to meet the terms of the offer; and remain once the offer
has expired (§48.3 a-d). Thus, Community workers have the right to move freely without constraint to pursue a career or employment. This protection makes the migration process a little less daunting and as such leads to a rise in the number of EEC migrant workers (Koslowski 115). Individual prosperity is expected to improve the economic viability and productivity of the EEC in general via a surge in income for workers, and profit for employers.

Furthermore, taking into account the politically unstable relationship shared by European states prior to the Treaty of Rome, Union members thought it fortuitous to enact anti-discrimination policy. Thus Article 48.2 legislates that member states have a legal responsibility to protect EEC citizens from discrimination in terms of “employment, remuneration and other conditions of work and employment” (EEC§48.2). The right to equal treatment has been expanded and reasserted in all subsequent agreements and treaties.

In sum, the Treaty of Rome and the creation of the EEC set a precedent for individual and community growth. Prior to the promulgation of this document Germany, France, Italy and the Benelux nations shared nothing more than geographical proximity. In the decades following the Second World War these six countries strove for economic stability. After the ratification of the Treaty they were bound together in economic and, to a lesser degree, political and social unity. Some nations experienced labour shortages, while others faced an overabundance of workers, and the right to free movement addressed this issue.
Workers are able, via Treaty legislation to feel at home in formerly hostile nations, as equals, protected from discrimination and unfair treatment. This is an important development considering the political and military events that took place a generation earlier. Against this backdrop we can regard the Treaty as a success. It sets the precedent upon which future discussions, reports, agreements and treaties regarding migration of third country nationals, free movement of EEC citizens, and foreigners’ rights can be established.
By 1986 the membership of the EEC included twelve states with the inclusion of Britain, Denmark and Ireland in 1973, Greece in 1981 and Portugal and Spain five years later (EEC preface). During the three decades between the ratification of the Treaty of Rome and the Single European Act (SEA), members tried to deepen and broaden the foundations of the EEC. Its citizens now elect European parliamentarians; the French proposed the creation of a political union of EEC nations, which failed; voting methods went from unanimous to qualified majority; and the European Monetary System established the European Currency Unit (ECU). However, it wasn't until the ratification of the SEA that member states, Union institutions and external partners challenged the legal tenets of the Treaty of Rome.

The European Council asked participants at its June 1984 Fontainebleau meeting to propose ways in which to improve the community infrastructure and political co-operation (Papademitriou 23). At the December 1984 Dublin meeting the European Council released its interim report for review. The report proposed a "major step forward in qualitative terms, particularly in the institutional sphere" (Europarl 2). The council adopted the points raised in the report and on 27 January 1986 the Act was released for general review.
On 17 February 1986, nine member states signed the SEA, followed later by Denmark, Italy and Greece on 28 February (Europarl 2). The SEA focused on three items: the creation of a large internal or Common Market by 1 January 1992; an increased role for Parliament to rectify the democratic deficit in the Community’s decision-making process; and improvements to the decision-making capacity of the Council of Ministers (Europarl 1). The Act also stipulates that the internal market should encompass an area without internal frontiers.

According to EU expert Dennis Swann, by inserting new provisions establishing macro-economic policy into the Treaty of Rome “the need to ensure convergence of economic and monetary policy [becomes a] key aim” of the Community (Swann 16).

In conjunction with this development the SEA also focuses on migration issues. It reiterates the right to free movement for workers within Community territory. This may appear irrelevant when one considers that free movement was already guaranteed under the Treaty of Rome; however, the repetition of this right signifies the Union’s dedication to retain "effective" tenets of previous legislation.

Next the SEA denies third country nationals (TCNs) the right to travel within the Community. In 1989 the European Parliament proposed to extend the right of free movement to non-EEC nationals. Member states refused to relinquish competence over TCNs and balked at the notion of a multicultural European polity. Although members accept that social and economic equality can exist
between community members, they deny any advantages to eliminating border controls, and allowing non-Community citizens access to the EEU (Koslowski 115). Mrs. Thatcher was very vocal in her disapproval of such a stipulation. According to Britain, the SEA granted easier passage for nationals of member states, but the Act does not intend free movement to apply to nationals of third countries (Swann 18). In the end this became the Community's legal stance and it stipulated that "nothing in [the Act] shall prevent states from taking measures that they consider necessary to control third country immigration". Alas, although 'native' workers are granted free movement within the community, the SEA clearly stipulates that third country nationals do not and should not share that right, even if denying that right complicates the creation of the internal or Common Market.

The SEA also addresses the inclusion of social and political issues into the Community framework to protect the rights of Community citizens, including those residing outside their country of birth (SEA§1). Regarding migrants the Act details two developments. The first addresses working conditions. The Act calls for national policy that will improve and sustain the health and safety of workers. All workers, including citizens from other community nations, gain from the inclusion of this type of policy. By calling upon member states to initiate change, the Community retains its advisory role while states protect their national sovereignty.
The second social issue raised in the SEA addresses the need for uniform working conditions. The Act outlines the community's intention to bring the standards of less-developed nations up to the level of the more developed. This is particularly important because smaller nations have lost many of their unskilled workers to other member states (Hall 2). Member states that improve working conditions retain more of their own workers, while attracting more Community workers (Kostakopoulou 2001: 50). The inclusion of social policy in the SEA sets a precedent for the inclusion of social issues in future discussions (Swann 221, Koslowski 115).

In sum, the architects of the Single European Act undertook to create a Common Market as envisioned in the Treaty of Rome. By legislating that an internal market should exist by 1992, the EEC paved the way for various institutional changes. Re-asserting the free movement of workers substantiated the Community's dedication to worker mobility. Its refusal to grant TCNs access to the EEC labour market enhanced its relationship with member states; had the Community stepped in and legislated free movement, member states would have felt, justifiably, that their national sovereignty was less important than Community objectives. Finally, for the first time, the social rights of citizens entered the Community arena. Bringing working conditions and the margin between the 'have' and the 'have not' states into discussion was important for future negotiations. While immigration issues were not the focus of attention, some meaningful decisions were detailed in the SEA. Progress need not be hasty to
be effective; the presence at the table of many European players demands slow progress that meets the needs of all.
Chapter 4: The Schengen Agreement: Laboratory for the Community

The SEA laid the foundation for a Common Market but the logistics demanded attention to migration issues. It became very clear in the mid-1980s that the Community's attention must shift to facilitating free movement. In 1985 France and Germany, paying heed to demands from their international truck drivers, met with the Benelux nations in the Dutch border city of Schengen to discuss mobility and migration (Kostakopoulou 2001: 51).

The key focus of the meeting was the matter of strengthening external borders, while eliminating or at least reducing impediments to internal free movement (Schengen 1). To facilitate these developments the Schengen conference participants aimed to implement harmonised visa policies, uniform external border controls, and effective crime prevention (Pascua 34). As Theodora Kostakopoulou notes in her work *Citizenship, Identity and Immigration in the European Union*,

> Whereas intra-Community migration was regarded as a fundamental freedom and the cornerstone of European citizenship, non-EC immigration was portrayed by official discourse and policy as an 'invasion' to be feared and resisted (2001 52).

Thus policy arising from the Schengen meeting was expected to solidify 'inclusion' and 'exclusion'; or what Geddes refers to as 'a fortressification of Europe' (2000: 29).
While member state citizens are free to work in any EU signatory nation, protecting this right demands the fortification of external borders and the elimination of internal travel barriers. The Schengen agreement outlines when and where external borders can be traversed and establishes policy for long and short term visas, the expulsion of aliens, and the creation of carrier sanctions (SEA§1, 6, 9-17, 21, 23 and 26 respectively). While these provisions are intended to stabilise external border security, Articles two and twenty-two mandate the elimination of internal borders. Furthermore, in order to guarantee protection and enforcement, the Schengen Accord establishes police co-operation (§ 70-76) and the creation of the computerised Schengen Information System (SIS), consisting of national information-gathering units and a joint coordination and supervisory unit (§92-119).

Before a European Treaty or legal document can be ratified, agreement must exist between member states on the form and content of the provisions, and this is where the Schengen Agreement encountered problems. Displeased with the Agreement, interest groups and particular member states halted ratification. First, Amnesty International and the Netherlands Institute for Human Rights felt that the establishment of a ‘fortress Europe’, with a ‘hard outer shell against Third World immigrants and refugees’, was unjust and discriminatory (Kostakopoulou 2001:51). Furthermore, according to these NGOs, the Accord encourages discrimination, and apparently conflict with the tenets of the Geneva Convention (Kostakopoulou 2001:4). These allegations appear founded—i.e., the Accord
does discriminate against non-members—yet the Community strove to create policy granting “Schengenzone” citizen’s access to the labour market, while simultaneously denying such access to non-members. The inclusion of one group will always lead to the exclusion of others.

France saw the Schengen Agreement as an impediment to its anti-drug trafficking legislation. France assumed that, upon ratification, French borders would be patrolled by the Netherlands, Spain and, to a lesser degree, Italy, all of which have lax policy to control drug trafficking (Brochmann 309). Accordingly, France argued, unless other states applied the same stringent policy as it did, the country would withdraw from the Schengen Agreement (Brochmann 309). The French threat was in vain because border-drug policy remained the same and France signed the Schengen Agreement.

