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Master Thesis

Single Case Study on Germany's decision-making concerning the transfer of competencies to the European level in the area of asylum and refugee policy

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List of Acronyms

CDU	Christian Democratic Party
EC	European Community
EU	European Union
FDP	Free Democratic Party
GG	Grundgesetz
LI	Liberal Intergovernmentalism
NF	Neofunctionalism
PDS	Party of Democratic Socialism
SPD	Social Democratic Party
QMV	Qualitative Majority Voting
VP	Veto Player

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1. Introduction

My research topic is located in the area of European Integration studies. The phenomenon of European integration has been examined by a great number of scientists (Haas 1961, Moravcsik 1993, Wiener/Diez 2004, Peterson 2001, Pollack 2001, Sandholz 1996, Hoffmann 1966). There seems little doubt that scientific interest in the European Union (EU) is increasing (Peterson 2001). Many of them tried to explain the reasons for and backgrounds of this process, as the willingness of national governments to voluntarily give up competencies in certain areas represents a major historical change in European history. Why national states act in this manner employs the European integration discourse already since the 1950s. Some authors underline in this context the relevant connection between national governments and domestic actors[1] with regards to the European integration process. On the one hand there are studies examining the way domestic politics influence policy-making at the EU level (such as Bulmer 1983; Moravcsik 1993). On the other hand there are studies examining the way EU politics influence the domestic politics of its member states (Smith 2000). I decided to focus in the present paper on the former possibility and examine how domestic politics influence policy making at the EU level. But in this field I will only examine the influence of domestic politics on national governments in the question of competence transfer from the national to the EU level. Consequently I will not examine the decision-making on the European level, but only the national position apropos the decision-making on the EU level. The aim of my research is to get a further understanding about the national government position towards the integration process and especially to get an understanding how this position is deployed. This means I will analyse the impact of domestic politics on the national government in the question of competence transfer to the European level in the area of asylum and refugee policy.

In this subject area different theories provide different explanations for the phenomenon of integration. The two grand theories, neofunctionalism (NF) and liberal intergovernmentalism (LI), have confronting concepts and opposing logics in order to explain the competence transfer from the national towards the European level. Liberal

[1] The term domestic politics refers back to the definition of 'politics' developed by Karl Rohe (1978). According to Rohe politics are relating to the procedural dimension of politics. Thereby it has to do with the ability to govern meaning the ability to prevail specific contents, interests and goals against others involved.

intergovernmentalism gives various explanations to understand the co-operation between national states on the European level. Among those explanations I chose to refer on the concept of 'two-level games' supported among others by Moravcsik. According to this concept co-operation on the European level enables national governments to achieve goals that would not be achieved otherwise because of domestic constraints. This concept leads me to the hypothesis that domestic politics has an impact on the decision of national governments to shift competences to the European level (H1). From this assumption one could infer that the shift of national competences towards the European level takes places when national governments want to bypass oppositional domestic politics (H2). Consequently, we could assume that the stronger oppositional domestic politics is the more governments are willing to transfer national competences to the European level (H3).

Theses hypotheses sharply contradict neofunctional theory, which assumes that domestic politics tend to bias national governments towards *not* shifting competences to the European level (AT H1). Oppositional domestic politics rather hamper the shift of competences to the European level. Neofunctionalists do not bear in mind the strategy of national governments to by-pass oppositional domestic politics. They rather proceed from the assumption that the shift of national competences takes place when national institutions are unable to satisfy local demands (AT H2). Domestic politics however rather represents a countervailing force, which opposes or impedes the integration process. Consequently, they assume that the stronger domestic politics is the less governments are willing to transfer national competences to the European level (AT H3).

These disagreements over the mentioned theories give me the intensive to test the validity of the hypotheses (H1-H3) introduced by LI. Therefore the following method will follow a theory testing procedure. Conducting a single case study, I will test the operating range of H1, H2 and H3. The case of the Federal Republic of Germany and its respective policy in the area of asylum and refugee affairs will serve as single case. The aim is to analyse if in the case of German asylum and refugee policy the concept of two level games is able to explain the governmental position vis-à-vis the competence transfer to the EU level. The concrete research question, which I will follow in this paper, is therefore:

What impact does domestic politics have on the decision of the German government to shift its competences in the area of asylum and refugee policy to the European level?

Starting from this question, my independent variable X (IV) represents the impact of domestic politics, while the dependent variable Y (DV) represents the position of the German government on the transfer of competences to the European level. The aim is to reveal which impact factor X has on Y. Based on the assumptions (H1-H3) of the LI theory I will base my single case study on three hypotheses derived from precisely this theory:

H1': Domestic politics has an impact on the decision of the German government to shift its competences in the area of refugee and asylum policy to the European level.

H2': The shift of national competences towards the European level takes place, when the German government wants to by-pass oppositional domestic politics.

H3': The stronger oppositional domestic politics, the more the German government is willing to transfer national competences in asylum and refugee policy to the European level.

In order to operationalise domestic politics and to measure its influence, I will use the concept of veto players (VP) developed by George Tsebelis. According to his concept, veto players are major political actors who are able to decline a choice, which will be made or has been made. They are therefore an appropriate variable to measure domestic politics. I will consequently bring to the fore what role German VPs play in the question of transferring competences to the EU level in the area of asylum and refugee policy. According to Strohmeier, the German political system features four types of veto players. In the empirical chapter of this paper I will measure the influence of these veto players at three given moments in German asylum and refugee policy. Accordingly, I will analyse the governmental position in order to see if there are any coherencies between IV and DV.

With the aid of the single case study I aim to realise a systematic in-depth analysis in order to get a sharpened understanding of the position formation of national governments in relation to their domestic politics concerning questions of competence transfer to the EU level. Nevertheless we have to bear in mind that the aim to measure

the impact of X on Y can only be achieved to a limited extent on a theoretical basis. It will be impossible to isolate the two factors X and Y from their respective contexts. Meaning that intervening variables can also have an impact on X or Y. Therewith they would provide alternative explanations for the nature of Y.

2. Theoretical Framework

2.1 Neofunctionalism versus Liberal Intergovernmentalism

The effort to develop a theory about the process of European integration began within the field of International Relations (Pollack 2001). Therein neofunctionalism (NF) and liberal intergovernmentalism (LI) were for a long time the dominant schools of thoughts. These theories are two grand theories based on different perspectives within the spectrum of integration theory. Both theories give an explanation for "the world's most advanced model of collective diplomacy" (von der Gablentz 1979, pp. 688) – the European Union (former European Community) and try to give an answer to the question why national governments co-operate on the European level. Both approaches provide an explanatory model of the motives, reasons and functioning of the European integration process. The respective approaches give different and mutually exclusive explanations for this process. Over the course of the next pages, we will keep in mind the question of whether the complex and relatively new process of European integration is better understood through the framework of liberal institutionalism or the insights of neofunctionalist theory. Which of these theories give an appropriate answer to our research question? How do the authors of different schools of thoughts explain the process of competence transfer from the national to the European level? What is the impact of domestic actors during this process and how could we apply this explanation to our specific case?

2.1.1 The European Integration through the glasses of Liberal Intergovernmentalism

Tracing back the development of the liberal intergovernmentalist school of thoughts we detect that LI is a derivative of the intergovernmental institutionalism. This approach was a theory of interstate bargaining aiming to explain national preference formation based on liberal theories of international interdependence (Moravcsik 1991). This theory focuses on European decision-making from a government-centric point of view.

According to this school of thought the central actor in EU policy-making is the central government (Blumer 1983). Andrew Moravcsik is one of the most important authors in European Studies who developed the theory of liberal intergovernmentalism. He defines the European integration process as a series of rational choices made by national leaders.

> "Theses choices responded to constraints and opportunities stemming from the economic interests of powerful domestic constituents, the relative power of each state in the international system, and the role of institutions in bolstering the credibility of interstate commitments" (Moravcsik, 1998: 18).

The European integration process is in his mind a "successful intergovernmental regime designed to manage economic interdependence through negotiated policy co-ordination" (Moravsik 1993, pp. 474). In Moravcsiks publications on the European integration process he often describes in general the reasons for which EU member states agreed to cede sovereignty to a supranational entity. Therein the European Community is seen as an international regime for policy co-ordination based on national preferences and intergovernmental strategic interaction. His theory rests on the assumption that

> "state behaviour reflects the rational actions of governments constrained at home by domestic societal pressures and abroad by their strategic environment" (Moravsik 1993, pp. 474).

In this approach domestic politics plays an important role, as national preferences are assumed to be generated domestically (Pollack 2001). Liberal theories assume that domestic actors (such as private individuals, voluntary associations and civil society) are the most fundamental actors in politics (Moravcsik 1993). Concretely, that means that state priorities are dependent on "politicians at the head of the national government, who are embedded in domestic and transnational civil society" (Moravcsik 1993, pp. 483). The mechanism is simple, domestic "[g]roups articulate preferences; governments aggregate them" (Moravcsik 1993, pp. 483). The motif behind is that governments want to maintain themselves in office, and this requires the support of domestic actors such as domestic voters, parties, interest groups, and bureaucracies, whose views are transmitted through domestic institutions (ibid.). The influence of those societal groups varies according to the issue-area. The pressure they put on government positions depend also on their strength and unity (ibid.). The costs and benefits of European co-operation are often unevenly distributed among domestic actors. That can lead to domestic conflicts between winners and losers. Domestic groups

that are disadvantaged by policy co-ordination are likely to oppose the co-operation. Only were governments can overcome such opposition, a co-operation is possible (ibid).

Moravcsik gives two main purposes for policy co-ordination on the international level. Both aim to remove negative policy externalities. The first is "the accommodation of economic interdependence through *reciprocal market liberalization*" (Moravcsik 1993, pp. 485 et seq.). The second purpose of international co-operation is "*policy harmonization i*n order to assure the continued provisions of public goods for which the state is domestically responsible" (Moravcsik 1993, pp. 486). National preferences within the co-operation are thus determined by the constraints and opportunities imposed by economic interdependence (ibid.). Besides these major reasons for co-operation Moravcsik suggests that the outcome of co-operation is dependent on the relative bargaining power of governments and their desire to control domestic politics (ibid.) This second aspect, that national governments sometimes use the European co-operation to overcome domestic oppositions, will represent the aspect under investigation.

> "National governments employ EC institutions as part of a 'two level' strategy with the aim of permitting them to overcome domestic opposition more successfully" (Moravcsik 1993, pp. 515)

So, besides other reasons, LI assumes that national governments co-operate on the EU level when this co-operation increases their power over domestic politics (Moravcsik 1993, pp. 485). Co-operation on the European level thus enables national governments to achieve goals 'at home' that would not be achieved otherwise because of domestic constraints. That means domestic politics has an impact on the decision of national governments to shift competences to the European level (*H 1*). This assumption represents the first hypothesis, which should be analysed in chapter 4 of this paper. Following this logic of argumentation I will infer that the shift of national competences towards the European level takes places when national governments want to by-pass oppositional domestic politics (*H 2*). Hence I will assume that the stronger oppositional domestic politics, the more governments are willing to transfer national competences to the European level (*H 3*). In the following, these three hypotheses should be applied on the case of Germany in order to assess if it is true that the stronger oppositional domestic politics in Germany, the more the government is willing to transfer competences in asylum and refugee policy to the European level (*H3'*). National governments co-operate on the EU-level, if this co-operation increase their power over domestic politics. Therein we see that the relation between the national government and

domestic politics is shaped by a question of power. Therefore I will analyse in chapter 4 the strength of domestic actors in relation to the strength of the national government. The strength of the domestic actors will be classed upon the category 'weak' or 'strong'.

Consequently to Moravcsiks suggestion the question occurs in what way the EU level increases the power of national governments over their domestic politics? In order to explain this assertion Moravcsik invokes several reasons to explain how the power of national governments is strengthened through the EU co-operation. He argues that the legitimacy and credibility of the European Community augments the independence of national political leaders in domestic politics. With the help of the European level national governments can balance domestic initiatives and influences. Therewith they protect policy autonomy at the expense of particular groups (Moravcsik 1993, Putnam 1988). National policy-negotiators can refer to the European level in order to generate changes on the domestic level. Such changes would have been impossible to reach without the European reference or legitimacy.

> "Constraints or necessities at either level may be purposely carried into the discourse arena (where it may also be exaggerated or, to some extent, strategically constructed) in order to increase one's own bargaining space/power on the respective other level" (Post/Niemann 2007).[2]

Besides, he claims that the power of governments is also strengthened because of the bargaining efficiency within the Community surrounding. The established setting on the EU level reduces transaction costs and creates a greater range of co-operation through well-defined decision-making procedures, negotiating forums, and the monitoring of compliance. According to this argumentation international regimes such as the EU provide a certain contractual environment that is helpful for efficient intergovernmental bargaining. Due to this efficient decision-making national governments gain more control over domestic politics as this decision-making enjoys a high level of legitimacy.

For my single case study, this would mean that the German government could try to balance oppositional positions of domestic actors in questions of asylum policy by transferring competences to the European level and thereby trying to gain more authority. Putnam and Moravcsik denominate this phenomenon the 'strategy of two-

[2] However, this logic can also be applied vice versa. National policy-makers can refer to domestic constraints in order to strengthen their negotiating position at the European level. The bargaining power depends on the size of domestic-level "win-sets", which represents the set of all possible agreements with the international level that would gain the necessary domestic support (Putnam 1988). A small domestic win-set could represent a bargaining advantage since the smaller the domestic win-set, the larger the bargaining power towards the European partner.

level games' (Moravcsik 1993, Putnam 1988). This strategy represents a calculated tool of national authorities and makes it easier to mobilise domestic coalitions, which are in favour of policy co-operation. In terms of governmental policy, higher domestic political legitimacy is achieved. At the same time governmental power becomes a greater agenda setter. Governments can reach bargains or take initiatives on the European level with relatively little constraints. Moravcsik gives examples from other areas to underline this argument. In his mind, new institutions were even created in order to pursue this goal. The strengthening of the Council bureaucracy in the 1960s or the creation of the European Council and the intergovernmental decision-making in political co-operation are examples to support his argumentation (see therefore also Guiraudon 2000). Regarding the specific issue of asylum and refugee policy, it will therefore be interesting to see whether or not there are similar examples.

According to Moravcsik, the concerns on the domestic level are aggregated through political institutions (Moravcsik 1993). To understand the concerns of domestic politics, we should thus analyse the interaction between political institutions. This understanding will be ensured by presenting the positions of all relevant German domestic actors in chapter 4.

