ABSTRACT

Immigrant integration has for a long time, been a crucial issue in Europe. Amongst the factors that trigger immigration are the demand for labour, political crisis (wars) in some countries and most recently, natural calamities (storms, cyclones and earthquakes) faced by some countries in the world. Because of the multiplicity of such factors and high demand for labour, immigrant integration has been perceived as one of the most threatening policy areas in Europe and has often required stringent measures both at national and EU levels.

This thesis deals with the challenges of immigrant integration at the EU policy Level. The sensitive nature of immigrant integration to state sovereignty is a point of focus because of the harmonisation challenges at the intergovernmental and supranational levels. This study explores the motives behind the cooperation at EU level and the role of supranational institutions in shaping the EU level policies. Secondly, the author will examine the scope and capabilities of the policies. The case of immigrant integration has been chosen because of its sensitivity both to Europe and the prospective immigrants.

In this thesis, the author will explore and examine the most vital aspects of immigration and immigrant integration policies at EU level, the reasons why EU level policies are not yet proactive and why they are not supranationalised yet. I will also look at available EU instruments and sources for coming up with strategies of integrating immigrants. All these will be done with regards to the theoretical frame work due to the sensitivity and complex nature of immigration problems faced by European states. Each theory will be explaining some stage or level in the development of EU level policies (Liberal intergovernmental and new institutionalism), the possible EU policy making frame work (intensive transgovernmentalism and policy coordination/bench making).
# Table of Contents

ACKNOWLEDGEMENT ........................................................................................................................................ iv

LIST OF ABBREVIATIONS .................................................................................................................................. v

Chapter 1. .......................................................................................................................................................... 1

  INTRODUCTION ............................................................................................................................................. 1

Chapter Two......................................................................................................................................................... 8

  2. THEORETICAL FRAMEWORK. ..................................................................................................................... 9

    2.1. New institutionalism. ............................................................................................................................. 9

    2.2 Neo-Functionalism theory on EU immigrant’s integration. ................................................................. 10

    2.3. Two level games Theory ..................................................................................................................... 12

    2.4. Mode of EU policy making ................................................................................................................. 15

    2.4.1 Policy coordination and bench making ......................................................................................... 15

    2.4.2 Intensive transgovernmentalism ..................................................................................................... 16

Chapter 3 .......................................................................................................................................................... 17

  3. EUROPEAN UNION IMMIGRATION POLICY; ..................................................................................... 18

    3.1. From intergovernmental Towards the Communitarization of Immigration ................................. 18

    3.2. Formal intergovernmentalism: Maastricht Treaty. .......................................................................... 21

    3.3. Communitarizing immigration: The Amsterdam Treaty. ............................................................... 22

    3.4. Contextualization of the EU Immigration Policy ........................................................................... 23

    3.5. EU Decision-making institutions and their roles on issues of immigrant integration .......... 26

      3.5.1. The European Council and the Council of Ministers ......................................................... 26

      3.5.2. European Commission ............................................................................................................. 28

      3.5.3. European Parliament ............................................................................................................... 29

      3.5.4. The European Court of justice (ECJ). ..................................................................................... 29

    3.6. Open Method of Coordination (OMC) as an instrument of cooperation for immigration policy ................................................................................................................................. 30

    3.7. Observations: Changing realities ....................................................................................................... 31

CHAPTER FOUR ................................................................................................................................................ 33

  4. IMMIGRANT INTERGRATION POLICY AT EU LEVEL. ................................................................. 33

    4.1. EU Policy on Immigrants integration ................................................................................................. 33

    4.2. What is Integration? ............................................................................................................................. 35

    4.3. Legal frame work for EU immigrant’s integration ............................................................................. 37

    4.4. EU Policy instruments for immigrants integration ............................................................................ 38

      4.4.1. Open method of Coordination. ................................................................................................. 38

      4.4.2. The National Contact point on immigration. ........................................................................... 39
ACKNOWLEDGEMENT

I am most thankful to my supervisor Prof. Jyrki Kakonen for his invaluable contributions, guidance, and patience during the research and writing of this thesis. I am also thankful to the distinguish academicians and staff members of the entire department of Political science and international Relation of the university of Tampere, for their suggestions and contributions rendered to me.

I will also like to thank all my classmates and friends who did dedicate their time and patience to help me during the writing of this thesis. I thank my Family for their relentless moral and financial support during these years of my education in the University of Tampere, Finland.
# LIST OF ABBREVIATIONS.

<table>
<thead>
<tr>
<th>Abbreviation</th>
<th>Full Form</th>
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<tbody>
<tr>
<td>AHIG</td>
<td>Ad Hoc Immigration Group of Senior Officials</td>
</tr>
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<td>CAR</td>
<td>Cities against Racism</td>
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<tr>
<td>COREPER</td>
<td>Comité de Représentants Permanents</td>
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<td>DG</td>
<td>Directorate General</td>
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<td>EC</td>
<td>European Council</td>
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<td>ECJ</td>
<td>European Court of Justice</td>
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<td>EP</td>
<td>European Parliament</td>
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<tr>
<td>EROMER</td>
<td>European Research Centre on Migration and Ethnic</td>
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<td>EU</td>
<td>European Union</td>
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<td>EUMF</td>
<td>European Union Migration Forum</td>
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<td>INTI</td>
<td>Integration of Third Country National</td>
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<td>JHA</td>
<td>Justice and Home Affairs</td>
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<td>LIA</td>
<td>Local Integration Action</td>
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<td>NAP</td>
<td>National Action Plan</td>
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<td>NCP</td>
<td>National Contact Point on Integration</td>
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<tr>
<td>NGO</td>
<td>Non Governmental Organization</td>
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<td>OECD</td>
<td>Organization for Economic Cooperation and Development</td>
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<td>Abbreviation</td>
<td>Description</td>
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<tr>
<td>OMC</td>
<td>Open method of coordination</td>
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<tr>
<td>QMV</td>
<td>Qualified Majority Voting</td>
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<td>SEA</td>
<td>Single European Act</td>
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<td>SIS</td>
<td>Schengen Information System</td>
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<td>TCN</td>
<td>Third Country Nationals</td>
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<td>UK</td>
<td>United Kingdom</td>
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<td>UN</td>
<td>United Nations</td>
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<td>WW II</td>
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Chapter 1.