Discussions such as these delayed the implementation of the Schengen Agreement until 1990. After ratification, implementation was finally set to begin. A vital component of the implementation process was the creation of the Schengen Information System (SIS) which, in conjunction with the creation of a common police force, fortifies the external frontier of the EU (Kostakopoulou 1998:887). The SIS is a very complicated structure utilising the technological skills of all Schengen member states. The cornerstone of the SIS is the ability of all applicable police commanders and consular agents to access information regarding specific individuals, vehicles and lost or stolen items (JSA 2). Countries
provide information via computerised systems and then forward the information to the central computer system. The SIS is monitored by an outside agency, the Joint Supervisory Authority (JSA), which is responsible for protecting personal data submitted by Schengen member states. In addition, the JSA performs technical checks on the central SIS database to ensure that member states uphold the individual's right to access as enshrined in the Schengen Accord (JSA 1). Although France and Germany had concerns surrounding the ability of southern states to control borders effectively, Schengen members patrol borders and implement policy to the best of their ability in order to establish a common market.

While the Schengen Agreement strove to open internal borders and strengthen external frontiers, the Agreement also led to two additional developments. First, as a result of Schengen related legislation, migration became a security issue (Brochmann 310). The creation of a common policing unit, the establishment of the Schengen Information System, and the ability of signatory states to gain access to other nations' citizen security information systems resulted migration becoming a security issue, while it retains its political and social importance (Brochmann 310).

Second, and to some degree more importantly, the Schengen Agreement caused external and internal segregation between groups of individuals. Europeans who wanted to be part of the 'club' were excluded and forced to either return home or
submit to discrimination, while legally and illegally resident TCNs were the focus of discrimination by states and individuals (Kostakopoulou 1998:889). Inclusion and integration of Europe’s ethnic population is inextricably linked with immigration. Intensifying internal controls to curb unregulated immigration damages community relations and often endangers the security of settled migrants and citizens (Kostakopoulou 2001:5). ‘Fortress Europe’ erects internal walls...around a substantial number of Europe’s own inhabitants (Spencer 121).

Thus, although others criticise the Schengen agreement for promoting discrimination against individuals who are not legally resident within a signatory state, there is evidence that discrimination exists even within the ‘zone’, and may be perpetuated by Agreements such as the Schengen Accord.

In sum, the Schengen Agreement granted ‘Schengenzone’ citizens free movement within signatory states. While disagreements between NGOs and member states delayed ratification for over two years, all participating states eventually signed the Agreement. The goal of Schengen was the creation of a Common Market, outlined in the Treaty of Rome and the Single European Act. To facilitate this goal the Schengen Agreement legislated strong external and invisible internal borders. As a result of technological advances stimulated by the Agreement, migration became a security issue; as such, it now receives more economic and political support than it would have if it had remained merely a social issue. Finally, a document of this magnitude inevitably carries some negative repercussions. The creation of ‘fortress Europe’ paved the way for a
dichotomy between inside members—Schengenzone citizens, and outside members—third country nationals. This magnified the differences between the two groups and as such the relationship became the focus of public discussion, and in some cases, outcry. Furthermore, the creation of an 'inside versus outside' dichotomy is prevalent within the 'Schengenzone'. Long-term residents are scrutinised more closely, and forced to prove that they belong in their chosen country of residence (Kostakopoulou 2001:23). Although these issues cast a notable shadow over the issues at hand, they do not impede the overall success of the Schengen Agreement. The legislation progressed European migration issues one step further by establishing key technological and legal provisions to further and in some cases limit migration into and within the EU. With regard to our examination of the common EU immigration policy, the Schengen Agreement is the most important document ratified by the Union and its member states.
Chapter 5: The Maastricht Treaty: Becoming Union Citizens

The late 1980s and early 1990s were years of upheaval for all member states. With the fall of the Berlin Wall and the collapse of the Soviet Union, attention was focused on Western Europe and its ability to incorporate major historical events, into their action plan for growth and development (Papademetrieu 33). Through integration via the Treaty of Rome, the Single European Act and the Schengen Agreement, European countries achieved substantial economic growth and prosperity, as well as intensified political co-operation. A fundamental goal of the Treaty of Rome was an elimination of the threat of war on Western European soil. As noted by Michael Baun,

Largely because of the EC, democracy in Western Europe has been consolidated and war between Western European countries is now unthinkable (1).

After eliminating this threat, European Community members focused their attention on furthering the integration process within the EEC. In December 1991 EEC leaders met in the Dutch town of Maastricht to discuss ‘deepening’ the Community. The twelve participating states also debated the creation of a full monetary and currency union, intergovernmental co-operation on foreign and security policy, and matters of immigration, enforcement and judicial affairs (Baun 3).

Maastricht conference participants had the difficult task of updating the legal parameters placed upon member states by the Treaty of Rome. This goal was
complicated by the fact that some member states argued for less control, while others advocated progress toward a more extensive Union (Papademetriou 26). After lengthy discussion and analysis of the issues at hand, the Maastricht Treaty (or the Treaty of the European Union) was formally signed in February 1992 (TEU Final Provisions). In addition to establishing the legal entity hereafter called the European Union, the document addressed three major issues: the development of common foreign and defence policies; reform of EC decision making institutions; and the expansion of Community authority into immigration policy areas (Stephens and Bush 1).

The end of the cold war dramatically altered the European security environment, generating new interest in the creation of a European defence policy. Article J.1 of the Maastricht Treaty calls for the definition and implementation of a common foreign and security policy covering all areas of the Union (TEU J.1). The Treaty notes how and when this policy should be legislated and implemented (TEU J2-J.18). Member state reaction to the policy was mixed; France and Germany supported the notion, whereas Britain did not. France believed a security policy would diminish US influence in Europe (Baun 83). Meanwhile, Germany was under the impression that support would alleviate fears about a newly unified, and therefore potentially indomitable German state (Baun 83). Britain, on the other hand, was very sceptical about European defence and security cooperation given its strong ties with the United States (Koslowski 128). London is opposed to any policy that might weaken NATO or undermine America's
willingness to remain engaged in Europe. Furthermore, Denmark and the Netherlands, along with other smaller nations, are concerned the policy will facilitate Franco-German domination (Baun 84). Eventually, however, all member states agreed that a foreign and security policy would address the needs of the community without undermining the power of NATO, eliminating the presence of the United States in Europe or increasing Germany's dominance.

In addition to addressing security issues, the Maastricht Conference focused on reforming the European Community's decision making institutions, in particular the European Parliament (EP). The Treaty of Rome granted the EP only limited powers over Community budgetary expenditures and prohibited it from raising revenues (Kostakopoulou 1999:179). Seats were, and remain, apportioned to member states according to population (Baun 77). Although the SEA extended the scope of parliamentary control, it remained, according to member states, powerless to counter member state initiatives. In response to this, the Maastricht Treaty introduced co-decision procedure. Parliament was also given the power to scrutinise Community finances (Kostakopoulou 2001:53). However, the enfranchisement of EU citizens in EP elections affected the individual most substantially. Citizen participation in the European Union decision making process, it was hoped, would generate public interest in Union programs, institutions and policy (Baun 87). Germany, which found the democratic deficit a

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1 Co-decision procedure is defined as a procedure introduced by the TEU that gives the European Parliament the power to veto certain legislative proposals. If the Council of Ministers and the EP fail to agree after a second reading of the proposal by parliament, a conciliation committee of the Council and Parliament will attempt to reach a compromise (Dictionary of Law, 1997:80).
major flaw, felt that citizen participation would improve democratic accountability within the Union structure. Furthermore, after a redistribution of seats according to representation by population, unified Germany is the most represented state in the EP (Kostakopoulou 2001:53). In contrast, France opposes the right to vote in EP elections, assuming that it would “contradict the constitutional principles of the Fifth Republic”, which favoured a strong executive and national sovereignty (Baun 87). Eventually, however, France did agree to support these provisions in conjunction with the Maastricht Treaty.

Although the EU expected parliamentary reforms to increase accountability and address the democratic deficit, Union member states placed more emphasis on the establishment of the pillar system. The Union is said to represent a temple, held up by three pillars: the EC in the first pillar, the aforementioned Common Foreign and Security Policy (CFSP) in the second; and finally Justice and Home Affairs (JHA) in the third (Geddes 2000: 88). Member states facing lost or eroded national sovereignty wanted a more accountable Union infrastructure. The Treaty of the European Union recognised two approaches—one based on intergovernmental agreements, the other on Community law (Kostakopoulou 1999:179). Intergovernmental co-operation was formalised under the tenets of Justice and Home Affairs (JHA). Title VI of the TEU, the so-called ‘Third Pillar’, institutionalised interstate co-operation on asylum policy, legislated external frontier controls, and oversaw temporary and permanent migration. The Commission supported the establishment of the Third Pillar, assuming it would
provide the foundation for a common immigration and asylum policy (Kostakopoulou 2001: 61).

Raised awareness about and heightened importance of an issue often leads to action, as was the case at the Maastricht conference regarding migration and border traversability. The facets of migration highlighted and legislated within the Treaty of the European Union include the retention of free movement, legislated EU citizenship, and border and visa policies. As we have seen the issue of free movement of workers was established in the Treaty of Rome and re-articulated in the SEA. Although Schengen supports the free movement of workers, the Agreement only applies to the Schengen signatory states, which is more limited in scope than the TEU. With the ratification of Maastricht, all European citizens were granted the right to free movement (TEU§8A). That right, however, is not without limitations. As noted by Martiniello,

> Article 8A of the Maastricht Treaty does not guarantee the total freedom of movement or settlement in another European Union country; European citizens must be financially independent and not dependent upon the social security system (371).