All in all, this approach departs from the assumption that the patterns of negotiation on the EU level are dependent on the national sub-structures. According to the two-level structure, this approach forsees that in the first stage national chiefs of government aggregate the domestic interests as well as their own interests and subsequently articulate national preferences towards European integration. In the second stage, national governments bring their position to the intergovernmental bargaining on the EU level, where agreements reflect the relative power of each member state and where supranational institutions have only little influence (Pollack 2001). The focus of my study lies on the first stage of this concept (aggregation of domestic and own interests and articulation towards EU). I will therefore give a detailed explanation of the interests of the national government and the domestic actors in the case of German asylum and refugee policy.

At the same time, we have to bear in mind that a number of scholars criticise Moravcsik's model of national preferences. According to constructivist thinking, this theory is too rationalist in the way that it ignores values and identities, which are of high importance to understand the European integration process. Drawing on the work of Ruggie (1998) and Wendt (1999), they argue that "membership matters", meaning that

the positions and even the identities of national decision-makers involved may alter over the process of EU integration. By ignoring the endogenous effects of the European integration process, Moravcsik ignores one of the fundamental features of the EU (Sandholz 1996; Risse 1996). Moreover, Schimmelfennig criticises that Moravcsik only focuses on five treaties and not for example on decisions of the Commission or the European Court of Justice (Wiener/Diez 2004). In addition, there are also various rational choice institutionalists calling attention to the point that LI ignores the role of supranational actors. In their view, EU institutions that in some fields allow for QMV also shape the integration process in an important way. The same is true for the aspect of path dependency, which remains unconsidered by Moravcsik, although it is undeniable that previous decisions are often too costly to reverse so that they 'locked in', and end up difficult to change (Pierson 1996). There is a last group of scholars that rejects the LI theory completely and opts for models of EU governance. Gary Marks (Hooghe/Marks 1995) for example, understands the EU as a system of multi-level governance where national governments becomes one besides supranational and subnational actors. These critiques are in part also applicable to the present study, as I (in order to test liberal institutionalist hypotheses) focus mainly on time periods of investigation, in which the negotiation of treaties was at the fore.

2.1.2 The European Integration process through the glasses of Neofunctionalism

After having explored the explanations of LI, we will in this section elaborate on neofunctional theory, which stands in a sharp contradiction to the LI approach and has an opposing explanation for the role of domestic politics within the European integration process. Ernst B. Haas, one of the most influential neofunctionalist integration theorists defines the European integration as a

> "process whereby political actors in several, distinct national settings are persuaded to shift their loyalties, expectations and political activities towards a new centre, whose institutions process or demand jurisdiction over the pre-existing national states'" (Haas 1961, pp. 367).

This definition includes on the one side a social process (shifting of loyalties) and on the other a political process (negotiation of the construction of new political institutions above the participating member states with a direct say in at least a part of the member states' affaires) (Wiener/Diez 2003). In this theory, national states are also expected to defend their preferences. In order to pursue this objective, states have to cooperate when it is necessary for the realization of their preferences. States' preferences are

dependent on the changing domestic competition for influence (Haas 2004). According to neo-functionalists, we can explain regional integration in such a way that

> "societal actors in calculating their interests, decided to rely on supranational institutions rather than their own governments to realize their demands" (Haas 2004, pp. xiv).

This process will be self-sustaining and quasi-automatic, because the central institutions proved unable to satisfy the local demands. The first steps of integration will give rise to further dynamics, which are leading to further cooperation. That is why it will come to "spillover effects" in not yet integrated neighbouring sectors. There are two different kinds of spillovers. Functional spillovers occur when incomplete integration undermines the effectiveness of already established policies. As a consequence, pressures arise for deepening and widening policy co-ordination among member states. The political spillover occurs when the already existing community institutions develop a self-reinforcing process of institution-building. Thus, regional integration becomes an inevitable response to the complexity of modern economies (Haas 2004).

This theory, however, has also been criticised by various scholars. According to Andrew Moravcsik, NF failed to

> "generate an enduring research programme because it lacked a theoretical core clearly enough specified to provide a sound basis for precise empirical testing and improvement" (Moravcsik 1993, pp. 476).

Its aim is to explain the European integration process, but it lacks to any aspiration of generality. Moravcsik further claims that this theory was unable to explain stagnation in the European integration process as occurred in the 1960s ("empty chair politic"). This was seen as failure to develop predictions about variations in the evolution of the European Community. Haas himself later declared his theory obsolete for this particular reason (see Haas 1975). Furthermore his critics state that NF fails to explain government choices. It describes domestic processes, but not how governments choose between different possibilities. Hoffmann added to that critique that different states are subject to different internal (domestic) and external pressures and will react differently, so that it is inadmissible to speak about the European integration process as such (Hoffmann 1966). Additionally, NF fails to distinguish between high and low politics, so Hoffmann. In his opinion, low politics can converge among member states, whereas high politics such as security issues will not converge on a supranational level. This distinction can also be of importance in the area of asylum and refugee policy. Asylum and refugee policies are not part of the foreign and security policy field, but they are part

of the internal security of the member states. As this policy area is at the heart of national sovereignty, it will be interesting to assess whether or not convergence takes place, and if so in what way.

In order to have a neofunctional view on the specific topic of refugee and asylum policy, I will in the following elaborate the explanations of Arne Niemann with regard to change and stagnation in the European asylum and immigration policy (Niemann 2008). Niemann uses four different factors to measure their impact on the integration process in this area. These influencing variables are: 1) functional pressure, 2) the role of supranational institutions, 3) socialization, deliberation and learning process, and 4) countervailing forces. In his opinion, the process of integration should be seen as a dialectic process because it is subject to dynamics and countervailing forces at the same time (Niemann 2008).

Introducing the term *functional pressures,* Niemann describes circumstances in which the original objective can only be achieved by taking further integrative actions. Behind this idea we have the assumption that there is a high interdependence of policy and issue areas. That is why it becomes difficult to isolate certain topics from the rest. This conception is a very neofunctional understanding of integration. Those pressures lead to further integration in order to achieve the original goal. Following this logic and looking at the development of asylum and refugee policy, we consider that a lot of changes occurred because of the establishment of the free movement of persons (functional pressure). This functional pressure leads to many modifications in the sector of asylum, visa and border control. It is very obvious that states want to regulate more clearerly the protection of external borders when internal controls are to be abolished. The fear that internal migration of asylum seekers would thereby increase as well as illegal immigration lead to the increase of European integration efforts at that time. This is what Niemann calls functional pressure.

The same is true for the *role of supranational institutions.* Niemann describes their role as if they automatically lead to further integration. Once established, they have their own logic and become difficult to control, so Niemann. They are occupied by increasing their own area of responsibility and become agents of integration such as the Commission or the European Parliament for example. At the same time he argues that the so-called *socialization, deliberation and learning processes*, which take place in the Community environment, lead to further integration as well. With regard to all the

established working groups or committees in the EU, the neofunctionalists conclude that the permanent contact between civil servants leads to further integration.

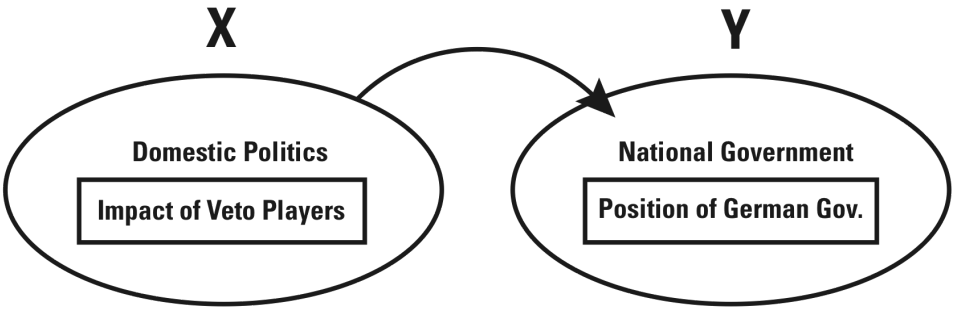
However, if we want to understand the process of integration, we have to take also into account *countervailing forces*, which are rather opposing or stagnating the integration process. Such countervailing forces can be seen in *domestic constraints* (Niemann 2008). National governments in the European Union are in general directly constrained by actors such as "lobby groups, opposition parties, the media/public pressure, or more indirectly by structural limitations" (Niemann 2008, pp. 564). According to Niemann, government action might turn out to be disintegrative in particular when domestic constraints accrue. That is why he reasons that domestic constraints can lead a national government to veto policies above the lowest common denominator. This means NF considers domestic politics as a countervailing force to European integration. Compared with LI theory, this conception represents exactly the oppositional estimation and assumes that domestic politics have the impact on the decision of national governments *not* to shift competences to the European level (AT H1) (Niemann 2008). Oppositional domestic politics rather hamper the shift of competences to the European level. Neofunctionalists do not bear in mind the strategy of national governments to by-pass oppositional domestic politics. They rather proceed from the assumption that the shift of national competences takes place when national institutions are unable to satisfy the local demands (AT H2). Domestic politics however represents countervailing forces, which are opposing or stagnating the integration process. Consequently Niemann assumes that the more influential domestic politics are, the less governments are willing to transfer national competences in asylum and refugee policy to the European level (AT H3). These hypotheses represent the direct antitheses to the intergovernmentalist assumptions. This discrepancy between the two theories gives me the intensive to test in chapter 4 the validity of the hypotheses (H1, H2, H3). The aim is to weight which theory has more plausible explanatory value in relation to my single case.

2.2 The Concept of Veto Players

In order to measure the impact of domestic politics on the governmental position in chapter 4, the impact of domestic politics (the independent variable) will be measured by using veto players as appropriate indicator (See Figure 1). The governmental

position (dependent variable) will be the outcome of my investigation. German veto players (independent variable) represent the explanatory factor from which the outcome is dependent on.

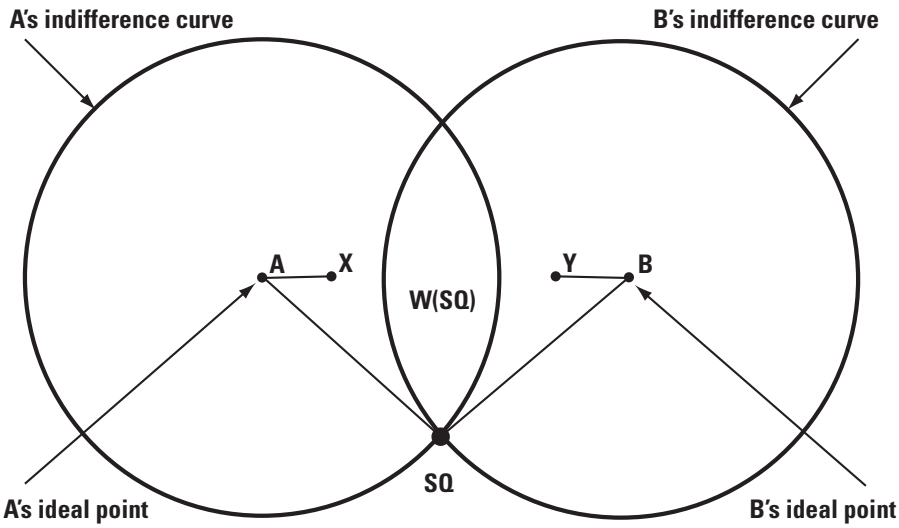
Figure 1:
The area under investigation of the Single Case Study



Source: Own representation

In 2002, the concept of veto players was introduced by George Tsebelis in his book "Veto Players – How political institutions work". Tsebelis defines veto players as a certain number of individual or collective actors, which have to agree in order to change policies or to change the (legislative) status quo (Tsebelis 2002, pp. 2). At the national state level, veto players are specified by the Constitution or the political system. Veto players specified by the Constitution are according to Tsebelis called *institutional veto players*, whereby VPs specified by the political system are called *partisan veto players*. Every political system has a configuration of VPs, which have a certain ideological distance and certain cohesion among them. In Figure 2 the points A and B represent two veto players with their specific indifference curves. Their ideal points indicate the policy from which they derive the highest utility. All points on the indifference curve represent policies that are equally far from the ideal point of the respective actor. Consequently all point on the indifference curve yield equal utility to the respective actor. The actor A prefers all policies lying within its indifference curve (e.g. X) to the status quo (SQ). At the same time A prefers the status quo to all policies lying outside its cycle (e.g. Y). The setting of VPs affects the respective outcome that can replace the status quo (see in Figure 2 the winset of the status quo (W(SQ)).

Figure 2:
Winset of a system with two veto players and unanimity rule



Source: Own representation abstracted from Tsebelis 2002

When the winset is too small, a significant shift from the status quo is impossible. This is the case when VPs are many, when they have significant ideological distances among them, and when they are internally cohesive. Tsebelis calls this impossibility of departure *policy stability*. Among the VPs, we can however perceive differences. Among them there are actors called *agenda setters*. These actors are able to present "take it or leave it proposals" (Tsebelis 2002, pp. 2) to the other VPs. They have to make proposals, which are acceptable to the other VPs so that the status quo can be changed. Otherwise the status quo will be preserved and no change will be achieved. Among the feasible outcomes they will choose the one they prefer the most. Their power is therewhile related to the *policy stability.* This implies that the higher the policy stability (small set of possible outcomes to replace status quo), the smaller the role of agenda setters. In the case of no change being possible, it does not matter who controls the agenda. According to this concept, we should predict the outcome of policymaking when we know the preferences of all VPs, the position of the status quo, and the identity of the agenda setters. Unfortunately, this perfect information is in reality rarely given.

In real cases, agenda setters are often collective actors. If we have a look at parliamentary systems, we detect that the government often realizes the agenda setting.

If we have a setting of VPs, which is characterized by policy stability, the government would be very instable, as no change from the status quo would be feasible. In the case of Germany we deal with a parliamentary and federal system. Therein we have two levels of government which rule the same country and people.

> "[E]ach level has at least one area of jurisdiction in which it is autonomous and there is some guarantee [...] of the autonomy of each government in its own sphere" (Tsebelis 2002, pp. 136).

Due to this federal structure, the German political system generates more VPs than unitary systems. Applied to the concept of Tsebelis this means that the German system has a higher level of policy stability. At the same time, Tsebelis associates with a higher number of VPs also a higher level of independence of the judiciary and of bureaucracy, as well as a higher level of government instability (Tsebelis 2002).