INTRODUCTION

Migration is not a new issue in our world today. As a result of growing globalization, international mobility and migration has increased over the last few decades. For centuries now, the world has witnessed a number of immigration flows brought about by economic, social, political and the most recent now is the climatic concern.\(^1\) Europe in this regard holds a significant place. Immigration issues have now been a great topic of debate and have formed a new wave of discussions in the EU policy making process.\(^2\) During the past 10 years, immigration issues have received more credible attention within the EU than ever before. The process has been part of a social chapter of the treaty of Rome for a long time. Although the EU institutions have taken time as well to initiate and harmonize immigration policies among the member states, harmonization process is far from complete.\(^3\) Consequently, the rising migration flow into the European Union increases the need for policy and strategy changes at the supranational and national level.

The United Nations (UN) convention on the Rights of Migrants defines a migrant worker as a "person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national". From this, a broader definition of migrants follows that,

"The term 'migrant' in article 1.1 (a) should be understood as covering all cases where the decision to migrate is taken freely by the individual concerned, for reasons of 'personal convenience' and without intervention of an external compelling factor."\(^4\) This definition indicates that, the term migrant does not refer to refugees, displaced or others forced or compelled to leave their homes. Migrants are people who make choices about when to leave and where to go, even though these choices are sometimes extremely constrained. Indeed,

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\(^1\)\text{WATTS; 2000.}

\(^2\)\text{GEDDES; 2003: p.104.}

\(^3\)\text{REGERINGSKANLIET; 2001: p 7.}

\(^4\)\text{Measures to improve the situation and ensure the human rights and dignity of all migrant workers. 1998. Report of the working group of intergovernmental experts on the human rights of migrants submitted in accordance with Commission on Human Rights resolution 1997/15. COMMISSION ON HUMAN RIGHTS Fifty-fourth session, Intergovernmental working group of experts on the human rights of migrants.}
some scholars make a distinction between voluntary and involuntary migration. While certain refugee movements face neither external obstacle to free movement nor are impelled by urgent needs and a lack of alternative means of satisfying them in the country of present residence, others may blend into the extreme of relocation entirely uncontrolled by the people on the move. The Special Report of the Commission on Human Rights qualifies the following categories of persons should be considered as migrants:

   i. Persons who are outside the territory of the State of which they are nationals or citizens, are not subject to its legal protection and are in the territory of another State;

   ii. Persons who do not enjoy the general legal recognition of rights which is inherent in the granting by the host State of the status of the refugees, naturalize person or of similar status.

   iii. Persons who do not enjoy either general legal protection of their fundamental rights by virtue of diplomatic agreements, visas or other agreements.\(^5\)

This broad definition of migrants reflects the current difficulty in distinguishing between migrants who leave their countries because of political persecution, conflicts, economic problems, environmental degradation or a combination of these reasons.

Turning to the concept of migration, it is the crossing of the boundary of a political or administrative unit for a certain minimum period of time. It includes the movement of refugees, displaced persons, uprooted people as well as economic migrants. Internal migration refers to a move from one area (a province, district or municipality) to another within one country.

International migration is a territorial relocation of people between nation-states. Two forms of relocation can be excluded from this broad definition: first, a territorial movement which does not lead to any change in ties of social membership and therefore remains largely inconsequential both for the individual and for the society at the points of origin and destination, such as terrorism. Second, a relocation in which the individuals or the groups concerned are

\(^5\) Pizarro; 9 August 2002.
purely passive objects rather than active agents of the movement, such as organized transfer of refugees from states of origins to a safe haven. The dominant forms of migration can be distinguished according to the motives (economic, family reunion, refugees) or legal status (irregular migration, controlled emigration/immigration) of those concerned. Most countries distinguish between a number of categories in their migration policies and statistics. The variations existing between countries indicate that there are no concise definitions of migration. What follows is a more common categorization of international migrants such as:

i. Temporary labour migrants (also known as guest workers or overseas contract workers): people who migrate for a limited period of time in order to take up employment and send money home.

ii. Highly skilled and business migrants: people with qualifications as managers, executives, professionals, technicians or similar categories, who move within the internal labour markets of trans-national corporations and international organizations, or who seek employment through international labour markets for scarce skill

iii. Irregular migrants (or undocumented / illegal migrants): people who enter a country.

iv. Forced migration: in a broader sense, this includes not only refugees and asylum seekers but also people forced to move due to external factors, such as environmental catastrophes or development projects. This form of migration has similar characteristics to displacement.

v. Family members (or family reunion / family reunification migrants): people sharing family ties joining people who have already entered an immigration country under one of the above mentioned categories. Many countries recognise in principle the right to family reunion for legal migrants. Other countries, especially those with contract labour systems, deny the right to family reunion.

vi. Return migrants: people who return to their countries of origin after a period in another country.\(^6\)

\(^6\) CASTLES; 2000
While illegal immigration refers to immigration across national borders in a way that violates the immigration laws of the destination country. Under this definition, an illegal immigrant is a foreigner who either has illegally crossed an international border, be it by land, water or air, or a foreigner who has entered a country legally but then overstays his/her visa. 

Migration was perceived with mixed feelings because some people in the host countries regarded it scepticisms while others looked at it positively. As such, migration is always taken in with security aspects.

There are some arguments abound against such assessments. Illegal immigration is a social phenomenon not criminal, which is faced all over the world, starting historically from the old ages to the present. For instance, just before the Byzantine era. Basically, today’s nation states have been formed by migration. This migration is called as a “tribe’s migration” from Asia to Europe. In the middle ages of Europe, migration had occurred from continent centre to outside countries. The “Santa Maria de Cortes” law dated as far back as 1182 stated some arrangements made for people such as nobles, knights, Jews and Muslims who had migrated from other countries. It stated that these migrants should have protection, and be subjected to judicial laws like other residents had. Thus migration is a familiar issue when we look at its background.

Migration is an important factor in the erosion of traditional boundaries between languages, cultures, ethnic group, and nation-states. Movements of people in or out of their communities and the resulting changes affect even those who do not migrate. Migration is not a single act of crossing a border, but rather a lifelong process that affects all aspects of the lives of those involved.