Nevertheless, extending free movement to all citizens is an incontestable accomplishment, which would elevate the external discrimination highlighted in the Schengen Agreement.

While national citizens were *de jure* European citizens, it wasn’t until citizenship was legislated at Maastricht that this became a *de facto* right (Geddes 2000:57).
Article 8 states that, "every person holding the nationality of a member state shall be a citizen of the Union". Member states were quick to stipulate, however, that EU citizenship is not to supersede national citizenship (Koslowski 114). Legislating EU citizenship signifies that Europeans—limited in this instance to member state citizens—can be productive contributors within 'multiple, diverse, overlapping and interacting political communities' (Kostakopoulou 1999:179). EU citizenship grants the right to vote and be elected in local elections, the right to diplomatic protection in third countries, and the right to petition the EP (TEU§8). The installation of EU citizenship as a fundamental Union characteristic was supported by many member states who felt that citizenship "would enshrine the political character of the Community" and strengthened its democratic legitimacy (Kostakopoulou 2001:54). Furthermore, the right to vote is a tool of inclusion for legally resident TCNs. The tenets of Marshallian theory argue that citizenship is three-tiered: civil, political, and social (Marshall 25). Prior to the TEU only civil and social citizenship were granted to EEC workers or Schengen citizens. Unable to participate within the community structure, these individuals were denied full access to society. The allocation of political citizenship is the missing link needed for full participation in the Union, as Yasemin Soysal argues in her work *Limits of Citizenship* (131).

Although EU nationals gained from European citizenship, critics argue that it perpetuates an 'us' versus 'them' mentality. In the TEU, EU citizenship only extends to individuals holding nationality in a member state (Kostakopoulou
The creation of European citizenship does nothing to address the situation of twelve million non-EU nationals residing in the Union as Hansen notes,

To the degree that an inability to participate in political life is tantamount to disenfranchisement, it is arguable that the most objectionable aspect of European citizenship is its failure to address the status of the disenfranchised permanent residents across the EU (754).

Nevertheless, this document intended to address the issue of 'citizen' rights and not 'legal resident' rights, therefore making the omission of third country nationals from the discussion irrelevant. Even considering this criticism, however, the establishment of European citizenship is a positive and necessary development in the creation of a 'total Union'.

In addition to legislating free movement and the creation of EU citizenship, the Maastricht Treaty also raised the issue of borders and visas, which is the final area of discussion in this section. Article TEU100c established a common visa policy between EU member states. In order for this to take place, all member states must agree to subject the same countries to the same visa requirements. The list basically includes all nations outside the OECD, and thereby all countries of relevance regarding current refugee flows (Brochmann 297). While few Schengen signatories objected to the creation of a third country list, some non-Schengen members opposed the list. Britain saw this policy as a challenge to
national sovereignty, which forced the nation to concede power to the Union.

Critics agree and note that,

from 1 January 1996 this matter will be decided by qualified majority. It will also be open to the Council to prevent Britain from admitting its own kith and kin should an emergency in one of the overseas countries of British settlement occur (Stephen and Bush 7).

Britain remains concerned about the implications of the common visa policy. However, having ratified the TEU they could be forced, in this instance, to concede power to the Union.

Concluding our discussion we focus on the strengths and weaknesses of the Maastricht Treaty. By all indications the TEU is a positive addition to the European landscape; institutional reform places more emphasis on the European Parliament, the pillar system sets out to reduce the democratic deficit, and immigration policy pays heed to Europe’s present and future multinational populations. The retention of free movement, the establishment of European citizenship and the creation of common visa requirements for TCNs are impressive feats. However, as is usually the case with progressive policy and legislation, the TEU was not without critics. Denmark, Britain and France all deliberated at length prior to ratification. All three states construed EU citizenship as a threat to national sovereignty and identity. Nevertheless, it is important to keep in mind that even with such vigorous disapproval, all applicable member states ratified the TEU. Furthermore, the ratification process was good for the
overall health of the Union: the legitimacy did not bring down the treaty; Europeans learned what EU citizenship actually entailed; and the Union had the ability to successfully combine EU policy with national legislation. Issues addressed at Maastricht continue to provide the basis for current discussions surrounding immigration.
Chapter 6: The Treaty of Amsterdam: Toward the Future of Immigration

After member states ratified the Maastricht Treaty, 'Europeanisation' began in earnest; meanwhile, certain questions still needed answering. This chapter will focus on the Treaty of Amsterdam's response to migration and mobility within the Union. While all EU member states signed the Treaty of Amsterdam, which came into effect on 1 May 1999, the document was the culmination of reports and papers submitted at the 1996 Intergovernmental Conference (IGC) (Europa 1). Prior to and during the IGC, several members called for a revision of immigration issues to better reflect the multicultural reality of European society (Martiniello 348).

In response to this demand, participants at the Amsterdam Conference focused on four issues: placing employment and citizens' rights at the heart of the Union; sweeping away the last remaining obstacles to freedom of movement of individuals; giving Europe a stronger voice in world affairs; and making the Union's institutional structure more efficient, with a view to enlargement (Europa 1). We focus on the "elimination of obstacles" by examining Union legislation in conjunction with national opinions. Previous Treaties, Acts and Agreements established free movement, EU citizenship and residency rights for EU nationals. The Amsterdam Treaty brings together migration policies legislated within the above mentioned documents and addresses additional issues.
The three areas of immigration policy raised at Amsterdam include the transfer of Justice and Home Affairs (JHA) from the Third Pillar to the First, the absorption of the Schengen Agreement into the Amsterdam Treaty, and the commitment by all EU member states to work toward the creation of a common immigration policy. The Maastricht Treaty established the 'pillar system', and as Kay Hailbronner notes, “in the Third Pillar member states are the actors; in the First it is the Community” (1998:1047). The Union decided, in the period following the ratification of the Maastricht Treaty, that member states could not create immigration policy that was advantageous to the Union as a whole (Pascua 33). The EU absorbed oversight powers controlling visas restrictions, immigration and asylum policy, rights of TCNs, external border controls, and judicial co-operation in civil matters. Because they are expected to lead to more accountability and equality in the decision-making process, experts support the change.

The transfer of migration-related areas from the Third Pillar to the First is a welcome development if only because it promises to introduce a single constitutional basis and more democratic control in areas where civil liberties are at stake (Kostakopoulou 2000:499).

However, it was not simply the case that the Community absorbed control without member states expressing concern. The sovereignty issue once again led Britain to oppose the policy (Helm 97.06.16: 1, Joppke 278). Germany, a pro-integration member state, was also hesitant to sign a Treaty that handed more powers to Brussels. However, they too agreed that in order to create the most ‘just’ Union, legislative control must be taken away from member states (Helm 97.10.03 10).
A negative consequence of the change from Third to First Pillar affects the judicial branch of EU governance. Subsequent to the move, the European Court of Justice (ECJ) lost jurisdiction to review measures or decisions relating to the maintenance of law and order and safeguarding internal security as it extended to migration issues; the ECJ did, however, retain the right to act as court of last instance (Kostakopoulou 1998:651). Even considering this detail the move is expected to increase the accountability of ‘top down’ and ‘bottom up’ decision making. As Kostakopoulou notes,

> if the goal is to design a fair and humane immigration policy, which encourages many voices and is subject to judicial supervision, shifting immigration to the community’s domain of jurisdiction makes sense (1998:892).

The second change affecting the EU migration landscape was the absorption of the Schengen Agreement into the Amsterdam Treaty. According to Article 2(1) of the Schengen Protocol the Council, “acting by the unanimity of the Schengen states, shall take any measure necessary for the integration of the Schengen Agreement into the Union and Community” (Kuijper 347)\(^2\). Thus the common internal border structure, the external frontier checkpoints, and the SIS became Union legislation.

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\(^2\) By 1997 membership in the 'Schengenzone' had grown to include all existing member states except Britain and Ireland. Italy signed the agreement on 27 November 1990, Spain and Portugal joined on 25 June 1991, Greece followed on 6 November 1992, then Austria on 28 April 1995 and finally Denmark, Finland and Sweden joined on 19 December 1996 (Schengen 1).
Some issues associated with the Schengen Agreement complicated its absorption into the Amsterdam Treaty. First, two non-EU nations are Schengen signatories. Iceland and Norway became part of the 'Schengenzone' in December 1996. While the two nations attended the Amsterdam Conference and remain active Schengen members, their participation in Union negotiations is limited to discussing the issues at hand, but they are denied the right to vote (Kuijper 351). A sub-issue for the parties involved was Norway's border relationship with Sweden. Discussions resulted in partnership legislation highlighting areas of jurisdiction and control (Kuijper 351). The Union, fearful of being bullied into submission by nations possessing special relations, appears pleased with this particular relationship. Furthermore, Norway and Iceland are satisfied that the Amsterdam Treaty retained existing partnerships and legal relations.

The relationship between Britain and Ireland and the Schengen partners is the second particular arrangement. Both are strict anti-Schengen nations and conflict arose when the Amsterdam Treaty absorbed the Schengen Accord into its legislation. Understanding their views, the Union accommodated the Island States, and for the time being the UK and Ireland remain outside the Schengen partnership. However, as noted in Article 5 of the Schengen Agreement, they retain the right to accede fully, or in part, to existing legislation. As noted by some critics, Britain is 'Article shopping'.

The UK does not wish to adhere to those aspects of the Schengen acquis that are linked to the
disappearance of internal border controls in the Union, but only to those that have to do with the so-called flanking measures of the area without frontiers, namely the SIS (Kulijper 354).