In my case study, I focus on policy outcomes or rather on the process from collective decision-making right up to policy outcomes. According to Tsebelis, policy outcomes are the result of the preferences of actors involved and the prevailing institutions (Tsebelis 2002). Policy outcomes are dependent on who controls political power and where the status quo is located. That means in order to assess the German policy outcome, we have to have a look on German VPs. In the following (chapter 3) I will specify the role and function of these actors within the German political system. Afterwards I will analyse their role and function during three specific time units. Therein their role will be assessed due to their respective strength, which will be classed upon the category 'weak' or 'strong'.

3. Methodological procedure

After having drawn the theoretical framework for the study, I will in this chapter explain the methodological procedure of my analysis. In the first subsection I will explain the methodological procedure I used (3.1), in the following subsection I will elaborate my units of research (3.2) followed by the actors of analysis (3.3). Finally, I will expound my way of proceeding and the utilized data material as well as the limits of my study (3.4).

3.1 Single Case Study

In the present paper we deal with a single case study. A case "connotes a spatially delimited phenomenon (a unit) observed at a single point in time or over some period of time." (Gerring 2007, pp. 19) It comprises a phenomenon that an inference attempts to

explain. With the aid of a single case study[3], in which the essential elements of a theory seemed to be covered, it becomes possible to test and even derivate modifications to the theoretical theses. Case studies are often used because they have considerable advantages in studying complex phenomena (Flyvbjerg 2006). As Yin explains, we were taught to believe, that case studies are appropriate for the exploratory phase of a research and not to test propositions. But Yin underlines that this conception is not correct. "Some of the best and famous case studies have been both descriptive, [...] and explanatory" (Yin 1994, pp. 3 et seq). According to him a case study can be used to develop or to test a theory (Yin 1994). Gerring describes the same attribute of case studies in saying: case studies are defined by a segregation of conjecture and refutation (Gerring 2007). In order to test a theory, it seems to be suitable to select a single case rather than a multiple case design as "the single case represents the critical test of a significant theory" (Yin 1994, pp. 40).

The in-depth analysis of a case study and its subjectivity allows for the generation of a great number of hypotheses (Gerring 2007, pp- 41). One single case study allows to test a multitude of hypotheses. According to Gerring "[t]he relationship discovered among different elements of a single case have a prima farcie causal connection" (Gerring 2007, pp. 41). So, one can consider a case study as a "plausibility probe" (ibid.). It is an appropriate tool to elucidate causal mechanisms. In my specific case it will be useful to elucidate the plausibility of the X/Y relationship.

Due to the disagreements within the mentioned theories I will in this paper test the validity of the hypotheses (*H1-H3*) derived from LI theory. Thus the following method will follow a theory testing procedure. With the aid of the single case study I wish to get an idea of the operating range of H1, H2 and H3. The case of the Federal Republic of Germany and its respective policy in the area of asylum and refugee affairs will serve as single case. Asylum and refugee policy is a very interesting field for examination, because on the one hand asylum and refugee policy has become one of the most dynamic and growing domains among the EU project, but on the other hand it remains still very close to the heart of national sovereignty (Niemann 2008). Within this field Germany represents a very decisive member state. From the end of the Second World War until the early 1990s, Germany was the member state with the most asylum

[3] Following Gerring's definition of a case study we deal hereby with "an intensive study of a single unit or a small number of units (the cases), for the purpose of understanding a larger class of similar units (a population of cases) (Gerring 2007, pp.37).

seekers in the EU (Musekamp 2007). Nowadays it is still one of the leading member states in the EU with a high immigration rate.[4] But besides the refugee numbers, the development of the German position towards the question of competence transfer in this area has changed over time. According to Musekamp, the German attitude towards a Common European Immigration and Asylum Policy developed "from a pro-active supporter to a reluctant follower" (cf. Musekamp 2007: 12). That is why it will be interesting to analyse whether in the case of German asylum and refugee policy LI theory will be able to explain the governmental position vis-à-vis the competence transfer to the EU level. The concrete research question, which I will follow in this paper, is therefore:

What impact does domestic politics have on the decision of the German government to shift its competences in the area of asylum and refugee policy to the European level?

Starting from this question my independent variable (X) is the impact of German veto players, while the dependent variable (Y) is the position of the German government towards the transfer of competences to the European level. The aim is to reveal which impact factor X has on Y. Derived from the assumptions H1-H3 of LI theory I will base my single case study on the following three hypotheses:

H1*: Domestic politics has an impact on the decision of the German government to shift its competences in the area of refugee and asylum policy to the European level.

H2*: The shift of national competences towards the European level takes place, when the German government wants to by-pass oppositional domestic politics.

H3*: The stronger oppositional domestic politics, the more the German government is willing to transfer national competences in asylum and refugee policy to the European level.

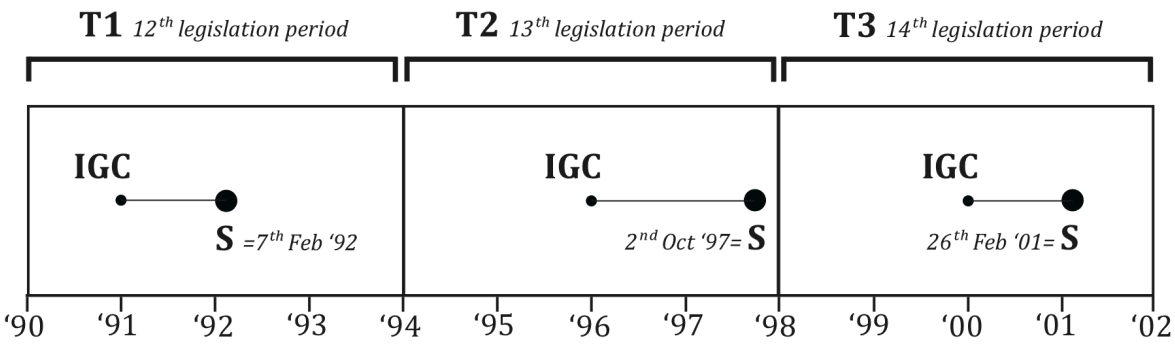
[4] As we can see in the appendix Table 1 Germany has in the period of 2002 to 2006 the highest refugee number according to its national Gross Domestic Product (GDP) among the EU member states. When we regard to its refugee number in relation to the size of its population and its territory, Germany occupies the third place among the member states. The UNHCR determines the capacity or ability to host refugees, by applying the GDP per capita, the size of the national population and the total land area (see UNHCR statistical yearbook 2005).

3.2 Units of analysis

In the present paper we deal as already mentioned with a single case study, but it is about a diachronic analysis, as it represents a variation in a single case over time (within case study). In order to understand this distinction we have to separate between a *holistic* and an *embedded* case study design. An embedded case study involves more than one unit of analysis. In my specific case I will analyse the impact of German veto players (IV) on the decision of the national government (DV) at three specific timeframes (N=3) and not the global nature of decision-making in Germany. The first time frame (T1) will cover the 12th German legislative session (from 20 December 1990 until the 10 November 1994). It appears to be important to combine the legislative sessions with the units of analysis as the position of national veto players and their impact is related to the political system and the given distribution of power.

T1 covers the period in which the German government participated in the negotiations preparing the Treaty on European Union (the so-called Maastricht Treaty), which represents not only a crucial document for the whole integration process but represents also an innovation for the area of refugee and asylum policy (see Figure 3). The second time frame (T2) covers the 13th legislative period (from 10 November 1994 until 26 October 1998) and at the same time represents the research unit to measure the impact of veto players on the national government during the negotiations for the Treaties establishing the European Communities and certain related acts (known as the Treaty of Amsterdam). This Treaty made substantial changes to the Treaty signed at Maastricht. With respect to asylum and refugee policy it established a new Community area of freedom, security and justice.

Figure 3:
The Units of Analysis containing the Treaty negotiations



Source: Own representation

The last time frame is consequently the 14th legislative period (from 26 October 1998 until 17 October 2002), in which the negotiations for the Treaty of Nice took place. These three embedded units are selected as they contain three crucial events in the European integration process and provide therewith the adequate units to measure the impact of domestic politics on national decisions in the question of competence transfer to the EU level. Furthermore, the LI theory has tended to focus on the bargaining among national governments over the outcome of treaty negotiations (Garrett/Tsebelis 1996). That is why it seems to be appropriate to choose the time units in such a way that they include these negotiations.

3.3 Actors of analysis

In order to operationalise domestic politics and to measure its influence I will use as already mentioned the concept of veto players developed by George Tsebelis in 2002. As already mentioned in the theoretical part veto players are major political actors, who are able to decline a choice, which will be made or has been made (Tsebelis 2002). That is why they represent appropriate variables to measure domestic politics. According to Strohmeier the German political system has four types of veto players. Applied to the concept of Tsebelis three of them are so called *institutional* VPs, grounded in the basic law (Grundgesetz or GG), namely the Federal Council of Germany (*Bundesrat*), the Federal Constitutional Court (*Bundesverfassungsgericht*) and the Federal President (*Bundespräsident*). The forth veto player, generated by the political game, is represented by the political parties forming the coalition government (*partisan* VP). In the following I will briefly explain the function of each VP within the German political system, in order to understand their general range of action before analysing their positions in the specific units of analysis.[5]

The German political system is a bicameral system with a second chamber, the *Bundesrat.* The Bundesrat is a legislative body that represents the sixteen federal states (Länder) of Germany at the federal level (Andersen/Woyke 2003). Through this constitutional body the Länder take part in the legislative procedure, the administration

[5] Within the presentation of the veto players I will only make reference to the aspects, that are important to make up for the quality of a veto player.

and the European affaires of the German central state (see Article 50[6] GG). Article 70[7] of the basic law specifies that the Länder have the legislative power in all the areas where the central state has no explicit competence.[8] The Bundesrat has effective veto power over the legislation. This means based on the Constitutional Law the Bundesrat has the opportunity to block laws by withdrawing its agreement to a proposal. That is why this agency is of crucial importance (Träger 2008). In Germany there are two different procedures. Some laws (Zustimmungsgesetze Art. 77 par. 2a GG) require the agreement of the Bundestag (Lower House of German Parliament) and the Bundesrat. Other laws (Einspruchsgesetze Art. 77 par. 3 and 4 GG) require only the majority in the Bundestag (sometimes a two-third majority is required in the Bundestag in order to overrule a two-third majority in the Bundesrat)[9]. About 60 per cent of all laws in Germany are so-called 'Zustimmungsgesetze' and require the agreement of the Bundesrat in order to get implemented (Schindel 1999). Topics related to questions of asylum generally need the approval of the Bundesrat. That is why all German national governments have always been concerned about the majority situation in the federal governments. It is important to know if the majorities in both chambers differ or are the same. If the parties that control the majority are the same in both chambers (assuming that the position of the parties is the same in both chambers) then there is no additional veto power. But if they are not the same and majorities are different, then the government coalition (consisting mostly of two parties) will have to request the approval from one party of the opposition, so that the number of veto players will rise (Tsebelis 2002). Consequently, we will highlight in the following the majority situations in the Bundesrat in relation to the national government coalition during our given times of occurrence T1, T2 and T3. This explanation will give an account of the impact of the Bundesrat as an important veto player.

The *Bundesverfassungsgericht* is a special Constitutional Court embodied by the German Grundgesetz (in particular in its article 93 GG) and the highest instance in the German political system. It can act as a veto player as it is in its area of responsibility to

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[6] Art. 50 GG: „Durch den Bundesrat wirken die Länder bei der Gesetzgebung und der Verwaltung des Bundes und in den Angelegenheiten des Europäischen Union mit."

[7] Art. 70 (1): Die Länder haben das Recht der Gesetzgebung, soweit dieses Grundgesetz nicht dem Bunde Gesetzgebungsbefugnisse verleiht.

[8] In practice however the central states maintains the main responsibility over the legislation.

[9] In September 2006 an important constitutional reform had taken place in Germany (Föderalismusreform I), which modified the division of competences between the central state and the federal states. As this modification took place after my reference unit it will remain unregarded.

review if all public acts are conforming to the basic law (Strohmeier 2003). It is able to declare public acts as unconstitutional and render them therewith ineffective (Andersen/Woyke 2003). Therefore, several institutions can bring a law, already passed by the legislation, before the Bundesverfassungsgericht in the case it displays evidences of unconstitutionality (called procedure of Abstract Regulation Control). That means the Court acts only on application. The Court has already decided in nearly all areas of controversy. In the area of asylum and refugee affairs it has already been involved several times (Andersen/Woyke 2003). This authority has been created due to the experiences of 1933. That is why the founding fathers of the Grundgesetz put a high emphasis on checks and balances in the German political system. However, in the 1970s the Constitutional Court attracted criticism. Several authors urged that the Court acts as a third chamber, which builds a kind of opposition. It seems as if it has exceeded its control function in giving concrete proposals and instructions to the parliament (Andersen/Woyke 2003).

The third institutional VP is the *Bundespräsident* (Federal President). He represents the head of state, but however next to the Chancellor (who has the policy directive) he has only limited influence on the decision-making. His position is seen as a rather representative function. According to Article 82[10] of the basic law, the Bundespräsident has the duty to verify if all federal laws are conform to the Constitution. Before a law can come into effect it has to be singed by the President (Andersen/Woyke 2003). According to that the President must before signing ensure that the respective law was passed in accordance to the order mandated by the Grundgesetz and that the content of the law is in accordance with the Grundgesetz as well. If that is not the case the Bundespräsident can or must[11] refuse to sign the law so that it will not come into effect (Andersen/Woyke 2003).

In addition to these three VPs, the German political system displays a fourth partisan VP, namely the *political parties constituting the coalition government* (Strohmeier 2003). Due to the electoral system we have a proportional representation within the Bundestag. As a consequence, many parties get the opportunity to send delegates to the Bundestag. That is why mostly a coalition of two parliamentary groups is needed to

[10] Art. 82 (1): Die nach den Vorschriften dieses Grundgesetzes zustande gekommenen Gesetze werden vom Bundespräsidenten nach Gegenzeichnung ausgefertigt und im Bundesgesetztblatte verkündigt.