Many European countries had been for centuries involved in exploration, colonization and imperialism such activities led to the development of the notion migration and immigration that has been highly politicized today within the European Union. The period of labour shortages in the 1950s and early 1960s strongly encouraged the import of labour whether from former colonies or elsewhere. Even though the period from the early 1970s to the present day has been characterized by a labour surplus in most European countries, there has never been a huge

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7 BBC news UK August 2007
8 BARTLETT; 1994: 111-113
9 , ibid., p. 132
10 BANTON; 1999.
amount of in-migration from the West Indies, western and Southern Asia, the masher, part of Latin America, Western and Eastern Africa and more recently from Eastern Europe and the Balkans. As immigration expanded and the economic buoyancy declined, so did individual European nations’ introduction of restrictions on immigration increase and continues to the present. This was the case regardless of how liberal or otherwise the nation was. Immigration was unrestricted in some countries such as Sweden until the late 1960s; Italy until the 1970s. West Germany officially had a no immigration policy prior to 1978 as applied by the 1965 alien’s law. The demise of the Soviet Union and the reunification of Germany generated a vast influx of East Germans into West Germany, and ethnic Germans from East central Europe and the former Soviet Union into the united German state. The actual nature of immigration and of immigrants themselves varies considerably across the European Union and a discussion of the situation prevailing in a sample of the European countries makes this clearer.

The elaboration and adaptation of a common immigration policy throughout Europe has proven to be a very difficult task. In this regards the Scandinavian countries are usually regarded as the most developed when it comes to public programs directly aimed at the integration of immigrants. However, one views a certain degree of contradictions in some of the Scandinavian policies. For instance, in seemingly multicultural countries like Sweden, there is the notion that “we should try to keep them out, yet if they manage to get in, they have to be integrated” said Lavenex and UCarer. This statement makes it quite doubtful due to the fact that “unwanted immigrants” are deemed to be undeserving of welfare state benefits in the EU. If the immigrants are not successfully integrated, this can create serious social problems in the long run. More fundamentally and from a normative point of view, this settled population has a moral claim to belong to the societies in which they live.

As earlier mentioned, the objective and rationale of this study is premised on the prolonged sensitivity of the topic over decades. The researcher is interested by the contradictory political natures of the immigrant integration policies in Europe. For instance, the Finnish Immigration chief Annika Forsander in an interview by the Six Degrees Finland’s English language magazine looks at the issue of immigrant’s integration as positive: “Immigration is an asset, not a burden.

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“She wants a stronger focus on the socio-economic and legal factors affecting the integration of immigrants, not the old debates about cultural clashes. The researcher would analyze and describe the EU policies and responses to immigration in view of gaining understanding of the decision making processes and the intergovernmental/super national discourses. Lastly, the study would explore the possibilities of EU level immigration policy on integration and make recommendations.

The main research questions of the study are the following:

1. Does the European Union have a real common immigration policy? Who are the main actors and what are the factors that affect the EU integration policy. Why?

2. What strategies and policy instruments does the EU use in the integration process of immigrants?

3. How do the EU member states perceive and cooperate in this issue?

4. In which domain as concerns immigration policy has the EU gained a positive remark? What are some of the weaknesses of the policies?

5. What perspectives and opportunities do exist for common EU immigrant integration policy?

To be precise and well concise this research will be concentrated in three areas. Firstly, the EU immigration policy and immigrant integration. Thus, due to the importance of this research area, I will limit myself to the extra EU – immigration policies on third country nationals in Europe. Secondly, policies patterning to legal immigration would be the core attention of the study. Thirdly, the EU level policies, decision and policy-making framework and the role of institutions would be examined. In the context of this research the research problem is the challenges faced by the European Union to create a common supranational immigration policy,

The dominant research methodology employed in the study is qualitative method. It is hoped that through this method a comprehensive analysis would be made on the topic. The advantage of this
approach is that, it does explore multiple methods and strategies as Punch points out on its more “flexibleness”.  

Since the E U and the process of European integration are too complex and sometimes controversial to understand by a single theoretical frame work, the study necessitates multiple theories to explain and render understandable, the issue being researched. The main theories to be used here are “new institutionalism theory, ‘liberal intergovernmental theory’ and the ‘Two – level game theory’. Putnam constructed the two level game theory to make logical connections between international negotiations and domestic decision making processes, and to integrate them in a parsimonious and yet fruitful way. He argues that we should think of policymakers as players of two games, a level 1 international game with one another, and a level 2 ratification games with domestic constituencies. The actors at level 2 represent public opinion, interest groups and bureaucratic agencies. At the domestic level, there are interactions of politician’s interest groups, while at the international level; government seeks to achieve bargains that would please domestic pressure and constituents’ in order to secure its position domestically.

Bulmer’s analysis of the relations between domestic politics and European integration focuses more on domestic policy making structures, and altitudes held within the member’s states to the EC and the effect on European integration.

Moravcsik applied the two level games to European integration by developing liberal intergovernmentalism; He argues that EU policy making is largely intergovernmental, it is dictated by national preferences and allows governments to escape from domestic pressures that limits their room from manoeuvres at national levels.

Thus Bulmer argue that institutions are the source of much political behaviours and they are not impartial black boxes which simply transform preferences into policies.

The structure of the theses will be comprised of: a content part, five chapters which are divided into smaller sub chapters, conclusion, bibliography, and appendix. In a chronological other the overview of the structure of the thesis is as follows:

First chapter is the introduction which contains the background to the study, the research problem and the objective of the study, followed by the methodology in which the choice of scientific approach, methodological perspectives and method of investigation are explained.

The second chapter will be dealing with the theoretical frame work used in analyzing the empirical findings.

The third chapter will focus on the common immigration policy of the E U, its dynamics and its constituent parts.

The fourth chapter will be dealing with the E U immigrant integration policy, context and prospects.

The Firth chapter will be dealing with the analyses of the empirical findings and a conclusion.
Chapter Two

2. THEORETICAL FRAMEWORK.

The EU and the process of immigrant integration are too complex to be understood using a single theory. For this reason, multiple theories will be used so as to better guide the rest of the study by having the ability to understand and explain the issues researched. The immigrations policy in the EU level has very interesting and controversial features regarding the theoretical basis, for it entails intergovernmental and supranational accounts.

2.1. New institutionalism.

Authors of the new institutionalism argue that institutions are the source of much political behaviours and they are not impartial black boxes which simply transform preferences into policies. New institutionalists analyses of EU opine that the Union’s common institutions are often more than mere arbiters in the decision making process, and have become key players in their own rights, “institutions matters”\(^\text{16}\).