By contrast, Ireland does appear to support many of the tenets of Schengen; nevertheless, the Irish are more concerned with retaining their 'Common Travel Area' with the United Kingdom than they are with pursuing open borders (Hailbronner 1058). Nonetheless, as signatories of the legislation both parties must be pleased with the relationship. As such, the Island states maintain border controls and the member states on the European continent abolish controls at internal borders. For the most part, 'fortress Europe' is not impeded by Britain's refusal to join Schengen; it only seems to hinder Britain's ability to maximise on trade possibilities and receive skilled and unskilled labour. Of course Britain's ability to opt-in to the negotiations is very advantageous, for it can wait until the fiscal advantages outweigh the cost of threatened or lost sovereignty.

 Authorities on immigration legislation note one criticism of the incorporation of Schengen into the Amsterdam Treaty. It appears that no consultation or review of the Schengen Agreement took place and as such the tenets incorporated into the Amsterdam Treaty remain those written over ten years ago, even before the Union was a legal entity (Kostakopoulou 1998:652). While this is an obvious weakness, Union working groups review, update and eliminate documents as appropriate. The real concern should lie in the closed nature under which this type of review takes place. To review, the incorporation of the Schengen Agreement into the Treaty of Amsterdam was a positive use of Union resources.
The Schengen Agreement provides the stability upon which the European Union was able to proclaim the establishment of a common immigration policy. The policy is expected to include common rules for visas and uniform visa format, a list of third countries whose nationals must hold visas, and the terms under which TCNs may travel within the EU (Europa 2). Since the Schengen Agreement addressed all of these issues, the only remaining hurdle was expanding these provisions to meet the needs of all member states. To address the implementation of the immigration tenets detailed in the Amsterdam Treaty, policy analysts highlighted two provisions. The first is a five-year time-line established to keep the Union and member states on track. Because of the speed with which the Union operates, five years appears to be a realistic goal. Hailbronner noted however that not all issues must be settled within the five-year deadline. Temporary protection of displaced persons and various issues concerning TCNs were excused from the time constraint (Kostakopoulou 1998:1050), presumably because some issues can and must be addressed more quickly, while others need not be finalised in the next five years.

The second provision highlighted by policy analysts was the voting mechanism. All immigration proposals to be implemented by 2004 must be decided by majority voting (Martiniello 347). Because each nation must agree on the proposals at hand, it is assumed that all legislation will satisfy all member states (Dearden 79). This is an assumption because member states may vote to meet the needs of other states or the Union at large rather than their citizens.
Nevertheless, this mechanism is the best method the Union has to ensure that member states support the proposed policy. After the five years have expired, member states will be asked to choose between unanimous voting and qualified majority voting for all Title IV issues (Europa 3). Many states appear hesitant to return to QMV for issues as controversial as immigration and migration. Germany sees unanimous voting as the only effective way to create immigration policy; it is opposed to member states being forced to accept a decision contrary to that for which they voted (Helm 97.06.17). For the time being however unanimous voting remains the mechanism used to mediate the creation of a common immigration policy. The willingness of member states to work with each other, utilising the tenets of existing Treaties and Agreements, brings the Union closer to establishing the common policy.

To conclude, the Amsterdam treaty, while lacking new immigration policy, does what it can to improve the 'state of the European supra-national state'. While moving Title IV, or immigration issues from the Third to the First Pillar is not guaranteed to speed up the process of decision deliverance, member states are expected to think more holistically when voting on Union decisions. Furthermore, the move will force member states to work with one another to create viable alternatives to independent state-driven policy. Absorbing the Schengen Agreement into the Amsterdam Treaty was criticised by some, but it is clearly advantageous for member states and the Union. Utilising existing legislation saves time and money. In addition TCNs know what to expect and how to gain
access to the European frontier. Finally, due to the absorption of Schengen tenets the Union was able to call for the establishment of a common immigration policy. This is the pinnacle of over forty years of immigration legislation. Binding members to a five-year time-line is a wise move considering the speed with which they function. Ultimately, the Amsterdam Treaty is a positive addition to the European policy landscape. Although new immigration issues could have been raised, it is enough to see member states progress toward a common policy.
Chapter 7: Tampere: Turning Vision into Reality

Participants at the Amsterdam Summit were idealists hoping to create policy that would prepare the European Union for the twenty-first century. Policy from above, however, is not enough to change the ways and means of national governments. They must take action, calling on their brightest academics and their loudest critics to work together to create a path toward success. In a show of support for growth and change, member states, EU parliamentarians, NGOs and accession states met in Tampere, Finland in October 2001 to turn the dreams of Amsterdam into reality.

During the Amsterdam Conference the issue of immigration was raised in the context of pre-existing legislation. However, debate focused exclusively on existing issues, a fact that disturbed some critics. During the years between the Amsterdam Summit and the meeting in Finland many member states began analysing national migration policies in the context of the growing perception of a demographic crisis and corresponding labour market shortages. Germany amended its naturalisation policy in late 1999 to permit long-standing residents the right to seek naturalisation (Koslowski 38). Similarly, Britain reviewed its policy and is beginning to improve integration and to capitalise on short-term economic migration (Hall 2). The Union often operates in a 'top down' fashion, instilling change from above. However, regarding immigration policy it is apparent that the Union prefers to use member state-influenced progress as an impetus for Union developments (Helm 97.07.11). Thus, with member states taking the
lead, the Union advocated incorporating immigration issues into the Tampere agenda. Although the Amsterdam Conference paved the way for the establishment of a common immigration policy, the participants at Tampere wanted a plan or scoreboard forcing accountability from nations and Union institutions. Furthermore, the Union and member states raised the issue of a European area of justice, and this along with the scoreboard and the common policy were the foci at Tampere.

Both the European Council (EC) and the EP actively addressed the common immigration policy before and during the Tampere Summit. They submitted working papers and reports highlighting what they saw as the key immigration issues. The EC is in full support of the establishment of a common immigration policy, and notes that legislation must include partnerships with countries of origin, fair treatment of TCNs, and management of migration flows into Europe (Tampere Summit 1122). The EP calls on the Commission and the Council to establish uniform legislation outlining entry and residency restrictions for migrant workers, a coherent method for issuing visas, and a categorised system allocating resident permits (EP Committee 2). These reinforce the fact that migration policy is as important to the EU as it is to member states. With 'top down' influence wielded by EU institutions and information being submitted from the 'bottom up' by member states, the tenets of the common policy should, in theory, receive the appropriate type and amount of attention to result in acceptable, productive legislation.
Naturally, NGOs and policy groups or think tanks have a vested interest in, and have generated an educated opinion concerning the establishment of an EU immigration policy. One such group, the Immigration Law Practitioner's Association (ILPA) submitted a document to the British House of Lords Select Committee on the European Union prior to Tampere outlining its impression of the common policy. To begin with the ILPA recognises that there is tension between the interests of Member States, of business, and of individual migrants (ILPA 1). Although all three are worthy and important, the ILPA is particularly concerned with the latter. Therefore, the group is adamant that any European Union immigration policy must take place within a framework that protects the rights of migrants (ILPA 1). Furthermore, according to the ILPA, for the policy to be truly successful it must establish an even 'playing field' between migrants and EU citizens. The Maastricht Treaty paved the way for equality between EU citizens, and the ILPA sees no reason why the common immigration policy cannot extend equality to legally resident non-Union citizens (ILPA 2). The Union has already dealt with the challenge of national sovereignty as it extends to granting EU citizenship. As such there appears to be no theoretical reason to deny legally resident TCNs equality within the EU.

That right does not, and should not extend to illegal migrants. Although most member states, and indeed the Union itself, appear to agree that legally resident TCNs deserve rights and protection, there is less agreement about how illegal
migrants should be treated. While most concede that illegal immigration is an unfortunate outcome of economic prosperity, national governments and the EU attempt to understand the rationale behind migration flows in order to counter the movement (Tampere Summit 1122). The European Council also recognises the importance of combating EU-destined human trafficking, and is attempting to deal with the human trafficking trend facing EU member states. Finally, the Community is dedicated to working with ‘sender’ nations to address the grounds for emigration and, where necessary, to improve political and economic support to help nations retain their citizens (Tampere Summit 1123). Thus member states and Union institutions are attempting to eliminate current and to counter future illegal migration. The process is laborious, but all parties involved understand that in order for society to benefit from legal migration, illegal migration must be reduced to such an extent that the effects are minimised.

In sum, the Tampere Summit provided participants with an unprecedented opportunity to debate the merits of the common immigration policy. NGOs and the EU submitted discussion papers highlighting strengths and weaknesses. Furthermore, member states and the Union began investigating ‘push’ factors, which are the keys to understanding present and future trends in migration.

In addition to discussing the common immigration policy, the meeting at Tampere called for the establishment of a European justice system. The European Council seeks to formulate a system whereby individuals can approach the
courts and authorities in any member state as if it were their own (Tampere Summit 1124). The EU Commission Action Plan goes even further by noting that, in the view of its authors,

the area of justice [should] make daily life easier for citizens; guarantee that offenders are prosecuted and sentenced; provide better access to justice; establish a universal recognition of judicial decisions; and achieve greater convergence in the field of civil law (Vitorino 4).

The two branches of the EU also argue in favour of establishing cross-border legal aid, multi-lingual court forms, and minimum standards for the protection of victims of crime (Tampere Summit 1123). These provisions, normal as national policy, are extraordinary as Union policy and when combined together create the “seeds of a European criminal code” intended to protect the rights of legally resident migrants (Tampere Summit 1123). Thus, Tampere was the catalyst for progress toward the creation of new facets of European citizenship and immigration benefits.