[11] The literature is on that point not concordant, if the Bundespräsident can or must refuse to sign the law in case he assumes an unconformity.

attain the majority in the Bundestag. As the government arises from the parliament, which is directly elected, its strength could be assessed in taking into account the majority situation within the Bundestag. The Bundestag has next to the Bundesrat and the government the legislative right. No German party has ever been able to achieve the majority in the parliament on its own. The alliance of the two parliamentary groups is in general limited to a legislative session (Andersen/Woyke 2003). That is among other reasons why my research units T1, T2, and T3 are adapted to these periods. The coalition government represents a very crucial actor, as it forms the government and makes up the Chancellor. In the 12th legislative session it was responsible for the introduction of 50.9 per cent of all draft bills, in the 13th legislative session the coalition government even adopted 71.2 per cent of all laws and in the 14th the number was about 70.4 per cent (Schindel 1999; GESTA-Statistik 2002). Therewith the coalition seems to be the agenda setter within the German political system. At the same time the position of the national government represents the dependent variable in my analysis and the aim will be to assess the impact of the other VPs on the governmental position.

The majority situation within the political institutions differs in every legislative session in relation to the election results. I will assume that according to the particular majority situation the power of veto players alter. That means the power of a veto player is dependent on the majority situation. This concerns in particular the Bundesrat and the Bundestag. If, for example, the opposition has many seats within the Bundesrat, it represents a stronger veto player to the government as if the majority situation had been more in favour of the government. The more power a veto player has, the more impact can this veto player have on the governmental position. Thus I define the strength of the VPs in relation to the majority situation in the political system.

3.4 Way of proceeding and limits of the analysis

In the following chapter of this paper I will measure the influence of these veto players at three given moments in German asylum and refugee policy. Accordingly, I will analyse the governmental position in order to see if there are any coherencies between IV and DV. In order to trace back and comprehend the governmental position I used the data available through the Bundestag and Bundesrat. Through the Parliamentary Library it is possible to get access to a range of primary sources. Large parts of parliamentary activities are documented in the form of minutes of plenary proceedings, official records,

subject and speakers indexes as well as draft bills and protocols. I used these documents to trace back the governmental position. Moreover, I effectuated a newspaper screening through Lexis Nexis and a literature review in order to complete the primary sources. In order to measure the strength of the VPs I compared the majority situation during the respective legislative sessions. In comparing the distribution of seats for example within the Bundesrat and the Bundestag over the three time-unites I wanted to determine their relative power vis-à-vis the national government. This strength will be expressed by a binary categorisation (weak/strong). Thanks to the 'Datenhandbuch zur Geschichte des Deutschen Bundestag' most information related to the majority situations within different bodies of the political system are documented.

With the aid of the single case study I aim to realise a systematic in-depth analysis in order to get a sharpened understanding about the position formation of national governments in relation to their domestic politics concerning questions of competence transfer to the EU level. Nevertheless we have to consider also the limits and weak point of my analysis. Firstly I have to concede that my case study suffers from a problem of representativeness as it includes only a small number of cases (Gerring 2007). This is one of the reasons why case studies are often viewed with various suspicions by various scholars (Geddes 2003, Goldthorpe 199, Ljiphart 1971, Keohane, King and Verba 1994). According to Gerring case studies are

> "often identified with loosely framed and non-generalizable theories, biased case selection, informal and undisciplined research designs, weak empirical leverage (too many variables and too few cases), subjective conclusions, nonreplicability, and causal determinism." (Gerring 2007, pp. 6)

Furthermore it is questionable if Germany is a representative country for other member states in the European Union. Germany has a federal political system, where the federal states enjoy many privileges. Due to this political system Germany displays many VPs that have an influence on the political outcome. This is one aspect why it could be difficult to treat Germany as a representative country for all member states. On the other hand, as the German system displays a variety of VPs, it is a good example to study the impact of those actors. Because of the limited number of cases, the validity of this method is weaker compared with large cross case studies, which have not been possible within the framework of a Master thesis. Concerning the effect of X on Y, it is crucial to note, that also other factors can play a role in this relation that are not explicitly analysed in this paper. Such intervening variables are difficult to assess as we are dealing with a complex and multi-level topic. Nevertheless, they will be mentioned in the

specific contexts in order to give a complete picture of the cases. Although case studies are often criticised they constitute a large proportion of the work in the field of social sciences. They give helpful in-depth information, which are indispensable before analysing them in a second step with the aid of large N studies.

4. Analysis: German Case Study in the period between 1990 and 2002

The period of analysis of my single case study contains a timeframe of about 12 years from 1990 until 2002. From the beginning until 1998, the coalition government was formed of a liberal-conservative alliance, which changed into a social democratic-green coalition for the 14th legislative period. For the first time in German history a coalition between the Social Democratic Party (SPD) and the Green Party had the majority within the Bundestag.

In this paragraph I will demonstrate on the one hand the three time units T1, T2, and T3 with regard to the governmental position towards questions related to asylum and refugee policy and on the other hand the position of the other VPs. Each research unit is set up in the same way. Firstly, we will get an overview of the situation during the respective timeframe explaining the appropriate positions of the actors involved. We will see what happened, what was the governmental position and decision towards the European level in the specific area of refugee and asylum policy. Was the German government willing to support the integration process in this area or was the government rather reluctant towards more European integration? Secondly, we will go through each VP in order to analyse its composition, strength and impact on the governmental behaviour. The aim is to get an appropriate interpretation of the situation and to evaluate the impact of every single VP in order to assess the impact of X on Y. The outcomes in the different time units will differ from each other. This will give us the possibility to compare them and to assess the plausible reasons for the different outcomes.

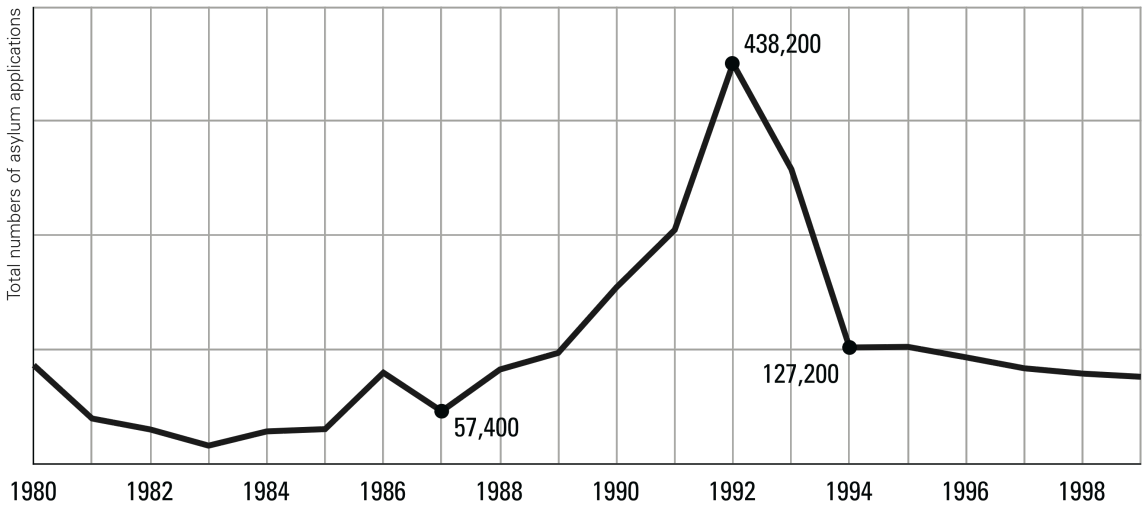
4.1 Research Unit T1 - the 12th legislative period

The 12th legislative period contains the timeframe from 20 December 1990 until 10 November 1994. During this session the governmental coalition was built by an alliance between the Christian Democratic Union of Germany (CDU), and the Free Democratic Party (FDP). The CDU forms together with its Bavarian sister party, the Christian Social

Union of Bavaria (CSU) the CDU/CSU grouping so that the coalition government represented an alliance between CDU/CSU and FDP under Chancellor Helmut Kohl (Krüschner/Holzapfel 1991).

In this section we will follow the political context in Germany during the adoption of the Treaty on European Union on 1 November 1993. Therefore, it will be important to highlight Germany's position before and during the final negotiation on the Treaty, which took place on the 9 December 1991. In order to understand the governmental position, we must trace back the German asylum and refugee policy to the late 1980s and early 1990s. During this period the German asylum and refugee policy was still minted by the experiences made during the Second World War and the Holocaust (Dickel 2002). Due to this historical background Germany developed a rather liberal refugee policy expressed in Article 16 of its basic law. According to this article, *all* people being politically persecuted had the right for asylum in Germany[12]. The claim was unconditional and enforceable. Consequently, every asylum application needed to be checked and assessed individually. As a result, Germany granted residence status to a vast number of asylum seekers at the time (see Figure 4).

Figure 4:
Asylum seekers in Germany - total numbers of asylum applications submitted in Germany in the 1980s and 1990s (rounded on hundreds)



Source: : Own representation abstracted from UNHCR 2001, pp.1

With this engagement Germany wanted to fulfil its international obligations but at the same time Article 16 GG represented also an important part of the German identity. In

[12] Original passage before 1993: Art. 16: Politisch Verfolgte genießen Asylrecht

addition to that Germany also singed the Geneva Convention and the related "Protocol on the status of refugees" in order to fulfil its international obligation[13].

After having reviewed the literature and the media coverage of the time we can resume that the German government seriously supported the European integration process in the area of asylum and refugee policy[14]. In the late 1980s and early 1990s Germany was very active in bringing the field of Justice and Home affaires on to the European level (Bösche 2006). The first steps in this direction had already been made in 1984, when the German Chancellor Helmut Kohl met the French President François Mitterrand in Rambouillet.[15] This bilateral meeting created the basis for the abolishment of checks between the European countries and represents the initial spark for the Schengen Agreement. "At that time, the German cabinet had not been consulted on the issue. Kohl acted quite quickly thus avoiding further criticism" (Bösche 2006 pp. 34)[16]. When the agreement between France and Germany was signed on 13 July 1984 German newspapers had a negative tone and proclaimed the victory of Kohl and Mitterrand over their bureaucrats. "The bureaucrats had been forced to comply with the political decision, and not vice versa" (Börsche 2006, pp. 36)[17]. This initiative represents one example where a German action led to a substantial transformation within the European integration process. In general the Schengen Agreement represents one of the first concrete co-operations in asylum and refugee affaires. Before this agreement, there had been no community policy dealing with this subject area.

In keeping with this involvement the German government campaigned for the integration of intergovernmental cooperation during the Maastricht negotiations. They pledged for the integration through the creation of a third pillar for justice and home affairs (Angenendt 1999). The German government and especially the chief of

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[13] The Geneva Convention prohibits the deportation of people, who would threatened with danger to life in their country of origin. See Article 33 prohibition of expulsion or return ("refoulement")" 1. No Contracting State shall expel or return ("refouler") a refugee in any manner whatsever to the frontiers of territories where his life or freedom would be threatened on account of his race, religion, nationality, membership of a particular social group or political opinion." (UNHCR 1951)

[14] See: Frankfurter Allgemeine Zeitung 13,14,16 July 1988, Die Welt 12 July 1988, Süddeutsche Zeitung 15 May 1990, Frankfurter Rundschau 16, May 1990

[15] On the 28/29 May 1984 in Rambouilet Helmut Kohl and François Mitterrand agreed on the idea to abolish customs formalities for people travelling between France and Germany.

[16] Westdeutsche Allgemeine 3 July 1984, Frankfurter Allgemeine Zeitung 3, 4 July 1984

[17] Die Welt 19 July 1984, Frankfurter Rundschau 14 July 1984

government Helmut Kohl were convinced that the European level could present a solution to the German refugee problem. As we can see in Figure 4, the number of asylum applications in Germany increased steadily between 1987 and 1992. The number of asylum seekers in 1987 amounted to 57,400 people, but rose to 438,200 in 1992. Over this period Germany was one of the main European destination of immigrants (Musekamp 2007). The reason for this drastic increase can be found in the end of the cold war as well as in the opening of borders to Eastern Europe but especially also in the civil war in Former Yugoslavia. As a consequence to these figures the domestic political actors such as the mayors in the federal Länder as well as other politicians protested against the rising costs associated with the rising numbers of requests (BR Drucksache 91/85). Consequently, the German government actively supported the idea of burden-sharing of refugees among the European member states in the hope of getting support from other member states (Musekamp 2007). Simultaneously to the negotiations for the Treaty of Maastricht German domestic policy dealt intensively with immigration, integration and discrimination issues. The rising immigration numbers lead to one of the most controversial discussions in Germany (Herbert 2003). These discussions were accompanied by a highly emotional and polemic wording in the German media coverage.[18] At the same time the number of radical right-wing attacks on asylum seekers, asylum housing or other immigrants increased in the mid-1990s (such as the xenophobic attacks in Hoyerswerda (September 1991), Greifswald (November 1991), Rostock (August 1992), Mölln (November 1992), Solingen (May 1993)). Throughout the 1990s, the terminology related to asylum questions got a new and negative framing[19]. The debate was increasingly linked to topics of security, asylum abuse, and financial burden. According to public-opinion polls the topic of asylum issue was the most important issue for the Germans between 1991 and 1993, ranking even higher than reunification or unemployment (Roth 1994). It became

[18] Die Welt 26.7.1990, Bild am Sonntag 21.10.1990, Bild-Zeitung 13.10.1990, Bild-Zeitung 6-15.11.1990

[19] Especially the 'BILD Zeitung' and 'Die Welt' (two wide reaching newspapers with a wide circulation) heated up the discussion with one-sided reports that represented asylum seekers exclusively as parasites and swindler. For example: "Insgesamt kosten die als Asylbewerber 'verkleideten' Wirtschaftsflüchtlinge die Stuererzahler jedes Jahr weit über 3 Milliarden Mark" (Bild am Sonntag 21.10.1990)."Bei 90 Prozent Schwindlern kann sich das zur existenziellen Bedrohung unseres Sozialwesens auswachsen." (Die Welt 26.7.1990) "Mit orientalischer Leidenschaft breiten Ausländer weitschweifige Lügenmärchen von angeblicher Verfolgung aus. Wer sich darüber empört, wird schnell als Rassist oder Faschist abgestempelt – und schweigt künftig." "Je länger das Verfahren dauert, um so genauer wissen sie, wie man sich zum politischen Märtyrer hochfrisiert. Aber kein Ausländer muß sofort Asyl beantragen. Er kann warten bis man ihn erwischt Als Schwarzarbeiter. Als Dieb. Als Drogenhändler. (Bild-Zeitung 6.11.1990).

increasingly difficult to deal with this issue on the domestic level, as public discourse became a highly polarised. This development led to the thinking within the German government that the shift to the European level could represent a solution to the domestic problem (Lavenex 2001d). With the help of a re-framing of the problem as a European and not a proper German matter, new opportunities arose.