Bulmer defines institutions as “formal institutions, informal institutions and conventions, the norms and symbols embedded in them, and the policy instruments and procedures”\(^\text{17}\). It includes less formalized arena of politics, culture of political institutions. Rosamond notes that institutions are not simply passive vessels within which politics occur; they can offer frameworks within which actors can carry out a relatively higher amount of constructive deals. They act as principal variables between actor preferences and policy outputs. But some new institutionalists, such as North, view institutions as a constraint for political actions:” the institutions define (or at least constrain) the strategies that political actors adopt in pursuit of their interests”\(^\text{18}\). Thus states benefits from the functions of institutions. However, it is common tendency that after a while national governments lose control over the institutions created originally to strengthen them, and EU develops according to its own integrative logic. As Pierson puts it, “actors may be in a strong position, seek to maximized their interests and nevertheless carryout institutional and policy

\(^\text{16}\) Petersen & Bomberg; 1999: p. 10-12.
\(^\text{17}\) Armstrong & Bulmer; 1998 in Rosamond; 2000a: p.115
\(^\text{18}\) Rosamond; 2000b: p.116
reforms that fundamentally transform their position in a way that are unanticipated or desired”  

Thus, actors, states may not be aware of the full implications and unintended consequences of participating in institutional venues when they begin their cooperation in the framework of institutions. Bulmer further argues that institutions do not merely reflect the interests of the units comprising them, and are not only mediating among them. The institutions themselves shape those preferences and those powers by structuring the access to political force to the political process, creating a kind of bias. Moreover, institutions can develop endogenous institutional momentum for policy change that goes beyond mere institutional negotiations. Institutions as settings of beliefs, knowledge, values and norms, established way of doing things, are regarded in a large extent by March and Olsen as very important shapers of the behaviour of the participating actors. From this viewpoint, it is important to examine the potential effects of institutionalization of an EU migration policy. North suggests that cooperation becomes “institutionalized” when individuals repeatedly interact, when they have a great deal of information about each other, and when small numbers characterized the group. This means that the institutionalist perspectives have provided a valuable insight into immigrant politics.

**2.2 Neo-Functionalism theory on EU immigrant’s integration.**

Neo-functionalists argue that regional integration is shaped by its functional consequences, but that the functional needs alone cannot explain integration. Regional integration gives rise to potential political tensions. It shakes up relative capabilities, creates new inequalities and transforms preferences. Above all, it leads to politicization, a general term for the process by which the political conflicts unleashed by integration comes back to shape. Neo-functionalists recognize that a decisive limitation of functionalism does not engage the political consequences of its own potential success. Functionalism identifies a rational basis for political choice. Welfare gains or losses according to Mitrany, s “common index of needs” determines whether a particular policy will or will not be selected. Neofunctionalists argue that functional pressures are necessary but not sufficient to change the scope, level or character of regional integration. They

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19 PIERSOHN; 1996: P.126.
20 BULMER, Sd.
21 MARCH & OLSEN; 1984 in ROSAMOND 2000: p 120.
23 MIRNAN; 1966:: p 159
conceptualized three intervening processes: Functional spill over occurs when an original integrative goal can be assured only by integration in a functionally related area. Externalization describes the pressure on the members of a regional regime to adopt a single and therefore integrative policy towards third parties. And most importantly, politicization describes a process by which regional integration becomes contested amongst a widening circle of political actors.

The above opinion stand in contrast to functional theory; for, functionalism assumes the "inevitability of socio-economic gradualism and the supremacy of welfare and technology over power politics" Functional needs are presumed to have self-evident consequences for the scope, level, and character of regional organization. Thus as integration bears fruits, so do experts and beneficiaries learn that integration can be extended to other practical non-controversial needs. David Mitrany argues that, successful integration requires consensus about practical goals and abstinence from power politics. As James Caporaso points out, functionalists believe in the possibility of defining certain non-political aspects of human needs, non-political in the sense that there is a high level of consensus concerning them. Such areas are labelled "technical" or "welfare oriented" The end result will be a community in which interests and activity are congruent and in which politics is replace by problem solving.

Politicization is the point at which functionalists and neofunctionalists part Company. For Ernst Haas, Leon Lindberg, and early Philippe Schmitter, politics is not a drag on regional integration but an essential ingredient. Schmitter argues that, “alone, functional interdependence based on high rate of mutual transaction is impotent. It must be perceived interpreted and translated into expressions of interests, strategies of influence and viable decision-making style.”

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24 SCHMITTER; 2003
25 PENTLANDS; 1975: p. 9-24
26 CAPORASO; 1972: p.27
27 Ibid: 25.
2.3. Two level games Theory.

Putnam, one of the pioneers of this theory makes a logical connection between international negotiations and domestic decision processes and integrates them in a fruitful way. Putnam further argues that, we should see policymakers as players of a two level game: “a level one, international game with one another, and:” a level two, ratification game with domestic constituencies. The actors in level two, according to Putnam, may represent bureaucratic agencies, interest groups and public opinion. At the domestic level, there are interactions of politicians and interested groups, the latter pressure on the former for producing favourable policies and the former builds coalitions among the later to enhance its powers. At the international level, the government seeks to achieve bargains that would please domestic pressures and constituents in order to secure its position domestically.

Putnam notes that it is unproductive to ask whether it is domestic politics that shape international negotiations or vice versa because the answer is “both sometimes “... If appropriately interpreted, it means that the two level games theory admits the role of domestic politics and international institutions equally in a cooperation process. All of these hypotheses draw attention to the importance of the effects of domestic politics on international cooperation. Later authors developed these assumptions to explain concretely European integration.

Bulmer’s analysis of the relationship between domestic politics and European integration focused more on domestic policymaking structures and attitude held within the member states to the EC and the effects on the European integration. He further argues that, the understanding of the bargaining that takes place between governments at the European level requires concentration on the domestic roots of the states preferences which are negotiated in those bargains.

Moravcsik on his part applies the “two level games theory “to European integration by developing ‘liberal intergovernmentalism’. He argues that EU policy-making is mostly intergovernmental. According to the author, the EU policies are dictated by national preference and allow governments to escape from domestic pressures that limit their room for interactions at

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29 Bulmer; 1988: p 349-51.
the national level. This approach rests on the assumption that “state behaviours reflect the rational actions of government constraint at home by domestic societal pressures and abroad by their strategic environment.” However, Moravcsik looks at institutions from the perspective of states. Most liberal intergovernmentalists argue that EU level cooperation strengthens states in comparison with their home polities, as they use institutional environment of EU for the legitimization of their actions and maintain preferences.

Liberal intergovernmental accounts fit well for explaining the development of EU immigration policy and its motivations, because, as many theories agree, domestic political factors and national governments do play an important role in this development.