The final matter raised at Tampere was the creation of a “scoreboard” mechanism, intended to track progress (or lack thereof) on the road toward a common immigration policy. The scoreboard specifies who is responsible for adopting initiatives, the timeframe involved, and the nature of various measures and instruments raised in Amsterdam and addressed at Tampere (Vitorino 3). The major categories include the common immigration policy; the area of justice; the fight against crime; and, finally, all other measures included in the Treaty but
not raised at Tampere, such as external and internal Union border policy, visas and the incorporation of Schengen, and Union citizenship (Vitorino 3). The Commission is expected to update the scoreboard every six months, and therefore demands that member states and EU institutions meet to discuss progress and areas of improvement in conjunction with that timeline. It will be interesting to chart the progress of the applicable areas of interest, as well as to analyse whether or not such a 'scoreboard' appears to work as a way of tracking such complicated policy developments.

The Tampere Summit made some major headway in the development of a common immigration policy. Participants addressed the rights of legal TCNs, in some detail, for the first time. By establishing partnerships with 'sender' nations, the EU and its member states appear to accept that illegal migration can be reduced, while needed immigration can continue. The intention to create a European area of justice is a notable aspiration of which the participants at Tampere should be complimented. Individuals legally residing outside their nation of birth are now able, under this new provision, to obtain legal counsel in a way that protects their individual rights, irrespective of lack of citizenship in their adoptive country. Finally, participants at the Tampere Summit, fearful of losing the productive momentum, established a scoreboard for keeping track of progress, developments and areas of concern. The Commission has requested that member states and EU institutions come together to review their progress every six months in order to remain on track in terms of time allocation,
responsibilities, and financial output. If all subsequent Summits are as successful as Tampere, the common immigration policy is bound to meet its 2004 implementation deadline.
Chapter 8: Progress Since Tampere

The European Union and its member states are dedicated to creating a common immigration policy. The chance to meet at Tampere solidified intentions and provided the catalyst to activate national governments and the EU. In the years between Amsterdam and Tampere, particular member states established more inclusionary national immigration policy and EU institutions focused on the reality of migration within the Union. Our attention now focuses on European immigration policy in the period since Tampere. Just over two years have passed since the Summit in Finland, and it seems that immigration policy has moved to the centre of the EU legislative agenda—a place of honour previously reserved for discussing the common currency, trade issues, and enlargement. Our discussion will focus on events that took place in 2001. Although attention could focus on both post-Summit years, it seems a more constructive use of our energies to analyse the most productive time-period. Three major developments occurred in 2001 concerning the common immigration policy, all three of which will be discussed in the following pages.

The first item under analysis is the Commission’s July 2001 Communication, *On an Open Method of Co-ordination for the Community Immigration Policy*. In light of developments at Tampere, and the Union’s obvious dedication to resolving immigration policy, the Commission proposes that guidelines be established in the following areas: management of migration flows; admission of economic
migrants; partnerships with Third Countries and the integration of TCNs (Commission July 2001:6). The Commission notes that migration flows can be facilitated in three ways: establishing just and sound national policies; promoting legal methods of entry into European member states; and, finally, stepping up efforts to curb illegal immigration, smuggling and trafficking (Commission 7). The Commission suggests that in order to facilitate the entry of more economic migrants into Union territory, the EU and member states should work together to establish a “coherent and transparent” labour market policy (Commission 9). However, their suggestions with regard to third countries are a little more complex. The Commission wants member states to take TCNs into account when creating national policies on training, employment and wages. Furthermore, they request that nations pay heed to the effect that emigration will have on the ‘sender’ nations. Finally, they want member states to encourage emigrants to take an interest in projects and business opportunities in their homelands (Commission 10). These suggestions are all valid, although some do appear a bit far-fetched considering that national governments are expected to expend energy protecting and providing for their own nationals, and not those of other nations. Despite this criticism, the Commission suggests some operational tools to assist with the implementation of the above objectives. The Commission would like to see countries provide statistics on numbers of TCNs and the situation those admitted in the previous year, including demographics, employment statistics, and figures on legal and illegal immigration. Furthermore, the Commission suggested that Europe establish ‘Green Cards’ and that EU job
postings be made available in third countries (Union Press 27 July 1-4). Britain, which remains exempt from EU immigration policy, appears to support the notion of approved entry for legal migrants, along with the implementation of measures to reduce illegal migration (Black 1). This posture follows from the fact that Britain is attempting to address its demographic shortages (BBC 2). Similarly, Germany and France accept that the demographic situation demands immediate, effective attention; ignoring the shortages would lead to economic and social instability (Jervis 2). Thus, although the suggestions are radical and in some cases unrealistic, member states appear at a loss for alternatives and therefore support any action that may lead to an improved labour market and a secure social safety net.

The second event to take place after Tampere was the Conference on Immigration. The Belgian Presidency organised the two-day event, which was attended by the Commission, the Council, and the Parliament to provide the opportunity for an in-depth political debate on the issue of migration. There were four themes of the conference: immigration policy and its management; common policy on economic migration; partnerships with countries of origin; and, finally, integration of migrants (Commission 1). These themes find their origin in the issues raised at Tampere, which were in turn supported by the Commission's Communication (Commission 1). Representatives from the fifteen member states, candidate countries, Norway and Iceland—the two non-EU Schengen members—and Third Countries including the United States, Australia, Morocco,
China, India, and Canada attended the conference. As noted by the Belgian Ministry of the Interior, a wide range of participants promoted a wide range of discussions.

According to the Belgian Government the event was a success because it addressed new issues and provided an open environment within which to debate the topics at hand. In his closing speech Home Affairs Minister Antoine Duquesne notes the following conference accomplishments (Duquesne 1-5):

1. The conference brought together a wide range of MEPs, ministers and leading figures from around the world,
2. A discussion of respect toward the economic balance in migrants' countries of origin took place for the first time,
3. Migrant support groups were given the chance to argue the worth or validity of migrant populations by outlining that diaspora transfers to 'sender' countries reach in the vicinity of $25 billion per year—a figure which far outstrips the value of development aid from the EU to these nations,
4. An agreement was reached stipulating that citizens of candidate countries would be given preferential treatment in the instance of labour shortages currently unmet on the internal market, and
5. The conference was seen as only the first of many such events addressing the needs and issues surrounding migration policy in the Union.

Evidently, member states and other conference participants are interested in devising policy that satisfies the Union without exploiting third countries. It is hard to say, at this time, whether or not this trend toward 'sender'- and 'receiver'-focused immigration policy is anything more than fantasy on the part of the EU. However, member states cannot deny that immigration into the EU continues and will do so for as long as the Union is economically stable. This fact, coupled with evidence that immigration may be a solution to some of the demographic woes
facing member states, makes the 'bitter pill' of migration policy easier for member states to swallow. Thus, the Union's progression toward a common policy seems to be both fortuitous and responsible; conferences such as that held in Belgium further the Union's intentions and progress.

Continuing our discussion of events that further the establishment of the common immigration policy we note that on 30 October 2001 the Commission released its third biannual update of the 'scoreboard'. Lack of data and evidence of progress demands that the first two updates be disregarded in favour of the third; the Union mechanism works slowly and therefore demands more than one year to establish change. Thus, it is appropriate to begin reviewing the Union's success or failure two years after the Tampere Summit. The Commission finds evidence of substantial progress, and provided that efforts are maintained and strengthened, the prospects for delivering the Tampere objective remain good (COM (2001) 628 Final: 4).

However, a first-hand analysis of the scoreboard indicates the opposite. Although migration issues were broached in the two years between Tampere and the scoreboard report, no progress was made (COM 5). Issues about which decisions were made include asylum, crime and justice, none of which centre on the common immigration policy. Even moves that were expected to achieve results did not; it was anticipated that the transfer of Title IV issues from the Third to the First Pillar would increase flexibility and urgency, which was not the case (COM 8). While operational co-operation is taking place, these relations exist in
conjunction with the Schengen Agreement and not the scoreboard or Tampere. Third country co-operation has continued since Tampere, which is good for nations dependant on migrant workers but has no effect upon the creation of Union policy. In sum, the Commission has exaggerated progress toward the establishment of the common immigration policy. It is clear after analysing the scoreboard that member states and the EU are unable to do anything more than discuss immigration issues. Although some issues were decided in the two-year period since Tampere, the focus was on crime prevention and decreasing illegal immigration. Both parties must increase their involvement in the debate about immigration issues for notable progress to be made in time for the April 2002 scoreboard.