> "Any consequent change to the liberal asylum law in Germany was no longer a failure of German politics or the breaking of a taboo, but a consequence of decisions at the European level" (Bösche 2006).

The argument was that Germany needed to amend its law in order to be in line with the European requirements. The Dublin and Schengen Conventions displayed rules in order to avoid "asylum shopping" among member states but nevertheless the guarantee in Article 16 GG prevented Germany from taking advantage of this.[20] The former Minister of the Interior Schäuble even threatened to block the ratification of the Schengen Agreement if the SPD and the FDP did not agree on the amendment (BT Drucksache 12/2453). At the beginning it was only the CSU that favoured a change of the asylum procedures (Lavenex 2001 b) but at the end of 1980s the CDU was also in favour of amending Article 16. Already in 1990 the Länder Bavaria and Baden-Wuerttemberg introduced a proposal to change Art. 16 (see BR Drucksache 175/90 1 march 1990 for Bavaria, BR Drucksache 684/905 October 1990 for Baden-Wuerttemberg, in 1992 Baden-Wuerttemberg modified its proposal and added the safe third country clause BR Drucksache 12/2112 18 February 1992). But the FDP and the opposition (SPD, Bündnis 90/Die Grünen (Green Party)[21] and PDS (Left-wing Party)) were opposed to this change. Consequently this change appeared in 1989 to be absolutely out of reach. Nevertheless, four years later the amendment (BT Drucksache 12/4152) was finally adopted on 26 May 1993 with the approval of the Social Democratic Party (BT Plenary protocol 12/160). How this development came about will be explained in the following subsections.

4.1.1 The Bundesrat as a veto player during T1

As already highlighted in 3.3 the strength of the Bundesrat will be measured in relation to the strength of the coalition government. Consequently we will highlight in the

[20] „Eine Ergänzung des Grundgesetzes muß [...] weiteren Verhandlungen auf der EG-Ebene vorausgehen, und die muß auch dem Inkrafttreten des Schengener Übereinkommen vorausgehen." (Rudolf Seiters, Minister of Interior, speech in the Bundestag 30 April 1992).

[21] See BT Drucksache 12/3235 Antrag das Asylrecht ist unverzichtbar.

following the majority situations in the Federal Parliament (Bundestag) in relation to the majority situation in the Federal Council (Bundesrat) during our given times of occurrence T1, T2 and T3. This explanation should expose mainly on which majority the actual governmental coalition can base its decision on. Therefore I have built three categories, in which the coalition of the federal government is (1) equal to the national governmental coalition ([**G**]overnment friendly Länder), (2) not equal to the national governmental coalition ([**O**]pposition friendly Länder) and (3) in parts equal to the national governmental coalition ([**M**]ixed Länder) (see Table 2 in the appendix). The Länder associated with the category 'G' are those where the governments are composed completely of one or several parties of the government. For this categorisation it does not play any role if one party of the government is part of the opposition. Those Länder that are associated with the category 'O' are those where the government is composed exclusively of parties being on state level in the opposition. The Länder associated with the category 'M' are those that have governments, which are composed of parties being on the state level both in the coalition government and in the opposition. For the analysis we assume that the votes of the Länder, which are belonging to the category 'G', can generally be accounted in favour of the coalition government. The votes of the Länder of category 'O' are mostly votes against the governmental position in issues as controversial as asylum and refugee policy. The category 'M', in which the federal government is constituted by a coalition of parties being in the government and in the opposition at the same time, is most difficult to assess. That is why the Länder of category 'M' must be assessed case-by-case.[22]

During the 12th legislative period, the Bundesrat was composed of 68 seats. The number of seats attributed to each federal state depends on the respective population size. However, the system of distribution of seats is not proportional. Every state has a minimum of three seats. States with a total population of over two million have four seats and states with a total population of over six million have five seats, whereas states with a population of over seven million have six seats. During T1 the Bundesrat had a total of 68 seats. Accordingly, 34 votes were required for the simple majority, 45 votes for the two-thirds majority. At the beginnings of the legislative period the government coalition had the simple majority within the Bundesrat with 35 votes from federal states belonging into category G (See Table 2 in the appendix). According to the concept of

[22] This assessment of the behaviour of the federal governments is only a theoretical prediction. In practice it is possible that political actors behave oppositional to their particular party.

Tsebelis, a change from the status quo was perfectly possible at this point of departure in January 1991. The government coalition was stable and had a significant role as agenda setter. Consequently, the Bundesrat would have represented no VP at this point in time. But over the course of the legislative period the coalition government lost this position due to changes in the Länder governments. Already in April 1991 the coalition lost 4 votes due to a change of government in Hesse. This development found its steady continuation until the end of the legislative period. In October 1994 the G-Länder occupied only 17 last seats whereas the O-Länder occupied the simple majority with 34 votes. Therewith the Bundesrat evolved into a veritable VP over the course of time.

In contradiction to this development within the Bundesrat, the opposition did not veto one of the most crucial proposals during T1, namely the amendment of Article 16 GG in May 1993. Even though an amendment of the basic law requires a two-thirds majority in both houses, the Christian Democratic Party was successful with its proposal.[23] While the opposition was against the amendment of Article 16 at first, the centre-right government was willing to change this article and thereby shift asylum and refugee policy to the European level. The Social Democratic Party was by far the most important opposition party. The Social Democrats initially opposed the proposal made by CDU/CSU. They wanted to find a solution to reduce the asylum claims without changing the Constitution. They underlined that the humanitarian orientation of the legislation should be preserved in the Bonn Republic. In October 1990 the SPD still rejected two proposals of the CDU to restrict the asylum law (BT Drucksache 175/90, BT Drucksache 684/90) Still in June 1991 the chairman of the Social Democratic Party Björn Engholm doubted that the numbers of application would decrease with a restriction of asylum rights (Dickel 2002)[24].

According to the concept of Tsebelis, the state of affairs at the beginning of 1992 represented a situation of policy stability (see Figure 5). The agenda setter, the government, had a weak position as it needed a two-thirds majority in the Bundesrat while it only occupied of 21 seats (even far from the simple majority). All opposition parties were at the beginning resolutely against the proposal and even the coalition partner, the FDP, did not support the proposal. Ideological distances between CDU and

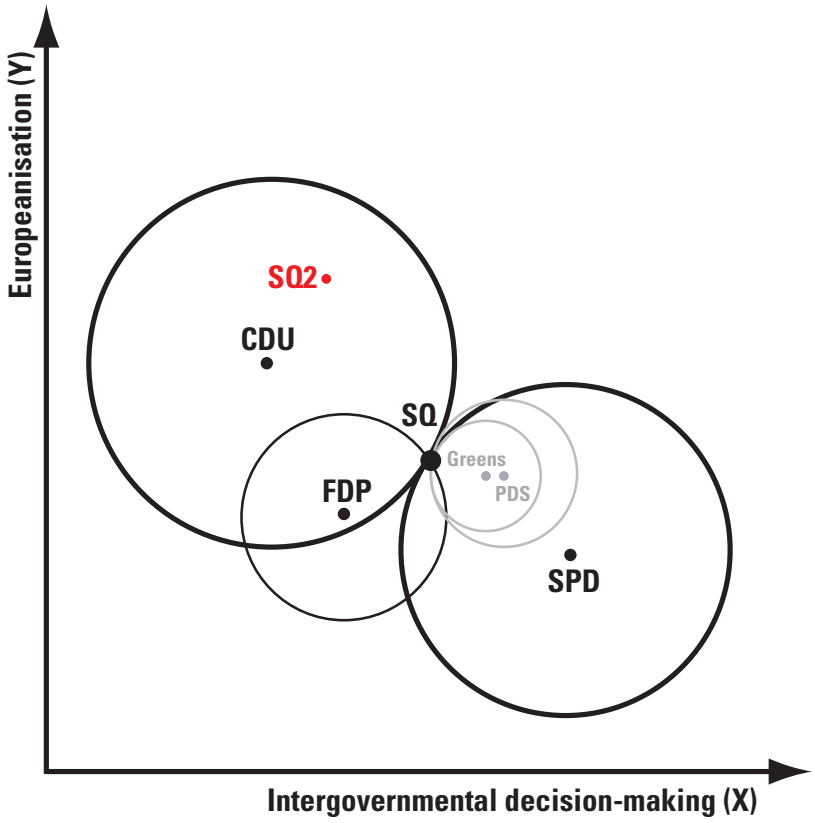
[23] That means the governing coalition needed votes from the opposition parties. In this case they needed votes from the SPD.

[24] Original wording:"Es wäre ein Irrtum anzunehmen, die Zahl der Zufluchtssuchenden könne durch eine Beschränkung des Asylrechts nennenswert gesenkt werden" (Dickel 2002, pp. 293).

the other parties were high and a change of the status quo in the direction of the ideal point of the CDU, would have been very unlikely. No winset existed that could have replaced the existing SQ. The policy stability is depicted in Figure 5 by the extremely small winset. The SPD and all other parties had preferred SQ to SQ2 (SQ2 implies the amendment of Art. 16), whereas the CDU had preferred SQ2 to SQ. According to Tsebelis this situation implies that no change from the SQ is possible.

Figure 5:

Position of veto players in German domestic politics before 1993



Source: Own representation

The dimension 'Europeanisation' and 'Intergovernmental decision-making' are chosen as the argument to change Article 16 was linked to the Europeanisation of Germany. The supporters of the amendment argued that the European level oblige Germany to change its asylum law. Therewith Germany gives up the determination of its asylum law in fovour of the European level. That is why the supporters of the amendment are located in Figure 5 and 6 at positions characterised by more Europeanisation.

In contradiction to Figure 5 the SPD decided during a very controversial party congress to agree to the change of Article 16, that means accordingly the SPD decided to move to SQ2 (Protokoll vom Außerordentlichen Parteitag Bonn). The amendment was then decided on 28 June 1993 (BGBl. I pp. 1002). Two months later, on the 6 December 1992 CDU/CSU, FDP and, SPD agreed upon the so-called 'asylum compromise' (c.f. Blätter für deutsche und internationale Politik, 1993, S. 114 ff.). Even though the SPD had 26 seats plus 21 M-Länder, where they participated in parts in all governments, they did not veto the decision within the Bundesrat. In the Bundestag only five Social Democrats voted against the law (BT-Plenarprotokoll 12/96 5 June 1992 pp. 7887-7911). The Green Party as well as the Left Party upheld their initial positions and opposed the proposal as announced (BT_Drucksache 12/3235; Liehmann/Jelpke 1991).

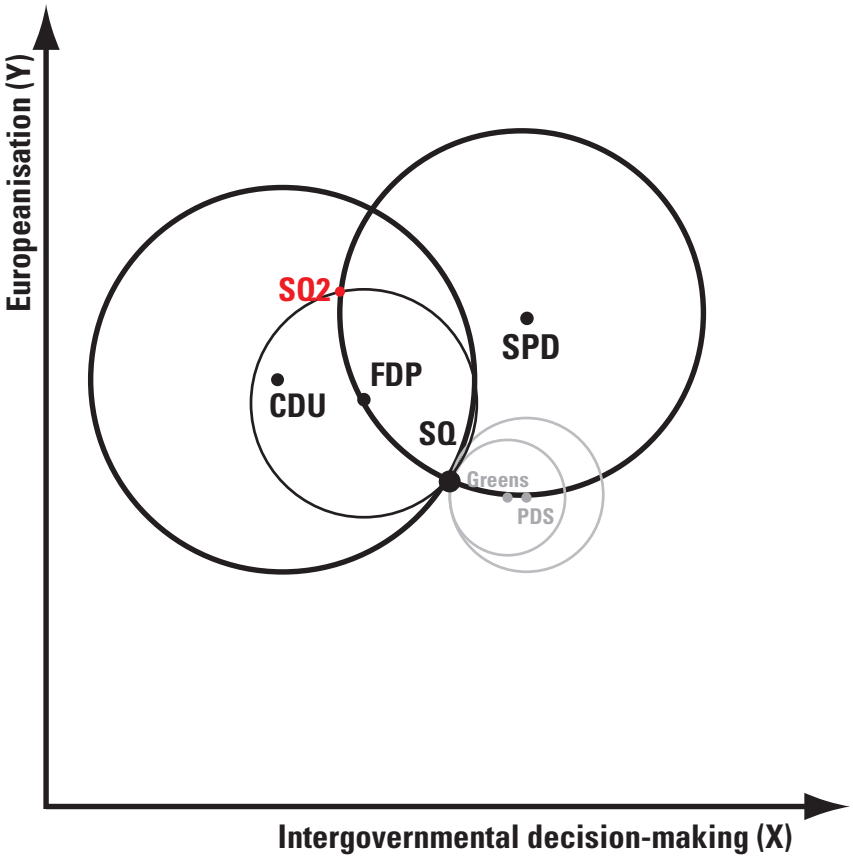
How could this change of mind within the SPD be explained? From a liberal intergovernmentalist point of view (as indicated in part 3) we could interpret that the domestic deadlock, existent due to the opposition's ability to block the proposal, impinged on the government to shift competences on the EU level. This theory supposes that domestic politics have an integrative impact on national governments. That would mean that in our case the powerful position of the Social Democratic Party in 1992 had an encouraging impact on the decision of the coalition government to shift competences to the EU level during T1. Thus in this specific case domestic politics had an impact on the decision of Helmut Kohl to support the integration of asylum and refugee policy at the European level. Therewith our hypothesis H1' would be confirmed in this specific situation. Moravcsik further assumes that governments co-operate on the EU-level when this cooperation increases their control over domestic actors. Applied to our case this would mean that in referring to the EU obligations the German government gained more control over the Social Democratic decision. Of course, from today's perspective it is difficult to predict the position of the SPD if the government had not referred to the European requirements. But nevertheless, if we look into the respective protocol we see that in its decision the SPD had the condition that the change of article 16 had to require - in compliance with the European level - the possibility according to the Geneva Convention and the European Human Rights Convention to send back refugees coming from save third countries (Protokoll vom Außerordentlichen Parteitag Bonn).

On the whole, it is conceivable that the issue linking with the European requirements changed the Social Democratic position in the direction towards SQ2. As predicted by Putnam governments refer to the European level in order to generate

changes on the domestic level. It is conceivable that this shift would have been impossible without the European reference. If we assume that Moravcsik is right in arguing that the reference to the European level gives the proposal more legitimacy and credibility, we could assume that this was the critical argument to move from the first position (Figure 5) to the second position (Figure 6). Still we have to consider that LI refers to issue linkages when two countries have highly asymmetrical interests in various issues. This concept refers to countries not to the behaviour of political parties, but as it provides a proper explanation in this situation, it is mentioned here.