Terri Givens argues that EU immigration policy is bottom up in the sense that immigration policy institutions came up from domestic politics of immigration. This is observed from the fact that national level factors have determined the nature of various harmonization proposals, thereby determining the position of member states in the negotiation process at EU level. He develops his suggestion by proposing a concrete module that focuses on the political salience, political partisanship and institutions that protects immigrant’s rights. He further concludes that when the political salience of a given immigration issue is high in domestic polity; any harmonization that results in EU level is more likely to be restrictive towards immigrants rights. Thus states pursue domestic preferences in EU supranational level and Moravcsik views it as “the continuation of domestic politics in the EU level by other means”.

According to Guiraudon, state policy makers escaped to Europe by consciously shifting to EU level cooperation, that is to say “Europeanization of immigration issues helped state officials to get rid of national constrictions.” Since from the beginning the role of the commission, EP and ECJ was very limited, the cooperation in immigration issues at EU level has actually strengthened the state executive by reasserting their power of deciding who enters its territory. As Givens clearly puts it, state actors strategically use EU level organization to pursue national policy goals that is trading sovereignty for policy success. Immigration is one of the sensitive

\[30\] Moravcsik; 1993:p480-482.
\[31\] Givens; 2004a: p. 145-150.
\[32\] Guiraudon; p. 99-104.
\[33\] Givens; 2004a: p. 145-150.
issues regarding sovereignty, and the cooperation in this issue is considerably, new phenomenon. For this reason, it is quite unsurprising why the pattern of EU cooperation is still largely an intergovernmental bargain. However, as the cooperation advances, EU institutions are being progressively incorporated in the process especially after the Amsterdam treaty.

Although the liberal intergovernmentalists and the two level games perspectives can somewhat correctly locate the EU immigration policy and how interstate preference regarding the issue is shaped, it has been criticized by various authors on several grounds. One of the most prominent arguments is that these theories in spite of having a good account "escape to Europe “ pay little attention to the reality that EU competencies also can affect domestic structures. They can “Europeanize” the laws, institutions, policies, and collective identities in member states.

However, Geddes notes that EU and its supranational institutions is dealt with as an “external” issue and complex vice-verse influence of EU institutions on member states and in relations between member states and EU is neglected. Therefore this view points are “institutionally thin”. It is good to also remember that liberal intergovernmentalism is dealing mainly, in the words of Peterson, with the level of “history-making” policy decisions. At this point, it is very practical to use Peterson’s distinction of policy levels with relevant theoretical frameworks for them. Peterson separates the integration policy process into different level of analysis. The “super systemic” level is a decision-making area that can make grand changes in the EU’s way of working, dealing mainly with the arena of European integration. The above explained liberal intergovernmentalist perspectives properly suites such kind of high political level. Systematic level is mainly dealing with policy-making, specifically policy setting and policy shaping. This would seem to be where routine integration takes place and daily EU policy proceeds. Peterson preferred the theory of new institutionalism for explaining this level of policies. Once integration has taken place in one area, EU then becomes a complex polity on its own right, where institutions gain significant role in shaping the preferences, initiating policies and bargaining.

34 GEDDES: p. 107-109
36 Ibid p. 8-9
While common migration policy is driven forward by Trans-governmental cooperation, there are remarkable attempts to achieve supranational governance in the field. Therefore, the potential and actual role of EU institutions in shaping immigration policies will also be examined.

### 2.4. Mode of EU policy making.

In this thesis, two of the policy-making modes of the EU, the Policy coordination and benchmarking as well as intensive transgovernmentalism will be examined. The analysis of Wallace, regarding the policy process can be very helpful here. Wallace defines five different forms of EU policy processes namely: distinctive community method, the regulatory model, multi level governance, policy coordination and benchmarking, and intensive transgovernmentalism.

### 2.4.1 Policy coordination and benchmarking.

This stems from the experience of the organization for Economic Cooperation and Development (OECD), an international organization for the most industrialised countries of the world which develops the practice of comparing and evaluating public policies of each state. The commission usually uses this technique to build up light cooperation in new areas in order to bring this issue to the supranational level, as it did in the case of environmental policy by achieving the incorporation of this issue to the Single European Act (SEA).

This policy coordination therefore counts on the technical specialist opinions and assumptions to develop a common approach, to encourage innovation. The main features of this policy coordination can be defined as:

i. The commission is a developer of network of experts and supports them.

ii. Independent experts that are engaged in the promotion of ideas and techniques.

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37 WALLACE; 2000: p 28-35
38 WALLACE; 2000: p. 33.
iii. The high level groups in the council that is organized for brainstorming rather than negotiating.


The opportunities of using benchmarking together with coordination in EU-level produce very advanced chances for comparing national, local and sectoral practices. And this is being done for sharing experiences and supports the spread of best practice. Benchmarking in the EU level aims towards the improvement of and changes in performance in certain issues and for supporting certain policies. This policy mode can be very relevant in explaining the new emerging EU immigrant integration policies.

2.4.2 Intensive transgovernmentalism

Intensive transgovernmentalism may be appropriate in interpreting the immigration-related policy-making processes in Europe. Wallace uses “transgovernmentalism” instead of the well known phrase “intergovernmentalism” to emphasis the intensity and commitment in EU level cooperation. This mode of policy implies the cooperation mainly between relevant national policies makers and does not involve intensive participation of EU institutions. Here some selected supranational structures can be used; nevertheless member’s states still keep the privilege of determining the types of common instruments and their domestic implementation.

The main characteristics of this policy mode are39:

i. The European Council that sets the general direction of policy

ii. The Council of Ministers that controls the consolidation of cooperation

iii. The Commission with limited role

iv. The EP and ECJ are almost excluded from the involvement

v. Special mechanisms for cooperation and management

vi. The policy process is not open to national parliaments and public.

39 WALLACE;2000: p 33
The impression one easily draws from the above theory is that it is somewhat loose and weak and its related structures weakly coupled and thus leading to constant legitimacy deficiency at the EU policy making level. However, it should be mentioned that, intergovernmentalism has the capacity to bring out substantive and effective joint policy when needed. Moreover it develops in areas where EU level integration is now emerging or has been under national control.

The above theories have been used to give a framework to the different stages of this thesis. That is; liberal intergovernmentalism and new institutionalism are necessary for comprehending the complex development of EU integration in immigration issues, role of institutions and its future implications. On the other hand, the policy mode was used to highlight the policy-making process in this field.
Chapter 3

3. EUROPEAN UNION IMMIGRATION POLICY;

In order to answer the question on, “the rationale for a common immigration policy in the EU as well as the competences of the EU in that sphere of interest”, it is necessary to take a retrospective look at the historical developments of integration in the area.