To conclude our discussion of progress since Tampere, it is evident that although member states and the Union are keen to debate the issues of migration, they are unable to legislate any real changes. This is rooted in three factors. First, the Union is, justifiably, more concerned with the health and safety of its members and their citizens than with the establishment of immigration policy. With the events of September 11th, member states are concerned for their safety and regard migrants as possible perpetrators of terrorism. The second reason why little emphasis is placed on actual change is that most of the immigration and movement policy appears to be tied to the Schengen Agreement, which was incorporated into the Amsterdam Treaty, and is therefore current Union legislation; thus while some areas may require policy drafting, for the most part
only implementation is necessary. Finally, changes may be hindered by member states who are hesitant to support policy that challenges state sovereignty. This situation is even more magnified when the content of the policy and change focuses on immigration and on who may or may not gain access to the state. Although some members are warming to the idea of increased migration, even the most supportive have been anti-immigration for a long time; these views are not quickly amended. To reiterate an important point mentioned above, member states, along with the Union, must begin accomplishing the goals outlined at Tampere and within the scoreboard to facilitate the establishment of a common immigration policy.
Chapter 9: Case Study: Member State Reaction

After discussions at the EU level are over, member states submit policy proposals to their citizens for review. The goal is to create the most advantageous policy—society’s gains should outweigh the losses—at the smallest cost. An issue as complex as immigration policy gives rise to heated debate about integration, sovereignty, labour market stability, and economic growth. The Union’s call for a common immigration policy has led to this debate taking shape intra- and supra-nationally; the impending deadline forces member states to decide whether or not to accept the tenets of the EU common immigration policy. As expected, member states have very clear and concise views regarding such a policy. This chapter will focus on the views of three nations: Germany, France and Finland in order to better understand causes of concern, debate, and opposition. These countries were chosen in particular for their views toward immigration and European Union involvement.

As a former colonial power, Britain continues to have ties to third countries. As one of only two English-speaking member states the UK is a popular destination for immigrants from both the EU and Third Countries. Like many other industrial nations, Britain needs migrants to compensate for the aging population (Castles and Miller 222). Nevertheless, the British population has been uneasy about anything foreign or different, making the immigrant integration process very difficult (Hawkins 9). Armed with these views and a strong opposition to any institutions that may challenge national sovereignty, the British state has refused
to sign any policy leading to the establishment of a common immigration policy. The nation’s views toward the EU’s actions therefore demand discussion.

Germany has similar views toward migration. Until recently, Germany did not accept officially that it was a country of immigration. With citizenship based on the principle of *jus sanguinis* it was easier for the German state to reject anyone who was not of German descent along matriarchal or patriarchal lines (Brubaker 25). However, two issues challenge the validity of that argument. First, migrants make up a substantial percentage of the German population—ten percent during the early 1990s (Bramham 1), and second, the population is aging at a rapid rate and employed legal migrants able to contribute to the social safety system could help defray some of the costs (Castles and Millar 186). Therefore, Germany supports the establishment of a common immigration policy. However, as a nation bordering on accession states, the Germans are apprehensive about enlargement and unlimited access to the German economy (Express 12.17.01). Thus the nation demands that the Union work at establishing accountable accession policy and come to terms with the reality of eastern border policy (Reuters 12.15.01).

The final country under discussion, Finland, is noteworthy for three reasons. First, it is one of the newest and therefore one of the weakest members of the Union. This position forces Finland, in many instances, to follow to the dictates of others. Stronger founding nations and dominant accession countries such as
Britain wield considerable weight within the Union, therefore reducing the influence of newly joined states. Second, Finland has retains a long-standing relationship with Russia. The Finnish Prime Minister Lipponen recently travelled to Moscow to meet with the Russia Prime Minister to discuss Finnish, European, and Russian relations (Finnish Government 22.5.02). Finland's role is often defined as moderator between the EU and Russia. The histories shared between Finland and Russia provide fuel for this relationship. The final reason Finland is selected for analysis focuses on its immigration policy. Finland has never been a targeted 'receiver' nation for migrants; however, now that Finland is a member of the EU, Eastern Europeans are using Finland as a way into Europe (Directorate 1). By analysing these three nations, we will obtain a more accurate understanding of why some countries support the establishment of a common immigration policy, while others do not.

Britain

Britain has worked hard to protect national sovereignty, while cementing its role as a key Union member. Developed as a result of its colonial past, Britain's immigration policy reflects the relationship between the nation and the Commonwealth (Hawkins 12). However, the nation appears to have a superiority complex resulting from its lost colonies, which manifests itself as a disapproval or dislike of foreigners (Castles and Miller 223). Nevertheless, individuals continue to migrate to Britain in search of economic and social opportunity. It is estimated
that approximately twenty-five percent of foreigners who register on the European continent land in Britain (Chevenement 2). Moreover, in 1995 over fifty percent of the 2.1 million foreigners resident in the UK were from outside the EU (Castles and Miller 222). The largest percentage of migrants into Britain has always come from Commonwealth nations, and until 1971 these individuals were 'equal' with Britons in terms of citizenship, rights and obligations (Castles and Miller 222). In 1971 legislation was passed which denied Commonwealth citizens this special status, and from this point forward all foreigners, whether from the Commonwealth or elsewhere, were treated differently than British citizens (Joppke 1999:108).

Immigration legislation was amended in 1983 with the adoption of the British Nationality Act. According to this legislation, British citizens include individuals who are born to British citizens; those born in Britain to legal residents and who at the age of 18 apply for British citizenship; and those who go through the naturalisation process (BN 1). Thus British citizenship instils the tenets of *jus soli*, and *jus sanguinis* citizenship policy. Individuals who are not granted citizenship, but who are legally resident in the country retain the right to education, health care, emergency social security, leave from Britain and the right to vote in municipal elections (BN 1). Naturalisation is relatively easy in the UK; the prerequisites include a five-year residency period, no criminal record, financial stability, an interest in British society, and knowledge of English (Freeman and Ögelman 773).
Although the British government has established a citizenship and naturalisation program that is just and treats individuals fairly, the fact remains that the government does not want nor feel that it needs immigration. As Joppke notes,

Britain stands out as the Western world's foremost 'would-be zero immigration country', displaying an exceptionally strong and unrelenting hand in bringing immigration down to the 'inescapable minimum' (1999:100).

Britain's aversion to immigration stems from their fear of the 'other', which is rooted in the dismantling of the British Empire (Joppke 1999:100). Former colonial subjects—Caribbean blacks and Asian Indians—formed the bulk of post-war migration and the legacy of the empire created a link between immigration and multiculturalism (Joppke 1996 476). In contrast to the United States, Britain has a race problem because it has immigration; thus, the nation appears fixed on limiting immigration (Bryant 167).

However, the reality of the situation demands that Britain accept a certain number of migrants to address labour market shortages. The nation is faced with a declining birth rate, which deems that the current ratio of workers to pensioners will decrease from six to one, to 2.4 to one by 2050 (ILPA 3). Recently, fifty percent of businesses stated that they have difficulties recruiting for skilled jobs (Lloyds in ILPA 60). Therefore, in July 2001 the British government's Home Secretary, David Blunkett, signalled interest in a national 'green card' system which looks at age, professional experience and language skills to determine
eligibility for access into the labour market (Black 01.07.12). That interest was taken one step further on 28 January 2002, when the British government announced the launch of its *Highly Skilled Migrant Program* (HSMP). The aim of this legislation is to provide an individual migration route for highly skilled persons who have the “skills and experience required by the United Kingdom to compete in the global economy” (IND 1). The program combines the point system used in Canada with an American style ‘green card’, and demands that individuals possess an applicable degree of financial stability, practical experience, and interest in British society (IND 2).

Another way in which Britain could meet the needs of the labour market is by opening its internal borders to other EU member states, but Britain refuses to afford free movement to EU citizens. Britain has not ratified policy pertaining to Union control over immigration restrictions, and it believes that nationality and immigration should remain under national governments’ exclusive jurisdiction (Hansen 754). Britain does not support Union control of immigration policy and has, as noted previously in Chapters 4 and 6, excluded itself from the Schengen Agreement and Title IV in the Treaty of Amsterdam (Martiniello 363). This is rooted in a fear of lost national sovereignty; Britain views the government’s ability to control and decide issues pertaining to the nation state independently and without the influence of other parties, as key to its success (Kostakopoulou 2001:20). Thus, the UK refuses to support the common immigration policy, the transfer of Title IV issues from the Third to the First Pillar, and the absorption of
the Schengen Agreement into the Amsterdam Treaty (Dearden 8). Furthermore, Britain is disturbed with the easy dispensation of European citizenship, and critics see the liberal allocation of this status as demeaning to British nationals.

In Britain [EU citizenship] means that non-English speaking immigrants from French overseas territories will have the same right of voting in municipal and Euro elections as native Britons. It is demeaning to hand out to all and sundry a voting right, which so many have fought and died to protect (Stephen and Bush 3).

Although the issue of protecting voting rights through warfare may seem a bit extreme it does outline Britain's general stance toward the EU, and its attitude toward EU citizenship.

The UK makes no secret of its dissatisfaction with the European Union. It disapproves of the Union's sweeping policy controls, its involvement in member state policy, and the relation between that control and British state sovereignty. The UK remains excluded from as many common policies and controls as possible. Refusing to ratify both the Schengen Agreement and Title IV has given the nation particular power. It is evident that a time will come when the UK must either support Union policy and opt-in, for better or worse, or withdraw from the Union structure without the ability to re-join (Joppke 1999:135). The relationship between Britain and the EU favours Britain; the nation has the right to opt-in and out of policy, as it feels fit; while the Union concedes to the wishes of the displeased child. Relinquishing authority is bound to impede the speed with which the Union is able to 'deepen' or 'widen' (Hailbronner 1998:1048).
Germany's relationship with the European Union is very different from that of Britain's. The nation has "embraced Europe as an alternative to the nation-state" resulting, one can only assume, from the desire to alter their reputation in the eyes of other European states (Joppke 1999:278). As a founding member of the Union, Germany's contribution to the European landscape cannot be ignored. The nation has worked alongside other European partners to create a Union that is forward thinking, constructive, and internationally influential. That is not to say that they have not taken issue with EU and member state initiatives. There have been debates about trade, tariffs, restrictions, and regulations regarding issues such as food and drink classifications, environmental protection, immigration, and border controls and enlargement (Moussis 47-8, 323-4). Nevertheless, when called upon to contribute its expertise or to provide an opinion regarding a Union decision, Germany agrees.