Figure 6:

Position of veto players in German domestic politics in 1993



Source: Own representation

From a neofunctional perspective the change of mind within the SPD would be interpreted differently. In this logic the shift is comprehensible due to functional pressures. As the Dublin Convention[25] - singed on 15 June 1990 by the member states -

[25] The Dublin Convention determines the first state of entry as the state responsible to decide upon the status of the refugee seeker.

determines the state responsible for examining applications for asylum lodged in one of the member states of the European Communities the change of the German Constitution would be judged as an adaptation to that Convention (Official Journal C 254, 19/08/1997 pp. 0001 – 0012). So the original objective (implementation of the Dublin Convention) can only be achieved by taking further integrative actions (changing of national Constitution in regards to asylum law). From a neofunctional perspective the amendment of Article 16 should be seen as a consequence of functional spillover effects. As a consequence of these functional pressures a greater degree of Communitarisation is required.

Nevertheless, we have to keep in mind that alternative explanations are also assumable. The pressure of the Christian Democratic Party put on the SPD represents a factor that had an impact on the position of the SPD. The rising numbers of asylum claims and the increased incidents with racial backgrounds on immigrants as well as the negative media coverage are other factors, which are providing alternative explanations having an impact on X and on Y. How weighty these impacts were in particular is whereas difficult to assess.

Despite this development some authors such as Börsche (2006) suggest that the modification of Article 16 was not a real European obligation. There was no indispensable obligation in a legal sense. In fact the modifications were more restrictive than necessary (Börsche 2006; Post/Niemann 2007). In accordance with the legally binding rules of the EU it would have been a possibility to allow deportation to other member states only in keeping with the rules of safe third country and safe country of origin. But instead the German asylum law had become more restrictive with the consequence that even many refugees were not allowed to apply[26]. The consequence of this change was also that asylum seekers could from then on be deported not only to other EC countries but also to non-EC states, which were classified as safe third countries (Börsche 2006). As a consequence the number of asylum seekers in Germany dropped significantly after 1993 (see Figure 4). Accordingly, the referring to the EU can be interpreted as a strategy of the CDU in order to overcome the domestic deadlock existent due to the opposition's ability to block the proposal. If this was the case, the German government would have been aware of the effect assumed by Moravcsik and

[26] The change of Article 16 initiated a number of fundamental changes. Germany implemented therewith 1) the Safe Third Country Concept. 2) the Safe Country of Origin Concept and 3) the Airport regulation.

deployed it in a calculated way. This implies that the second hypothesis H2' is also confirmed in this specific case.

When it comes to the third hypothesis (H3') it is to say that it can only be judged at the end of my analysis, as it requires the comparison between different cases. In order to judge if the German government is more willing to transfer national competences in asylum and refugee policy to the European level the stronger national veto players are, I need to compare situations in which the VPs have had various strengths. This will be possible only in the end, after having demonstrated the positions in T1, T2 and T3.

4.1.2 The Bundesverfassungsgericht as a veto player during T1

During this unit of analysis the jurisdiction of the Federal Constitutional Court has been invoked one time. It was asked to intervene on the question if the amendment of Article 16 is in accordance with the German Grundgesetz. In this matter the Bundesverfassunggericht judged on the 14 May 1996 (see BVerfGE 94, 49 - Sichere Drittstaaten). In its judgement the Court decided that the amendment of Article 16 and the introduction of Article 16 par. 2 were compatible with the Constitution[27]. Therewith the Court carried out its function as guardian of the Constitution but without vetoing the particular legislation. The decision of the Court on this question is final and all other institutions are then bound by its case law. Interestingly the Court justified the amendment as a basis for a comprehensive European refugee policy with the goal of establishing a burden-sharing system among the member states (BVerfGE 94, 49). Therewith the Court put a preliminary end to the debates on asylum right and confirmed the necessity for the European level.

4.1.3 The Bundespräsident as a veto player during T1

In the history of the Federal Republic of Germany the Bundespräsident refused only eight times since 1949 to sign a law (Feldkamp 2003). During our time of investigation the Bundespräsident refused to sign a law on two occasions in 1991 and in 2006 (ibid.). In both cases the relevant law dealt with issues other than asylum or refugee policy. The

[27] Original wording: Entscheidungsformel:1. Die zu gemeinsamer Entscheidung verbundenen Verfassungsbeschwerden werden zurückgewiesen. 2. Artikel 1 Nummer 1 und Nummer 2 des Gesetzes zur Änderung des Grundgesetzes (Artikel 16 und 18) vom 28. Juni 1993 (Bundesgesetzbl. I Seite 1002) - Artikel 16a des Grundgesetzes neuer Fassung - ist mit Artikel 79 Absatz 3 des Grundgesetzes vereinbar. 3. § 18 Absatz 2 Nummer 1, § 26a Absatz 1 Sätze 1 und 2, § 31 Absatz 4, § 34a des Asylverfahrensgesetzes in der Fassung der Bekanntmachung vom 27. Juli 1993 (Bundesgesetzbl. I Seite 1361) sowie die Aufnahme von Österreich in die Anlage I (zu § 26a) sind mit dem Grundgesetz vereinbar.

only incident in this area was that in 2002 the Bundespräsident Johannes Rau expressed his concerns in questioning the constitutionality of the German immigration law. Despite his doubts however he signed the law (ibid.). This matter occurred after the signing of the Treaty of Nice and is therefore not part of my investigation. As there has been no pertinent intervention of the Bundespräsident, where he vetoed a law or expressed any doubts in the area of asylum and refugee policy he will remain unconsidered in my explanations of T2 and T3. As already mentioned the President executes due to the political culture in Germany a rather representative function without a political positioning and without interfering in the political debates. As he did not refuse to sign any law relevant for my study and as he occupies a nonpartisan role in the political system, I will classify its impact as rather weak.

4.1.4 Parties constituting the coalition government as a veto player during T1

The parties constituting the coalition government are the parties, which hold the majority within the Bundestag. The members of the German Bundestag are directly elected. They have the task of building the government. In order to measure the strength of the parties constituting the coalition government, I will in the following show the majority situation within the Bundestag. On the basis of the numbers of the seats we can measure their strength in relation to the opposition parties. In order to designate the strength of the coalition I assume that the more seats the coalition possesses within the Bundestag, the more the government can count on the approval of the parliament. As I want to measure the impact of the veto players (X) on the governmental position (Y), the parties constituting the coalition government do not represent any veto player for the government[28]. In the theory of Tsebelis they constitute in general in the political system a veto player, but in my specific case I must take into account the strength of the opposition as a veto player to the government. That means the stronger the coalition parties are in the Bundestag the less impact the Bundestag as veto player has on the government. That means further that the stronger the opposition the more the Bundestag represents a veto player to the government. In the following time units T2 and T3 I will therefore also exclusively refer to the opposition within the Bundestag.

[28] If I would strictly follow the theory of Tsebelis in this point I would have a content-related discrepancy in my study. I can not count the government (coalition parties) as a VP to the government. That would not make any sense. Therefore I measure the strengh of the government in relation to the opposition.

During T1 the government had more support within the Bundestag than within the Bundesrat. The liberal-conservative alliance had during the four-years term 398 seats (319 belonging to CDU and 79 belonging to FDP) in relation to 264 of the opposition (239 belonging to SPD, 17 belonging to PDS and 8 belonging to Bündnis 90/Die Grünen) (see Figure 7). As the simple majority was attained with 331 votes, we can state that the coalition had at that time a stable simple majority with 398 votes (60,1% of the Bundestag).

Figure 7:
Composition of the German Bundestag according to the Composition of seats during T1

Source: Own representation based on data from Krüschner/Holzapfel 1991

We can thus infer that the parties constituting the coalition had a strong position. Consequently the Bundestag represented a weak veto player during T1. With regard to the amendment of Article 16 the coalition needed a two-third majority (meaning 441 votes in the Bundestag). The SPD represented by far the most important party in the opposition and was therefore very important in the debate about the amendment of Article 16. The coalition government needed among the opposition parties only the votes of the SPD to obtain the two-thirds majority. The coalition between CDU/CSU and FDP did not find any compromises during the coalition talks in December 1990 in the matter of the asylum law. Similar to the SPD the FDP was at the beginnings of the negotiations against the change of Article 16 GG. For the final decision on the 26 May

1993 finally 521 delegates voted in favour whereas 132 against the proposal with one abstention. The CDU/CSU grouping unanimously voted for the proposal. The votes of the SPD split into 234 yes and 132 no votes, those of the FDP into 79 yes and 9 no votes. The Green and Left Parties voted entirely against the proposal. This result shows that in this question there had been no clear party cleavage. The change of positioning makes it difficult to utilise the concept of Tsebelis. Regarding veto player theory, we need to know the position of the status quo and the position of the veto players with their respective ideological distances. In this case however we have seen that ideological distances can change due to issue linking or other reasons.

4.2 Research Unit T2 - the 13th legislative period

The 13th legislative period contains the timeframe from 10 November 1994 to 26 October 1998. The coalition government still represented an alliance between CDU/CSU and FDP under Chancellor Helmut Kohl. During this time the negotiations for the Treaty of Amsterdam[29] took place in particular through the Intergovernmental Conference launched on 29 March 1996 at Turin. Prior to the conference the member states presented papers outlining their positions on specific topics of the agenda (Grilles/Droufsas 2000). The German government published a short position paper (Deutsche Ziele für die Regierungskonferenz) referring to several other papers such as the "Déclaration du Chancelier Helmut Kohl et du Président Jacques Chirac au Président du Conseil européen", the government coalition agreement for the 13th legislative period of the Bundestag and the position paper of the German Länder (EU Parliament 1996). Within the area of Justice and Home Affairs the priorities of the government were put next to the completion of the EUROPOL Convention on "common right of asylum, refugees policy and a just distribution of refugees amongst the EU Member States" (EU Parliament 1996). Finally the Treaty was adopted at the Amsterdam European Council on 16 and 17 June 1997 and signed on 2 October 1997 by the Foreign Ministers of the fifteen member states (EU Scadplus).

The treaty of Amsterdam introduced the establishment of an Area of Freedom, Security and Justice as a new objective for the EU. The third pillar introduced by the Treaty of Maastricht was divided into two parts. The part on visa, asylum and other

[29] The full title of the Treaty of Amsterdam: Treaty of Amsterdam Amending the Treaty on European Union the Treaties Establishing the European Communities and certain Related Acts.

topics related to the free movement of people shifted into the first pillar and became Title IV of the TEC (Niemann 2008). The other part on police and judicial co-operation in criminal matters remained in the third pillar under Title VI TEU and remained therefore intergovernmental. The first part under Title IV TEC was associated with an obligation to adopt the measures needed for the free circulation of persons (such as border control, visa rules, aims regarding refugee and asylum) within five years after entry into force of the Treaty.

Against all expectations the German delegation turned out to be a problematic negotiation partner during the Amsterdam summit[30]. The German delegation imposed its veto against QMV in the third pillar[31]. According to Niemann the domestic political actors confined Chancellor Kohl to refuse the switch to QMV after three years following the adoption of Amsterdam (Niemann 2008). At the outset of the intergovernmental conference Helmut Kohl and his coalition between Conservatives and Liberals strongly supported QMV for asylum, visa and immigration (Deutscher Bundestag 1997)[32]. But in the course of time the government had to change its position as it faced opposition even in its own party. The Länder had to bear the costs related to asylum claims and accommodation. That is why several authors assume that the Länder were against the QMV as they wanted to protect their prerogatives in areas where they were responsible (Post/Niemann 2007). The Länder were at that time not interested in transferring competences in the area of refugee and asylum policy to Europe anymore[33] because as the change of Article 16 had diminished the necessity of burden-sharing for Germany and the number of asylum claims decreased significantly (see Figure 4) (Bösche 2006). Furthermore, they pointed out that asylum and refugee policy is a very sensitive issue of

[30] Frankfurter Rundschau 16 May 1997, 18 June 1997, 19 June 1997

[31] Frankfurter Rundschau 12 June 1997, 14 June 1997, 18 June 1997, 19 June 1997, Die Tageszeitung 14/15 June 1997, 19 June 1997, 21 June 1997, 21/22 June 1997

[32] „Der Deutsche Bundestag fordert die Bundesregierung auf, sich weiterhin nachdrücklich für die folgenden Ziele auf der Regierungskonferenz einzusetzen: 1. Im Hinblick auf die notwendige Vertiefung sowie die anstehende Erweiterung der EU brauch die Gemeinschaft eine flexiblere Entscheidungsfindung Deshalb sollte für möglichst viele Politikbereiche das Prinzip der Mehrheitsentscheidung angestrebt werden [...] 5. Der Ansatz der niederländischen EU Präsidentschaft in den Bereichen Justiz und Inneres, der die Vergemeinschaftung von Außengrenzregelung, Visa, Asyl, Einwanderungs- und Flüchtlingspolitik sowie justizielle Zusammenarbeit in und Teilbereichen der Zollzusammenarbeit vorsieht, muß unterstützt werden." (Deutscher Bundestag 1997 Drucksache 13/7901, pp.1-2)

[33] „Die Regierungskonferenz muß zu einer klaren Abgrenzung der Kompetenzen zwischen Union und Mitgliedstaaten führen. Ziel der Befassung muß eine stärkere Durchsetzung des Subsidiarität als Regel für die Verteilung und für die Ausübung von Kompetenzen sein." (Bundesrat Drucksache 169/95)

national sovereignty in order to protect their own national influence.[34] In order to realise their demands, the Länder used their newly gained powers granted by the Treaty of Maastricht to block further integration in this field (Bösche 2006). Initially the government supported to integrate the regions into the European project, as it wanted to see the Länder as a link between Europe and the German citizen. Finally, the German government misperceived the role of the Länder as supporters of the European integration process.

When we have a look inside the domestic discourse of that time we perceive differences between the chief of government and his Minister of Interior, who was backed by the Länder (Lavenex 2001). The Länder and the Minister wanted to maintain unanimity on questions concerning asylum and refugees because they feared to be overruled on the European level, so that they would have eventually had to bear more costs than they intended. The Conference of European Ministers of the Länder (Europaministerkonferenz) two years before in September 1995 came to the opinion that the procedural and material right of asylum should be harmonized. The majority of the ministers supported the idea to agree on a common immigration policy, but two Länder (Bavaria and Rhineland-Palatinate) vetoed the proposal (Bundesrat Drucksache 169/95). The heads of these two Länder Edmund Stoiber and Kurt Beck composed a letter were they explicitly forewarned the Chancellor that the Bundesrat might refuse the Treaty if asylum and immigration was decided by QMV (Börsche 2006, 63).