3.1. From Intergovernmental Towards the Communitarization of Immigration

The mid 1970s was the starting point of EU level management of immigration issues. It all started within the framework of Trevi groups 40 established in 1975 which subsequently resulted to the creation of the Ad Hoc immigration group of senior officials (AHIG) 41 in 1986 to deal with immigration as a security issue. However, the group was somehow deficient to deal with the security challenges posed by immigration 42. The second stage of challenges of immigration issues in Europe was in the mid 1980s when there were intensification and coordination of immigration matters amongst European states. This was provoked mainly by two factors.

Firstly, it was due to consequences of immigration for domestic policy-making and the pressures derived from that. Thus, it is necessary to delineate the process of immigration to Western Europe after WW II, in order to appreciate the distinct challenges raised by various dimensions of immigration and to better understand how they affect the policy making of the EU states. Three main waves of migration are of utmost importance in this study.

The capture of labour immigration to Europe which occurred massively in the 50s and 60s was due to the post-war economic boom that created labour shortage in the European labour markets. Thus in order to remedy this situation, private employers and governments across Europe actively recruited cheap foreign labour. These immigrant workers made considerable contributions to the economic reconstruction and prosperity of Europe. These migrant workers were referred to as “guests” and they were to return to their countries of origin when labour

40 Mainly addressed cross boarder issues of terrorism between member states, oriented, thus more on security.
41 The main goals of AHIG were to emphasise the importance of each states external border controls to security to community as a whole and to facilitate the coordination of national policies. The AHIG, s method was to make policy recommendations to national related ministers.
42 MESSINA; 2002; p 99
conditions in Europe had changed. Unfortunately, contrary to this expectation, most of the migrants decided to settle permanently in Europe. Furthermore, economic recession in the early 70s which resulted from the oil crisis influenced most of the European governments to stop immigration by terminating recruitment agreements. This was a significant period because of the shift to a more restrictive policy.

Family reunification was the second wave of immigration policy in Europe. Settled migrants began to bring their relatives into Europe. The liberal democratic nature of domestic environment at that time allowed it. The EU states could not unilaterally stop this unwanted and unforeseen reality.

The third wave of immigration to Europe was referred to as asylum and illegal migration; this was witnessed all over Europe in the early 1980s. The origin of this new wave can be divided into two circumstances: reduction of the scope of legal migrants by restrictive policies, and the end of the cold war which resulted in a number of conflicts and revolutions in the late 1980s and early 1990s. Based on humanitarian grounds and domestic constraints such as judicial and bureaucratic constraints as well as the result of international conventions the receiving countries had initially far less rooms to restrict the flow of asylum seekers and refugees. The difference between the various waves is that, unlike the previous wave that contributed to the welfare states, the third wave instead posed as a burden to the welfare states in the sense that the asylum seeker depended on public benefits of the receiving states. The image of new immigration has therefore been affected by this development leading to a negative look and reactions on asylum seekers in the welfare states and thus perceived as a dangerous threat.

The third wave of immigration flow is very significant because it has become so central to the politicization of migration since the 1990s. This was related to the development of the integration processes achieved by single European Act of 1985. SEA was expected to reach the completion of the common market, including the free movement of people within the community territory by 1992. Because the internal free movement and abolition of internal boarders posed the challenge of external frontiers, control at the boarders of the single market and internal

43 GEDDES; 2002: 19-20.
44 MESSINA; 2002: p 109-110
security policies, supranationalisation of intra-EC free movement of people by treaty provision necessarily made immigration and asylum issues common interest for EU states. Thus low politics of free movement impelled cooperation and integration in high politics of immigration and asylum. However, while free movement was constitutionalised at the EU level, it was not applied to immigration and asylum and that has remained a topical issue for intergovernmental cooperation and are largely unchecked by judicial overview or democratic accountability at both national and supranational levels. These factors consequently gave impetus for cooperation on the sensitive issues such as controlling the national territory and population which is considered the very core of state sovereignty. The Schengen agreement, signed by five pro-integration countries (Belgium, Germany, France, Luxemburg and the Netherlands) in 1985, was the first coordinated institutional effort to achieve multilateral cooperation. But it did not initially include all the member states and was negotiated outside EU framework. Schengen involves some important measures that later became central for shaping EU common immigration police. Geddes notes that, Schengen signatories were pushing fundamental EC objectives, albeit beyond the constraint imposed by the EC legal and political order, also excluding those reluctant members to cooperate on the immigration and asylum issues. At the core of the Schengen agreement are commitments by the signatory states to dismantle their internal border control regarding their nationals, establish common external boarders, adopt a common visa police for TCN’s strengthen internal controls, designate a state responsible for the review of an asylum claim, and exchanging of information by creating a common Schengen information system (SIS).

45 GEDDES; 2000: p 3-5
46 LAVENEX & UCARER; 2000: p 22.
47 But came into force only after 10 years and now includes almost 20 member’s states excluding the UK and Ireland.
48 By articulating the notion of a responsible country for handling asylum claims, Schengen countries agreed that only one Schengen country should be responsible for seeing an asylum request to completion. This was to prevent asylum seekers to lodge multiple applications in those countries. An innovative information exchange was created for that purpose.
49 Ibid .pp 82-84
50 Principal aim of the Dublin convention was to harmonized most asylum procedures across EU thus to reduce incidents on “asylum shopping “giving only first state of entrance to decide on the case.
The second document that came out of the European intergovernmental negotiation was the Dublin convention of 1990 dealing with mainly asylum matters, but it came into effect in 1997. This convention basically duplicated the Schengen provisions concerning asylum issues.\textsuperscript{51}

\section*{3.2. Formal intergovernmentalism: Maastricht Treaty.}

Signed in 1992, the Maastricht treaty created the “third” pillar of the EU under the name of justice and Home affairs (JHA) and placed immigration and asylum issues under this EU based institutional setting. Because of the strong opposition from some member states to give up competencies to supranational institutions, Maastricht treaty formalized, but did not super nationalise cooperation on immigration and asylum policy by drawing co-operations that had been outside of the treaty into intergovernmental pillars of the newly created EU. Title VI of the Maastricht treaty dealt with JHA cooperation. Article K.1 listed issues that were regarded as matters of only “common interests”, not “common policies”.\textsuperscript{52}

i. Asylum policy

ii. Rules governing the crossing of persons of external member states and exercise of control therein

iii. Immigration policy and policy regarding nationals of third countries

iv. Their conditions of entry to and movement within the territory of member states

v. Their conditions of residence within the territory of member states, including family reunion and access to employment.

vi. Combating their unauthorized immigration, residence and work on the territory of member states.\textsuperscript{53} From the above points, it is clear that immigration integration measures were limited and did not possess a sure footing in the treaty, while there was clear preference convergence on the tight control aspect of immigration.