Although Germany incorporates many of the Union's policies into its own legislation, the EU is currently reviewing German immigration policy for valid and useable articles (AP 01.07.11). German citizenship is guided by the principle of *jus sanguinis* in its 1913 citizenship law (Brubaker 25). According to this principle, individuals are only granted citizenship if they are born to an individual of German descent (Citizenship Reforms 1). As Joppke argues,
Germany has been created by the German people for the German people, as a state with a mandate of unification, in which all powers derive from the German people (Joppke 2000:101).

This philosophy and method of granting citizenship may have been acceptable at a time when immigration was less prevalent, but in the current era of globalisation and mobile labour forces, citizenship limited to that of descent is no longer appropriate. Germany is currently home to more than 7.3 million foreigners, the majority of whom, according to the principle of *jus sanguinis*, will never be citizens (Thomasson 1). However, as of 1 January 2000, children born in Germany to foreign parents acquire citizenship at birth if at least one parent has resided in Germany for a minimum of eight years (Citizenship Reforms 2). Thus, as of 2000, German citizenship law contains both *jus sanguinis* and *jus soli* elements.

As a result of changes in naturalisation policy, adults who have resided in Germany for more than ten years are granted the right to naturalisation (Citizenship Reforms 2). Unfortunately, only half of the population is eligible under these provisions; nevertheless, this is a sign that policy is changing to better reflect the reality of Germany's legally resident immigrant population. In addition to the residency period required for naturalisation eligibility, individuals are required to give up their national citizenship, prove financial stability, speak German proficiently, and possess a clear criminal record (Citizenship Reforms 4). The reality of the situation is that very few individuals are willing to dissolve their
homeland citizenship, resulting in a very low rate of naturalisation. In the early 1990s, only .2% of eligible foreigners residing in Germany naturalised (Koopmans 633). Nevertheless, naturalisation exists, which is a step toward the inclusion of non-Germans into society.

In addition to addressing the needs of long-term TCNs residing in Germany, the government is making strides to meet Germany's labour market shortages. The major crisis facing Germany at the present time is its quickly aging population. More than twenty percent of the population is currently over the age of 60; by 2040 that figure is expected to rise to 71% (Castles and Miller 186). Considering the cost of the German social safety system and the high standard of living Germans are used to, the population must expand in order to pay down the costs incurred by the baby-boomers. According to Rainer Münz, Germany requires approximately 300,000 immigrants per year, over the next three years, to stabilise the population (Rinaldi 24). However, not all demographers share Dr. Münz's views, Dr. Jürgen Flüthmann of the German Institute for Demographists notes that "Germany has had a yearly immigration rate in the post-World War II era of 120,000 to 130,000 on average. To have 400,000 or even 300,000 [would be] unrealistic (sic)" (in O'Rourke 1).

Nevertheless, German authorities recognise that some immigration is necessary to keep the economy running. On 4 July 2001 the German government released an audit of its immigration program, entitled the Süßmuth Report, outlining plans
to open its doors to approximately 20,000 skilled immigrants per year to meet labour market shortages and provide a counter to demographic and economic shortages (Innen 1). Furthermore, the report outlines a Temporary Foreign Worker (TFW) program through which 20,000 individuals will enter Germany on an annual basis for short-term employment contracts to meet immediate needs for highly skilled professions (Innen 1). The German government's intentions are in line with what the EU wants its other member states to undertake. Having researched the labour market shortages and the ways in which migrant populations can be advantageous, the German government has set out a realistic immigration program, which should begin to address the shortages facing the country.

The nation is not, however, working independently. Having signed all Union Treaties and Agreements over the past forty years, Germany is fully integrated in the European Union's immigration policy. Germany supports the free movement of persons, European citizenship, the tenets of the Schengen Agreement and the creation of a common immigration policy. Nevertheless the Germans are concerned about details which they feel effect them the most. As a nation that receives a high percentage of TCNs—approximately 30% of those entering EU territory—Germany is concerned with border issues (Koslowski 128). The retention of unanimous voting and the transfer of immigration issues from the Third to the First Pillar partially addressed German concerns (Joppke 2000:278). An additional issue perturbing Germany is enlargement and the entry of
accession states into the Union. In the February 2001 Eurobarometer, only thirty-six percent of Germans expressed support for enlargement (EurActiv 1). This lack of support is rooted in the fear that the nation's labour market will be flooded with migrants from new EU states (Bramham 1). The Commission estimates that Germany will receive approximately 6 million Eastern European workers after enlargement (EurActiv 1). According to other sources, however, that amount will decline to only 170,000 workers after ten years time (Jervis 2). Nevertheless, Germany wants to curb the influx of migrants by placing a five to seven year migration ban on Eastern Europeans (Hoeneckopp and Werner 2). Although no final decisions have been made regarding this request, the process of outlining the criteria for the entry of accession states is in the final stages. In sum, the only two common immigration issues that concern Germany are border policies and migration from the accession countries. The Germans fully support the creation of a common immigration policy in general and almost all of the details.

Germany is a country of immigration, and although official admission of this fact is only recent, the changes implemented by the country are noteworthy. The fact that legally resident TCNs can now naturalise is key to the successful integration of current and future migrants. By auditing the nation's immigration system the Süßmuth Report highlights the role that migrants play in Germany's social and economic success. In accordance with this admission, Germany amended its skilled and unskilled TFW program. The EU has made an example of Germany
because of the revolutionary and realistic way it views its current and future migrant population. Although there is some debate as to whether or not Germany has grounds for concern regarding migration from accession states, the EU is paying heed to the issue and bringing it up for discussion whenever possible. Thus, Germany is a powerful nation in general and more specifically regarding immigration policy in the Union. There is a mutual respect between the nation and the Union that benefits both; Germany establishes national policy with Union support and the Union addresses Germany's concerns with respect and diligence.

Finland

This small northern nation, a member of the EU since 1 January 1995, fully supports Union mechanisms (Handling 1). The outcome of the accession referendum was close; 56.9% of voters supported membership, while the remainder voted against joining the Union (Chronology 2). The decision to join was less of a challenge for Members of Parliament; on 20 December 1994 they unanimously passed a constitutional amendment supporting accession (Chronology 3). The Finnish labour market and migration issues are important for both the state and its citizens. Much like other industrialised nations Finland is facing a declining birth rate and an aging population (EVA 2: 2). Furthermore, Finnish unemployment figures in the early 1990s hit an all-time high—approximately sixteen percent in 1994—and although the situation is improving—
the rate stood at eight percent in 2000—there are still fears that an increase in immigration will negatively effect the economic stability of the nation (EVA 1).

Finnish views on immigration are varied and occasionally contradictory. Although a majority of citizens assume that immigration will increase the nation's international influence, only forty percent support immigration as a way to address demographic problems (EVA 2:2). Furthermore, while 60% of Finns admit that they are racist, most feel that their 'scepticism' is a healthy precaution against discrimination (EVA 2:2). Foreigners currently account for 1.8% of the population in Finland, or 97,600 individuals, the majority of whom originate from the former Soviet Union (Directorate 1). With citizenship laws based on both jus soli and jus sanguinis, all individuals residing in Finland have access to citizenship (Directorate 5). Children born to either a Finnish mother or father and children born in Finland who did not acquire citizenship in any other country at birth are granted Finnish citizenship (Directorate 5). However, the nation does not accept dual citizenship and will therefore retract citizenship if an individual holds the citizenship from another country (Directorate 6). Foreigners residing in Finland are eligible to apply for citizenship if they meet the following criteria: reach the age of majority (18); reside in Finland for a reasonable length of time—usually five years; possess a secure income; converse proficiently in either Finnish or Swedish; and live a respectable life\(^3\) (Directorate). Thus, although the foreign population is not enormous the right to citizenship forces the state to

\(^3\) The government does not define what an 'non-respectable life' would include but it can be assumed to include criminal activity either while in Finland or prior to arrival and the like.
review its admission process very carefully when considering expanding the entry of outsiders.

This situation is magnified by EU membership. Although any success that has taken place—including improved employment rates—is attributed to EU membership, Finns still feel that they must establish a position for themselves among other European countries (EVA 2: 1). As noted earlier, the Union wants national governments to establish their own policy and will then use that policy to create EU legislation. As a trendsetter among member states, Finland has done just that. In 1997, the Ministry of the Interior adopted the Government Decision-In-Principle on Immigration to bring Finland’s immigration policy into the twenty-first century. The details of the Decision-in-Principle can be divided into three categories: internal issues, external relations with Russia, and external relations with the EU. Regarding national policy, the central aim of Finland’s immigration legislation is:

on the one hand, openness and internationalisation, human and basic rights, the principles of good governance and legal protection, and on the other hand, combating illegal immigration and control of side effects of organised international crime (MOI 8).

Thus, the government strives to establish a balance between legal and illegal migration. Although it agrees to work with the EU, in this regard Finland is adamant that issues of migration must fall under the sovereign control of the state. Thus it is the state that must take the lead on all policies (MOI 4). One such policy concerns labour market shortages. The Finnish government has
made it protocol that only persons "possessing professional skills or specific qualifications will be favoured" (MOI 10). Thus, unlike Germany and Britain, which are willing to address labour issues through general immigration, Finland is prepared to counter labour market shortages by reallocating national resources or importing specifically trained workers.