In avoidance that the Länder blocked all German efforts for more harmonisation, the government concluded a compromise with the Länder governments. They agreed to integrate refugee and asylum to the first pillar but to apply widely unanimity (only limited options in specific cases to decide by majority) (Bundesrat Drucksache 169/95). The unforeseen change in the German position was finally one reason why the outcome of Amsterdam was more restrictive than had previously been expected.

> "Thus, this development was merely a starting point for a quite restrictive, at best formally harmonized European refugee and asylum policy of the lowest common denominator" (Bösche 2006, pp. 55).

[34] Die Europäische Union muß zusätzlich Kompetenzen im Bereich der Gemeinsamen Außen- und Sicherheitspolitik sowei der Innen- und Rechtspolitik erhalten. [...] Damit soll eine aktivere Rolle der Europäischen Union nach außen sowie in den Bereichen Asyl- und Flüchtlingspolitik und gemeinsame Bekämpfung des grenzüberschreitenden organisierten Verbrechens ermöglicht werden. Die Kompetenz-Kompetenz verbleibt auf der Ebene der Mitgliedsstaaten." (Bundesrats Drucksache 169/95)

Albeit at that time in France and in the UK the supporters of EU integration won the general elections, the German government was not able to use this opportunity due to domestic pressure.

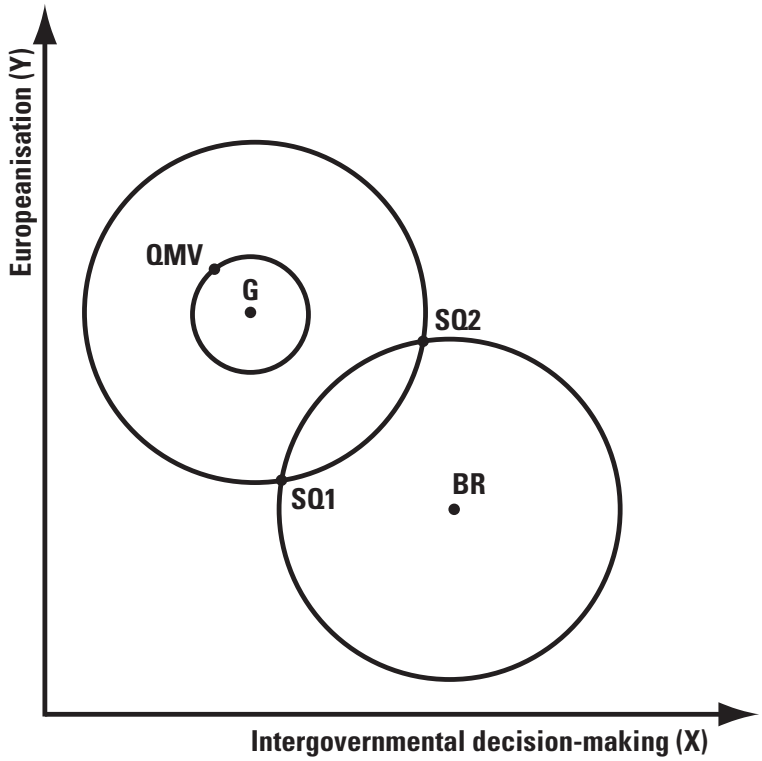
4.2.1 The Bundesrat as a veto player during T2

During the 13th legislative period the Bundesrat still consisted of 68 seats. Thus the seats needed for the simple majority as well as for the absolute majority remained constant. For the whole period the Bundesrat represented an important VP. From the beginning in November 1994 until the end of the term the opposition, mainly the SPD, had the absolute majority with 34 seats and later -from January 1996 onwards - even with 35 seats. The government coalition had only between 10 and 16 seats belonging to the category G during the whole term (see Table 2 in the appendix). When we consider that about 55.1 per cent of all laws during the 13th legislative period required the agreement of the Bundesrat to get implemented (Andresen/Woyke 2003), we realise the crucial position of the Bundesrat. According to the veto player concept, the Bundesrat represented during the whole period a veritable VP and due to its distribution of seats the situation was characterised by high policy stability. For 55.1 per cent of all proposed laws it had been very unlikely that the status quo would have changed due to a small set of possible outcomes to replace the status quo. Concerning the question of competence transfer to the European level the concept of Tsebelis would predict that a shift towards QMV is rather unlikely. The government (G) preferred QMV to SQ1, as the position of QMV was nearer to its ideal point (See Figure 8). Though the Bundesrat (BR) preferred SQ1 to QMV. As QMV was outside its indifference curve a shift towards QMV was not possible. In accordance with this model no shift towards QMV took place. Kohl blocked majority voting on asylum issues during the European Council.[35] Instead they could find a compromise (SQ2), which was closer to the preferred position of the German government (QMV) but within the winset in which an outcome was possible. As the Bundesrat was indifferent between SQ1 and SQ2, a move towards SQ2 was possible. The compromise between the actors was that QMV should only apply to visa policy. All policies in the area of asylum and immigration should be decided unanimously as before (Ergebnisprotokoll der Sitzung der Arbeitsgruppe Regierungskonferenz 1996).

[35] Frankfurter Rundschau 14, 18 June 1997

Figure 8:

Position of veto players in German domestic politics in 1993



Source: Own representation

Concerning our hypotheses we can then conclude that H1' has not been confirmed in so far that the domestic level influenced the government not to shift competences to the European level. Indeed the domestic level had an impact but not in the direction of integration but rather the opposite. Therewith the antithesis (AT H1) derived from the NF approach would be confirmed in this specific case. Due to the oppositional domestic pressure the government decided to make concessions to the Länder governments. This means that as predicted by Niemann domestic politics have in this case acted as countervailing force, in stagnating the integration process. Following the logic of Moravcsik the government should have agreed to QMV in order to bypass the domestic opposition. As this was not the case, H2' is also not confirmed.

Still it is crucial to note that the German government could have decided to ignore the objections of the federal states. Article 23 GG gives them the right to be involved when their legislative rights are concerned. In the case of refugee and asylum affairs their predominance was not certain at all (Börsche 2006). But the fact that the central

government followed the position of the Länder shows clearly that domestic constraints can lead to disintegrative decisions on the European level.

4.2.2 The Bundesverfassungsgericht as a veto player during T2

During T2 and T3 the Bundesverfassungsgericht hasn't been invoked in order to estimate the constitutionality of any legislation in the area of asylum and refugee policy. That means the Bundesverfassungsgericht was not involved during this time as an active veto player. That is why it will remain unconsidered in T3. Nevertheless the simple existence of the Court with its competencies is taken by itself already enough to represent an important veto player. In general its judgement have a high reputation among the population and among the other political institutions. As it is the highest instance in German political system there are many authors, which questions its legitimacy as it is not directly elected but nominated by the Bundesrat and the Bundestag. Important for my study is however that it represents the highest instance and therewith the final authority and is therefore considered in the analysis always as a strong veto player.

4.2.3 The Bundespräsident as a veto player during T2

See above 4.1.3

4.2.4 Parties constituting the coalition government as a veto player during T2

During the 13th legislative period the liberal-conservative government had less support within the Bundestag than during T1. The liberal-conservative alliance had during this term occupied 341 seats (294 belonging to CDU/CSU and 47 belonging to FDP), the opposition occupied 331 (252 belonging to SPD, 30 belonging to PDS and 49 belonging to Bündnis 90/Die Grünen) (see Figure 9). As the simple majority was attained with 336 votes, we can say that the coalition had at that time a rather tight majority with 341 votes (only 5 votes more than needed for the simple majority). Compared with T1 where the coalition had a majority of around 60.1per cent of the Bundestag, this time it had only about 50.7per cent.

Figure 9:
Composition of the German Bundestag according to the composition of seats during T2

Source: Own representation based on data from Krüschner/Holzapfel 1991

In order to demonstrate the strength of the opposition we can add that the opposition had initiated over the legislative session about 196 draft bills[36] throughout the legislative period, which represent 59.6 per cent of all proposed bills (Ströbel/Feldkamp 2005). We can thus say that the parties constituting the coalition had a rather weak position. As a result the Bundestag represented a strong veto player during T2.

4.3 Research Unit T3 - the 14th legislative period

The 14th legislative period is defined as the timeframe from 26 October 1998 until 17 October 2002. The governmental coalition consisted since the parliamentary elections in 1998. For the first time in German history the coalition was consistent of an alliance between the Social Democratic Party and the Green Party. The chief of government was Gerhard Schröder (SPD). During this term the Treaty of Nice was negotiated during the Intergovernmental Conference in 2000 and was finally signed on 26 February 2001 (EU COMM 2008). It includes a range of topics relating to conditions of entry and residence as well as on rules on long-term visa issuing procedures and residence permits (Official

[36] 68 were introduced by the SPD, 73 from Bündnis 90/Die Grünen and 53 from the PDS.

Journal C 325, 24 December 2002). It elaborates on the conditions under which Non-EU citizens can travel freely in the EU area and on illegal residence in the EU (ibid).

In general, it is to say that the European Council in Nice implied only few results in the field of refugee and asylum policy (Angenendt 2002). The European Parliament expressed that the Council failed to define a common immigration policy, maintaining the principle of unanimity and the procedure for consultation for all matters concerning legal immigration (EP 2003). Important Articles such as Article 62[37], Article 63 (2b)[38], Article 63 (3a)[39] and Article 63 (4)[40] remained completely unchanged. In other areas where changes had been reached it mostly concerned common rules and basic principles (such as Art. 63(1) and Art. 63 (2a)) (Niemann 2008). Niemann therefore classifies the progress made at Nice as 'low to medium'. Neither the issue of burden-sharing among the member states nor the issue of QMV was resolved through the Treaty of Nice.

Germany insisted further on its right to veto and continued to block QMV. As the number of members in the Council increased, it became even more difficult to find a compromise. After the change of the German basic law it seemed to be more costly for Germany to participate in a EU-wide burden-sharing mechanism. For this reason the Länder governments were not willing to agree on this point. Often domestic politics linked this topic to the high unemployment rate of that time (Niemann 2008, Prevezanos 2001). Consequently, the new Chancellor Schröder was held to agree upon such proposals. This demonstrates again the blocking capacity of the Länder. Accordingly the SPD-Green coalition stands in the continuity of predecessor government. But this time the government was not entirely for QMV. Within the ministry of interior and justice several officials were strongly opposed to QMV (see Plenarprotokoll 14/135, Plenarprotokoll 14/195, Plenarprotokoll 14/144, Drucksache BR 299/02).

4.3.1 The Bundesrat as a veto player during T3

During the 14th legislative period the Bundesrat consisted of a total of 69 seats. Accordingly, 35 votes were necessary to obtain the simple majority and 46 votes for the two-third majority. As the opposition had become very strong in the Bundesrat towards

[37] dealing with measures on the crossing of external borders and the abolition of internal borders.

[38] dealing with measurs on the balanced distribution of refugees

[39] dealing with measures on long-term visa

[40] dealing with measures on residence of third-country nationals

the end of the 13th legislative period, the new government had a large support within the Bundesrat at the beginning of T3. Similar to the situation in 1990 the government held a simple majority with 35 votes from federal states belonging to the category G (see Table 2 in the appendix). Thus at the beginning of T3 a shift from the status quo would have been perfectly possible according to Tsebelis. In November 1998 the government was stable in relation to the Bundesrat and had a significant role as agenda setter. At this point the Bundesrat did not represent a VP. But this situation changed very quickly. Already in April 1999 the G-Länder lost 5 seats due to a governmental change in Hesse. This development continued almost continually through the end of the term. During these 4 years the G-Länder lost 14 seats in the Bundesrat. Therewith the Bundesrat evolve over the course of time into a veritable VP. The Intergovernmental Conference took place in 2000. At that point of time the G-Länder had 23 seats, the O-Länder 28 and the M-Länder 18 (see Table 2 in the appendix). That means at the moment of decision the Bundesrat represented a rather strong VP.

Even though the majority situations within the Bundesrat evolved very similar to the development during T1 the estimated impact from X on Y had been different. Coming back to the situation in T1, the opposition had a strong representation within the Bundesrat (G 21, O 26, M 21), but nevertheless it did not veto the integration process. In T3 however the opposition had a similar strong representation (G 23, O 28, M 18) but it did veto the integration. Similar as during T2 this situation could be rather explained by the NF approach than by the LI approach. Concerning our hypothesis we can then conclude that H1' has not been confirmed. Similar as during T2 we can argue that the domestic level influenced the government not to shift competences to the EU level. Therewith domestic politics acts here as a countervailing force. Therewith H2' is also not confirmed, as the government did not try to by-pass the oppositional actors. The difference whereas to the situation in T2 was, that the government had not a clear position. The chief of government Schröder were in favour of QMV but various other members of the cabinet were against. Consequently the O-Länder did not represent veritable oppositional actors within the domestic politics.

4.3.2 The Bundesverfassungsgericht as a veto player during T3

The Federal Court blocked the new German immigration law of 20 June 2002 in its judgement on the 18 December 2002 (see BVerfG, 2 BvF 1/02) due to procedural failures. As already indicated in 4.1.3 this matter occurred after the signing of the Treaty

of Nice and is therefore not part of my investigation. For the assessment of the Bundesverfassungsgericht as a veto player see above 4.2.2.

4.3.3 The Bundespräsident as a veto player during T3

See above 4.1.3.

4.3.4 Parties constituting the coalition government as a veto player during T3

During T3 the government had slightly more support within the Bundestag than during T2, but this constituted only a minimal change. The alliance between the Social Democratic Party and the Green Party occupied during this term 345 seats (298 belonging to SPD and 47 belonging to Bündnis 90/Die Grünen). The opposition had 324 votes (245 belonging to CDU/CSU, 43 belonging to FDP and 36 belonging to PDS) (see Figure 10). As the simple majority was attained with 335 votes, we can say that the coalition had at that time a weak majority with 345 votes (51,6 % of the Bundestag). The coalition had of only 10 votes more than needed for the simple majority.