The legal basis for the immigration issue was weak, it did not involve the binding regulations and directives. Instead three soft policy instruments were specific for the third pillar were

\begin{itemize}
  \item \textsuperscript{51} MESSINA; 2000: p 100.
  \item \textsuperscript{52} GEDDES; 2000: p95-96
  \item \textsuperscript{53} Article K1 also includes other issues such as combating drugs trafficking, terrorism, police cooperation and others. Immigration and asylum were thus place alongside internal security issues. Immigration was constructed as an external challenge and as an internal threat to societal stability and cohesion.
\end{itemize}
available for members: joint positions, which has not any binding power, joint action which depended on unanimity to gain binding effect, conventions, which requires ratifications at national level and that creates cumbersome procedures prior to their entry into force.\(^{54}\)

While the Maastricht treaty changes represented an improvement over the previous ad hoc arrangements, this new institutional arrangement was plagued with varieties of governance problems, which hindered its effectiveness in the years that followed the implementation of Maastricht treaty.\(^{55}\) But what so ever the case, regular consultations became the rule as the Union institutions tried to negotiate their space within the emerging structures. This then drew immigration and asylum issues closer to the EU.

### 3.3 Communitarizing immigration: The Amsterdam Treaty.

The Amsterdam treaty was committed to the development of an area of Freedom, justice and security. The treaty was signed in 1997 but came into effect in 1999; it was the first step towards a common EU immigration policy. The Amsterdam treaty changed the status of immigration and asylum matters from the third pillar to the first pillar via a new title IV. This implied that the EU gained competence on immigration matters.\(^{56}\)

Immigration and asylum were communitarized in the sense that they moved to the community pillar, but were not ‘supranationalised” in the sense of being made subject to the day-to-day process of integration. But the compromise could however be achieved if granted. Denmark, the UK and Ireland opted – outs or the rights to be bound by the policy are output unless they choose so, by adding flexibility clause to the treaty.

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54 It created a coordinating committee comprised of senior representatives from each state and representative from commission to advice the council on immigration and asylum matters.

55 Regarding this intergovernmental cooperation, there were two kinds of criticism emerging: first from the refugee and migrants rights advocates in the ace of the increasingly selective and restrictionist practice that was coming out of Brussels. Second one was about institutional structures of Maastricht – at that point highly secretive and non democratic – that was producing these new policies.

56 Article 63 of the EC treaty provides, that in the five years following the entry into force of the treaty of Amsterdam (1 May 2004) the council will adopt:

- measures on immigration policy within the following areas: conditions of entry and residence, and standard on procedures for the issue by member state of long term visas and resident permits, including those for the purpose of family reunion, illegal immigration and illegal residence, including repatriation of illegal resident.

- Measures defining the rights and conditions under which nationals of third countries who are legally resident in a member state may reside in another member states. measures adopted in point 3 & 4 shall not prevent any member state from maintaining or introducing in the area concern national provisions which are compatible with this treaty and with international agreements.
There was a change in the decision-making procedure for “soft law “instruments were abandoned. Immigration and asylum were made subject to standard EU policy instruments, such as binding regulations, decisions and directives. However, the balance of the Amsterdam treaty was towards the consolidation of restrictive emphasis with limited EU competence for issues affecting the rights of migrants. Some other key achievement of the Amsterdam treaty is that it made provision for expanded anti discrimination provisions to cover racial or ethnic discriminations and it fully incorporated the Schengen acquis into the EU single institutional framework.

Some critics however argue that such institutional progress towards a common immigration regime still favours a “least common denominator approach “, fostered by the unanimity rule which prioritises the position of member states . The review and control functions of the EP and ECJ are still limited, meaning that, issues of transparency and democratic deficit remain as prime concern. Thus, while decisions at the Amsterdam treaty came at the expense of creating a multispeed Europe, it can still be hailed reinforcing European Cooperation. Despite all the above criticisms, the Amsterdam treaty opens the door for new institutionalizations of immigration policies. Post Amsterdam period is increasingly associated with the activeness of EU institutions, especially when the commission is trying to take a crucial role in shaping the preferences of member states in the construction of EU level policies .With the above review of the historical developments surrounding EU immigration policy, it will be good to explore some key questions and problems regarding the issue.

3.4. Contextualization of the EU Immigration Policy.

All member states of the European Union are affected by the flow of international migration, for this reason they have all agreed to develop a common immigration policy at EU level. The European commission has made proposals for developing this policy, most of which have now become EU legislation. The main objective is to better manage migration flow by a coordinated

57 GEDDES; 2000: p 125 - 126
58 The main problem here was that decisions made by the Schengen, secretive and unaccountable Executive committee would immediately after the rectification of Amsterdam treaty become community law.
approach which takes into account the economic and demographic situation of the EU.\textsuperscript{60} In spite of all the restrictive immigration policies which have been in place since the 1970s in most member states, large numbers of legal and illegal migrants have continued to come to the EU together with asylum-seekers. Realising that a new approach to managing migration was necessary, the leaders of the EU set out at the October 1999 European council in Tampere Finland, the elements for a common EU immigration policy. The approach agreed in Tampere in 1999 was confirmed in 2004 with the adoption of the Hague programme, which sets the objectives for strengthening freedom, security and justice in the EU for the period 2005-2010.\textsuperscript{61}

From the early cooperation moves on immigration issues till today, the guiding principles of European migration policy have been the liberalization of migration inside the Union through freedom of movement and safeguarding of control over migration from outside the Union. For the past three decades, the European migration policies loom between restriction and expansion, inclusion and exclusion as well as intergovernmentalism and supranationalism.