The Decision-in-Principle's discussion of national immigration legislation makes way for an analysis of Russian emigration. As mentioned briefly above, Russia and Finland have a unique relationship based on past events that have seen the two alternate as friend and foe. Due to the fact that Finland borders on Russia, it intends to diligently monitor organised crime rings, borders, and regional administration (MOI 3). Furthermore, Finland has dedicated resources to decrease migration from Russia; however, the fact that the majority of migrants in Finland are Russian by descent has not gone unnoticed by citizens or the government (MOI 7). Nevertheless, due to current unemployment figures and the threat of increased migration from accession countries, Finland is outlining policy now which will help curb migration in the future.

Accession is the key problem area for Finland with regard to the EU. It remains a key issue regardless of the fact that the government supports the establishment of a common immigration policy, EU citizenship and the incorporation of Schengen tenets into Union legislation (Chronology 1; Directorate 2; Handling 1). Regarding TCNs, Finland is clear in its support for efforts to bring "the rights of
third country nationals legally residing in the territory of the EU in level with the rights of nationals” as a method of establishing legal equality between citizens (MOI 6). Much like Germany, however, Finland is concerned that accession will lead to a migration tidal wave and an influx of foreigners in the country. Although the Decision-In-Principle notes that a joint identity exists for citizens (MOI 15), membership in the EU is challenged by the existing strong, youth-supported ‘Finnish identity’, which is hindered by the inclusion of TCNs in society (EVA 2: 1). Thus, although the nation welcomes foreigners with the promise of equality, citizens often refuse to accept anything that may impede the further development of a positive Finnish identity.

In sum, as a ‘newer’ EU member, Finland is dedicated to establishing good working relations with the Union and other member states. However, the Finns fear of a loss of sovereignty as a result of immigration policy, and they have accordingly defined their own terms of entrance and citizenship. The high unemployment figures, although minimal in relation to mid-1990 figures, raise doubt about the need for immigrants in Finland. The government, nevertheless agreeing with the EU’s goal of a common immigration policy, accepts the need to import skilled workers to address labour market shortages. Finland’s situation shows how national identity can be harboured by the development of Union policy. Finnish citizens, having just emerged from a period of crisis and a lack of national pride, are gaining confidence in their abilities as a people and a state. EU immigration legislation and enlargement have the capacity to challenge this
new-found awareness. If asked to choose between the two, it seems clear that Finns would vote in favour of retaining national sovereignty over expanding Union borders and admitting foreign nationals.

To conclude our report on these countries, we find that each country shares similar national immigration policy ideology, while all three nations view the common immigration policy with different lenses. All three nations currently function under the tenets of both *jus soli* and *jus sanguinis* citizenship policy, this is a big change for Germany in particular, which previously defined citizenship solely according *jus sanguinis*. Addressing the fact that each nation is home to legally resident TCNs, governments have begun amending immigration legislation to reflect the need to grant naturalisation or citizenship to eligible candidates. All three nations are currently facing a demographic crisis, the reality of a shrinking and ageing population. To address this issue, each country has introduced a skilled worker entrance mechanism. Finally, Germany and Finland have established immigration policies that they are comfortable forwarding to the Union for their review. Britain has refrained from this because of its disapproval of the Union's intention to create a common immigration policy. Overall, these three nations all exhibit a mature and inclusive attitude to migrants. Policy has been amended to address the multicultural aspects of society and to prepare each nation for the realities of the twenty-first century.
Although these nations may share ideology regarding national policies, they all think differently when it comes to relations with the EU. Considering Britain's concern about losing its sovereignty, it is unlikely that the British will ever relinquish themselves in terms of immigration policy. They do hold the right to join Union negotiation in this regard, although it may be that the terms regarding Britain's support are too restrictive for the Union and other members to accept. Nevertheless, Britain continues to be a key player, even regarding issues from which they have already excluded themselves, such as immigration legislation.

Germany, in contrast, has involved itself in EU immigration legislation since the inception of the supranational entity and continues to be an adamant supporter. Presently Germany is concerned with two issues, the influx of legal migrants from accession countries, and the fact that after accession the longest piece of the Union's eastern border will no longer be guarded by Germany, which in its mind will increase the potential for illegal migration. To address these issues Germany requests that Eastern Europeans be denied free movement within the Union for at least five years. However, there is as yet no decision regarding the free movement of the Union's future citizens. Nevertheless, Germany continues to provide insight into the establishment of the common immigration policy.

Finland, also a supporter of the common immigration policy, is a bit at odds with the role of migrants in society. Although they receive the least number of TCNs, the Finns the possibility of large-scale immigration from the former Soviet Union,
other EU member states, and elsewhere (MOI 6). Although the unemployment rate hit an all-time low in the mid-1990s, the economic stability of the nation and a newly discovered 'Finnishness' has led to the public's refusal to accept any open door migration policies. While skilled workers are needed in Finland, as in Germany and Britain, Finland is dedicated to utilising native work-forces whenever possible. As a newly joined member of the Union, the nation must function in accordance with EU policy, if for no other reason than to continue receiving economic and social support from the fourteen current and twenty-something future members. Nevertheless, even considering this pressure Finland's government and its citizens are dedicated to retaining Finnish national identity, coming at the expense of open borders and free movement of European and non-European citizens.

In general the governments of EU member states face a difficult battle, one which involves attempting to please citizens while setting out to meet Union-based obligations. Although it can be assumed that membership in such a Union has outstanding advantages, there are obviously disadvantages so enormous that nations in good conscience cannot fully concede power to the European Union.
Chapter 10: Conclusion

Will the EU establish a common immigration policy by 2004? After reviewing European immigration legislation and performing a country-based analysis, I am confident that a common immigration policy will exist within the next two or three years. I base my decision on two factors. First the Union has progressed methodically toward a common policy, developing the appropriate foundation upon which to establish the policy. Second, member states have shifted their views toward immigration and immigrants, and as such are more keen than they had been previously to accept EU common policy. Together these developments have prepared the European landscape for the establishment of the common immigration policy.

The establishment of common legislation, regardless of the subject matter, demands a well-developed institutional framework, of which the Union is currently in possession. The Schengen Agreement details provisions to address common visa, border and security issues; furthermore, the Schengen Agreement established a monitoring and policing system to facilitate the sharing of information between member states. The Schengen provisions were absorbed into the Amsterdam Treaty, and the Union therefore has effective implementation legislation as required for the launch of a common immigration policy.
Although an institutional framework is key, the existence of legal provisions is more important. Migration legislation entered the European landscape over forty years ago, when the Treaty of Rome granted workers the right to free movement. Since then legislation has been amended to suit societal changes and European nationals are now European 'citizens', equal under the law, with the right to be treated without discrimination in other EU countries. Thus, EU nationals are already protected under EU legislation; this eliminates the need for the Union to establish policy in conjunction with European immigration legislation.

Non-EU nationals are, on the other hand, a more serious issue. As noted above, the Schengen Agreement addresses border issues as they apply to TCNs. However, there is a movement within the Union which supports granting non-EU nationals rights within EU legislation as outlined in Chapter seven. Whether or not this takes place in conjunction with the common immigration policy is, however, irrelevant; participants at Amsterdam and Tampere demanded nothing more than a list of third countries whose nationals require visas. Such a list exists, via the Schengen Agreement, and it is expected that within two years all member states, in particular non-Schengen nations, will accept the list either as it stands now or with amendments.

In sum, the Union system has already established the institutional and legal provisions required in order to launch a common immigration policy by 2004.
However, provisions aside, a trend is sweeping the Union. As outlined in Chapter eight progress toward the establishment of a common immigration policy is slower than anticipated. While this is disturbing, I don't believe that it is an accurate indication of whether or not the common policy will be launched according to schedule. Member states are seemingly uninterested in pursuing common immigration initiatives and one reason for this may be the emphasis member states are placing on outdated national migration policy. Addressing concerns raised by citizens, legally resident foreigners, and interested stakeholders, European governments have started amending national immigration policy to reflect the needs of the twenty-first century. This is immensely advantageous for the establishment of a common immigration policy. As noted earlier, the EU would rather take its lead from member states when implementing immigration provisions. As such, realistic and responsible national immigration legislation kills the proverbial two birds with one stone. Member states retain sovereign control over national immigration policy and the EU avoids the costly process of drafting legislation. The fact that most member states have, in recent years, amended their immigration policy means that in all likelihood a common policy can be established, incorporating tenets of national policy, that is agreeable to a majority of member states. Although it is unrealistic and naïve to assume that all fifteen member states are going to agree with the first draft of immigration legislation, the process is assisted by the inclusion of nationally acceptable legal tenets.
Thus, although progress in the establishment of a common policy has been slower than expected in the post-Tampere period, evidence supports the prediction that the EU will be able to launch a common immigration policy by 2004. An institutional and legal foundation has already been established from which to launch the common policy. Member states understand the role that migrants play in society and as such are amending formerly restrictive policy to make it more accountable and reflective of society. The European Union, fearful of allegations of 'top-down' decision making, relishes the opportunity to use either existing Union legislation or amended national policy as the basis from which to draft the elements of a common immigration policy.

To conclude, what began as an economic union joining six post-Second World War nations with one another has grown to encompass fifteen member states and over 370 million citizens. Although immigration has always taken a back seat to other more pressing issues such as trade, security and enlargement, it has remained a constant in Union negotiations and legislation. This is due in part to the fact that the EU is the recipient of a large percentage of the world's migrants. Establishing a common immigration policy facilitates the entry of valuable migrants in search of economic, political and social stability.
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