Figure 10: Composition of the German Bundestag according to the composition of seats during T3

Source: Own representation based on data from Feldkamp/Ströbel 2005

I would therefore classify the Bundestag as a rather strong veto player during T3. During this term 328 draft bills were introduced out of which the opposition initiated 175, that is 53.4 per cent (Ströbel/Feldkamp 2005).

4.4 Comparison of T1, T2 and T3

Finally we have to compare the three units of analysis in order to assess whether or not H3' is a valid hypothesis. In H3' I have put up the hypothesis that the stronger oppositional domestic politics, the more the German government is willing to transfer national competences in asylum and refugee policy to the European level. Throughout the previous subsection I have pictured the development in the German domestic discourse over asylum and refugee questions. Therein I draw the position of the German domestic veto players and according to the majority situation within the political system I have estimated the strength of the respective VPs.

Overall there is no coherence between the strength of the VPs and the government reaction (see Table 3). If we go through the different cases, we see that during T1 the government was willing to give up competences to the EU level while the Bundesrat is estimated to represent a strong VP and the BT a rather weak VP. As the Federal President and the Federal Court are estimated to have had the same impact in all three cases, we can discount them in so far as we can estimate that having in all three cases the same impact cannot explain the change in the governmental position. During the units T2 and T3, the Bundesrat and the Bundestag are both estimated to represent rather strong VPs. At theses occasions, whereas the government vetoed the competence transfer to the EU, as it vetoed QMV at two occasions, at the Treaty of Amsterdam and at the Treaty of Nice. Consequently, we cannot estimate on the basis of this case study that there is any coherence between the competence transfer and the strength of veto players.

Table 3:

Comparison of the impact of VP in T1, T2, T3 itemised upon strong or weak (the moment of comparison is in each case the moment of EU decision-making)

	Bundesrat	**BVerfG**	**Bundes-präsident**	**Bundestag**
T1	strong	strong	weak	weak
T2	strong	strong	weak	strong
T3	strong	strong	weak	strong

Source: Own Representation

In order to accord with the hypothesis H3 derived from the LI approach, the government should have rather shift competences in T2 and T3 than in T1. That is why we have to

consider that in these specific cases the NF approach provides a more pertinent explanation. Oppositional domestic politics represent in our cases rather countervailing forces and influence the government not to shift competences to the European level. According to the concept of Tsebelis, the situations in T2 and T3 represent situations of policy stability, in which the government is rather instable as agenda setter and a shift remains unlikely. The veto players are too strong so that the national government is unable to by-pass them. This neofunctional explanation seems to fit better to this case than the liberal intergovernmentalist explanation. One could estimate that the two level game concept underestimates the strength of domestic actors. During T1 however the government held a large majority within the Bundestag so that it seemed to be simpler to prevail against the other veto player. But nevertheless the results aggregated in Table 3 do not provide a clear statement on the impact of the VPs on the governmental position. The reason for this unclear result can lie on the one hand within the fact that we deal only with three specific cases and we would need to look at greater numbers of cases to be able to make a clearer statement. On the other hand, there are alternative explanations that were not considered in detail, which might have also influenced the governmental position.

5. Conclusion

On the basis of LI, this paper got us a better understanding of the German position towards questions in the area of asylum and refugee affairs within the European context. We saw that the German position is constituted by the position of the national government and domestic political actors, which intervene as VPs. The aim was to measure the impact of X on Y. Thereby we saw that the government position in the question whether or not to shift competences to the EU level is influenced by a set of various factors. In the German case the federal structure proved to have an important influence on the governmental position. From the identified four veto players two (i.e. Bundestag, Bundesrat) were in all cases involved in questions relating to asylum and refugee affairs. In two of three cases the federal decision makers were not willing to give up competences to the EU level. This case study focused on a small number of cases that are expected to provide insights into causal relationship across a larger population of cases. Unfortunately this goal has not been achieved within the present case study. We could not detect any clear causal effect between X and Y. Each of the three cases give

different information about the relation between X and Y. As a consequence no generalisation is possible.

In regards to the hypotheses, concluded in Table 4, we see that in the first case (T1) the hypotheses H1' and H2' derived from LI seemed to be confirmed. Concerning the amendment of Article 16 GG in 1993 German domestic politics have had an impact on the decision of the German government to shift its competences with regards to asylum procedures to the European level. The national government used the two level game structure in order to achieve its own preferences. In the cases T2 and T3 the two level game have not been used by the government. Due to domestic pressure the government vetoed further Europeanisation. Consequently H1' has not been confirmed. As in T3 the governmental position were in part congruent to the other VPs, no oppositional position existed, so that we can not judge about the validity of H2'.

Table 4:

Hypotheses itemised upon confirmed/not confirmed

<table>
<tr><th></th><th>H1'</th><th>H2'</th><th>H3'</th></tr>
<tr><td>T1</td><td>confirmed</td><td>confirmed</td><td rowspan="3">not confirmed</td></tr>
<tr><td>T2</td><td>not confirmed</td><td>not confirmed</td></tr>
<tr><td>T3</td><td>not confirmed</td><td>/</td></tr>
</table>

Source: Own representation

At first appearance it seems as if veto players are having opposed effects. In the case of T1 I argued that strong VPs lead to a shift towards more European integration while in the case of T2 I argued that strong VPs lead to less integration. The aim was to find plausible explanations for the relationship between X and Y. That is why in the first case the two level game strategy was helpful to understand the relationship, whereas during T2 neofunctonalism gave a proper explanation. This contradiction find its explication in the fact that the transfer of competences to the EU level could not be exclusively explained by domestic veto players. LI does not proceed from the assumption that national governments use the strategy of two level games in every single competence transfer to the EU level. This strategy is only presented as one possible explanation for the behaviour of the national government.

We have seen that also other factors played a crucial role and must be taken into account to make firm cause and effect generalisation. In the analytical chapter we saw that the position of the German government was also influenced by other factors such as the number of asylum applications, the media coverage and the general atmosphere in the society. In order to get a greater degree of confidence a large-N cross case study is needed. Within a large N study one could analyse how often the strategy of two level games is used by national governments and for which reasons. Therewith the importance of two level games in the relation between governments and domestic politics would become clearer.

In general the development showed that there are concrete efforts in order to Europeanise asylum and refugee policies. Albeit the most progress in this area has been achieved in the defence of unwanted forms of immigration through cooperation of border management, through implementation of the safe third country rule and the safe country of origin rule. Still national authorities are not willing to give up their absolute sovereignty in these areas of high priority. The debates on asylum are still politicised as a security treat. According to Lavenex asylum and refugee policies touch core aspects of state sovereignty, "namely the right of the state to admit or reject the entry and stay of non-nationals on its territory" (Lavenex 2001b, pp. 2). This represents an alternative explanation derived from LI, which explains why the transfer of competences to the European level still proceeds very slowly in this area. According to Moravcsik the process of integration it dependent on the issue. Moravcsik's empirical research confirms that national governments are interested in concrete economic cooperation than in general concerns like security or European ideals. As Hoffmann affirmed one have to distinguish between low and high politics. According to LI low politics can converge among member states, whereas high politics such as security issues will not converge on a supranational level. This liberal intergovernmentalist assumption could represent an explanation for the cases T2 and T3.

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Appendix

Table 1:

Indicators of host country capacity and contribution 2002-2006 ranked due to **Refugees 2002-2006 to GDP (PPP) per capita**

Member State of asylum (residence)	**Refugees 2002-2006 to GDP (PPP) per capita**	Refugees 2002-2006 to 1,000 inhabitants	Refugees 2002-2006 to 1,000 km2
Germany	**26.3**	10.0	2,316.0
United Kingdom	**8.1**	4.8	1,181.5
France	**4.3**	2.3	250.7
Netherlands	**3.4**	7.7	3,616.9
Sweden	**2.8**	10.7	216.1
Denmark	**1.6**	10.6	1,311.0
Italy	**0.6**	0.3	57.2
Austria	**0.5**	2.3	226.4
Belgium	**0.4**	1.4	463.4
Bulgaria	**0.4**	0.6	38.5
Hungary	**0.4**	0.7	79.6
Finland	**0.3**	2.2	34.8

Poland	**0.2**	0.1	11.2
Romania	**0.2**	0.1	7.8
Spain	**0.2**	0.1	11.5
Czech Republic	**0.1**	0.1	19.5
Greece	**0.1**	0.2	19.2
Malta	**0.1**	3.5	4,538.7
Cyprus	**0.0**	0.7	57.8
Estonia	**0.0**	0.0	0.2
Latvia	**0.0**	0.0	0.2
Lithuania	**0.0**	0.1	7.1
Luxembourg	**0.0**	3.4	614.1
Slovakia	**0.0**	0.1	7.7
Slovenia	**0.0**	0.3	32.2
Ireland	**--**	2.4	145.3

(A zero indicates that the value is zero or rounded to zero. Two dots (..) indicate that the value is not available.)

Source: Own representation according to the UNHCS Statistical yearbook 2002, for GDP (PPP) per capita and national population: International Monetary Fund, for national surface area: Global Insight Digital Mapping 1998

Appendix

Table 2:
Majority situation within the Bundesrat during T1, T2 and T2

Legislative Period	Exact time	Coalition government	Coalitions in the Länder in relation to the national government coalition			Seats in the Bundesrat[41]	Länder category G	Länder category O	Länder category M
			Equal	Not equal	In parts equal				
12th 1990-1994	January 1991	CDU/CSU +FDP	HES, RPF, BWÜ, BAY, MBV, SAN, THÜ, SAC	SWH, BRE, NDS, NRW, SAA	HAM, BER, BRA	68	35	22	11
	April 1991	CDU/CSU +FDP	RPF, BWÜ, BAY, MBV, SAN, THÜ, SAC	SWH, BRE, NDS, NRW, HES, SAA	HAM, BER, BRA	68	31	26	11
	May 1991	CDU/CSU +FDP	BWÜ, BAY, MBV, SAN, THÜ, SAC	SWH, BRE, NDS, NRW, HES, SAA	HAM, BER, RPF, BRA	68	27	26	16
	June 1991	CDU/CSU +FDP	BWÜ, BAY, MBV, SAN, THÜ, SAC	SWH, HAM, BER, NDS, NRW, HES, SAA	BER, RPF, BRA	68	27	29	12
	December 1991	CDU/CSU +FDP	BWÜ, BAY, MBV, SAN, THÜ, SAC	SWH, HAM, NDS, NRW, HES, SAA	BER, BRE, RPF, BRA	68	27	26	15
	April 1992	CDU/CSU +FDP	BAY, MBV, SAN, THÜ, SAC	SWH, HAM, NDS, NRW, HES, SAA	BER, BRE, RPF, BWÜ, BRA	68	21	26	21
	July 1994	CDU/CSU +FDP	BAY, MBV, THÜ, SAC	SWH, HAM, NDS, NRW, HES, SAA, SAN	BER, BRE, RPF, BWÜ, BRA	68	17	30	21

[41] Seats for Berlin are included

	October 1994	CDU/CSU +FDP	BAY, MBV, THÜ, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, BWÜ	68	17	34	17
13th 1994-1998	November 1994	CDU/CSU +FDP	BAY, MBV, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, THÜ	68	13	34	21
	December 1994	CDU/CSU +FDP	BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, BWÜ, MBV, THÜ	68	10	34	24
	January 1996	CDU/CSU +FDP	BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, BWÜ, MBV, THÜ	69	10	35	24
	June 1996	CDU/CSU +FDP	BAY, SAC	BWÜ, BAY, SAC	BER, BRE, RPF, BWÜ, MBV, THÜ	69	16	35	18
	June* 1996	CDU/CSU +FDP	BWÜ, BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAA	BER, BRE, RPF, MBV, THÜ	69	16	35	18
	December 1996*	CDU/CSU +FDP	BWÜ, BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, MBV, THÜ	69	16	35	18
	November 1997*	CDU/CSU +FDP	BWÜ, BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, MBV, THÜ	69	16	35	18
	Mai 1998*	CDU/CSU +FDP	BWÜ, BAY, SAC	SWH, HAM, NDS, NRW, HES, SAA, BRA, SAN	BER, BRE, RPF, MBV, THÜ	69	16	35	18
14th* 1998-2002	November* 1998	SPD + Green Party	BRA, HAM, HES, NDS, NRW, SAA,	BWÜ, BAY, SAC	BER, BRE, MBV, RPF, THÜ	69	35	16	18

			SAN, SWH						
	April 1999*	SPD + Green Party	BRA, HAM, NDS, NRW, SAA, SAN, SWH	BWÜ, BAY, HES, SAC	BER, BRE, MBV, RPF, THÜ	69	30	21	18
	September* 1999	SPD + Green Party	BRA, HAM, NDS, NRW, SAA, SWH	BWÜ, BAY, HES, SAA, SAC	BER, BRE, MBV, RPF, THÜ	69	27	24	18
	October* 1999	SPD + Green Party	HAM, NDS, NRW, SAA, SWH	BWÜ, BAY, HES, SAA, SAC, THÜ	BER, BRA, BRE, MBV, RPF	69	23	28	18
	June 2001*	SPD + Green Party	BER, HAM, NDS, NRW, SAA, SAC	BWÜ, BAY, HES, SAA, SAC, THÜ	BRA, BRE, MBV, RPF	69	27	28	14
	October* 2001*	SPD + Green Party	BER, NDS, NRW, SAA, SAC	BWÜ, BAY, HAM, HES, SAA, SAA, THÜ	BRA, BRE, MBV, RPF	69	24	31	14
	January 2002*	SPD + Green Party	NDS, NRW, SAA, SWH	BWÜ, BAY, HAM, HES, SAA, SAC, THÜ	BER, BRA, BRE, MBV, RPF	69	20	31	18
	May 2002*	SPD + Green Party	NDS, NRW, SWH	BWÜ, BAY, HAM, HES, SAA, SAC, SAN, THÜ	BER, BRA, BRE, MBV, RPF	69	16	35	18

Source: If not otherwise indicated the information comes from Schindel 1999: Datenhandbuch zur Geschichte des Deutschen Bundestags 1949 bis 1999.
* DH 1994-2003

SWH = Schleswig-Holstein
NDS = Lower Saxony
NRW = North Rhine-Westphalia
HES = Hesse
BAY = Bavaria
BER = Berlin
BRA = Brandenburg
THÜ = Thuringia
HAM = Hamburg
BRE = Bremen
RPF = Rhineland-Palatinate
BWÜ = Baden-Wuerttemberg
SAA = Saarland
MBV = Mecklenburg-Western Pomerania
SAN = Saxony-Anhalt
SAC = Saxonia