Though much has been done to communitarize the European migration policies, it is still intergovernmentally inclined. This is because from the beginning, the EU level cooperation on immigration was shaped by preferences of member states. The motivation for cooperation was to escape from domestic, judicial and bureaucratic constraints that impeded the attainment of restrictive policies. This may be explained further by the fact that the scope for judicial and political control is far weaker at EU level than at national level. Thus the EU immigration policies was to build a “fortress Europe”

Geddes describes EU migration policy as a “net” which is designed to “catch” certain immigrants and “allow others go, than a fortress.\textsuperscript{62} An example is in the case where highly skilled workers from developed countries can move relatively easier. They are encouraged and facilitated by European countries to fill the shortages in manpower and counter the effects of an ageing population. While on the other hand, unskilled workers or asylum seekers have become increasingly “unwanted”, the subject of restrictive policies has encountered formidable

\textsuperscript{60} Justice and home affairs, European commission September 2007
\textsuperscript{61} Ibid.
\textsuperscript{62} GEDDES; 2000: p6.
These categorizations bring to light the capacity of states to categorize migrants on this basis in order to regulate international migration, as well as to develop international cooperation that can facilitate the attainment of these tasks. The reasoning being that one of the important features of EU immigration policy is that immigration was always considered as a security-oriented matter. “New” migrants were often perceived as “threats” to the society and something “unwanted”. Moreover, immigration policies of the EU are largely unchecked by judicial overview or democratic accountability at both national and supranational level due to minimized role of supranational institutions. Because the EU immigration policy is not dealing with every aspect of immigration the cooperation on immigration is an uneven process. Drawing from the preceding analyses, the EU would seem to have been successful in developing common policies concerning a common and strict visa policy, the adoption of high standards control at the external borders, the fight against illegal immigrants, the limitation of access to asylum procedures, and return of rejected asylum seekers and illegal immigrants.

Messina explains that problems of this nature emerge from the facts that immigration related policy agendas of member states only partially overlap. In the policies areas were there has been a great agreement amongst member states, such as asylum, border control significant progress has been achieved to generate common policies. On those areas where there has not been much convergence of state objectives such as labour migration, little EU level policy has been reached. This is because in terms of unanimous decision-making one reluctant part can be an obstacle in progressive agreement. If one is to go by Lowi, s application, the fourfold classification of policy – making patterns, immigration and asylum can be seen as a “constituent” policy sector, within which the rules of the game remain matters for negotiations but are already fairly well structured by national response to the control and security dimensions of policy. Only in matters of visa policy, qualified majority voting (QMV) is applied. But, with regards to the decision making procedure, (unlike other community policy areas) council is not sharing its decision-making rights with the European parliament. As regards the procedure and requirements for the issue of

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63 Ibid.
64 Messina; 2000: p 118-119.
65 Geddes; 2000: p 41
visas by the member’ states and rules of uniform visas, the treaty provides for co decision procedure to apply after transnational period without the council having to take a decision.\textsuperscript{66}

3.5. EU Decision-making institutions and their roles on issues of immigrant integration.

The institutions of the EU have important roles to play in the immigrant integration process. To study the scope of these supranational institutions in the area of immigration, it is necessary to access their competence and their ability to shape policy outcomes. For this reason it would be germane to examine the roles played by each of the institutions and their competence in policy-making,

3.5.1. The European Council and the Council of Ministers.

The European council coordinates the foreign policy activities of the EU as provided in the Maastricht treaty. The role of the European council is twofold. First, it provides overall political directions to the EU. Secondly, it is competent to rule in matters which remain unresolved at the level of the Council of Ministers.\textsuperscript{67} The European Council sets the agenda for issue of international character and expresses the position of the EU in questions of external relations as well as initiates cooperation in new activities.\textsuperscript{68} Given the constant sensitive natures of its related issues immigration remains the prerogative of the European council/ The Council of Ministers because it is an area where member states are directly represented. Although the capabilities of the council have been diminished, through successive treaty reforms, it still retains sufficient decision-making powers. The Justice and Home Affairs (JHA), the council is responsible for immigration policy issues, which bring together related ministers about once every two months to discuss the development and implementation of common cooperation policies in this sector. It permits dialogue, mutual assistance, joint efforts and cooperation between immigration executives of the now 27 member states. Unanimity in this case according to the treaty of Amsterdam, is the main decision making pattern in council at least for a transitional period of

\textsuperscript{66} Justice and home affairs accessed: 20/03/08
\textsuperscript{67} WHITE; 2001: p11
\textsuperscript{68} PETERSON and SHACKELTON ; 2002: p33
five years. Only in matters of visa policy area, QMV is applied. Unlike other community policy areas, the council does not share its decision making rights with the European Parliament. However, it is laid down that the council acting unanimously after consulting the European Parliament, may take a decision with a view to making all or part of the area of immigration to the co decision procedure. As regards the procedures and requirements of the issue of visas by the member states and rules on uniform visas, the treaty provides for the co decision procedure to apply after the transitional period without the council having to take a decision.

The presidency of the council plays the role of providing impetus for proceedings, The management of policy and setting the agendas to depends a large extent, on the presidency in such sense that every six month priorities might shift with particular national concern. The presidency is assisted in this task by the general secretarial of the council. The European council, as a general intergovernmental body also plays an important role in setting priorities, strategic commitments and political guiding principles of the Union in certain matters. With the initiative of the commission, a special European Council Meeting was exclusively devoted to JHA matters in October 1999 in Tampere Finland. This was very significant step in the domain of immigration. The Tampere European council meeting clearly defined the policy framework in which member states may create a common immigration policy. It set the political guidelines and some concrete objectives for the developments of a common EU policy within the key areas identified as follows:

i. A common European asylum system based on the full and inclusive application of the Geneva Convention
ii. A comprehensive approach in respect to partnership with countries of origin which addresses political, human rights and development issues in countries and regions of origin and transit
iii. Guarantees fair treatment of TCN residing legally in the territories of its member states through a more vigorous integration policy aimed at granting them rights and obligations comparable to those of EU citizens.

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69 This was criticized by many because, unanimity means that interest of one single state can be very decisive in policy outcome …….even after the end of the five year period all members must agree to move toward QMV.
70 EU common immigration policy 2008
iv. Work to harmonize national legislations regarding conditions for entry and residence of TCN.

v. To attain all this goals the council with initiative of the commission reached some important agreements in the following period of time till today. According to Penninx, since 1999 some 50 legislative proposals have been made and only 23 of them became binding regulations: and they were related to border and visa (11), illegal immigration and expulsion (9), asylum (5), and only one to legal immigration. The first council directive on legal immigration was adopted in 2003 and it was on the basis of family reunification. But the council could not agree on important directives of commission on admission of immigrants for employment purposes.

3.5.2. European Commission

The Amsterdam Treaty gave the commission the sole rights to initiate immigration issues after the transitional period. During this transition period it has to share this role with member’s states. During this five years period, the commission has been very active and seemingly assume a leadership position in the immigration policy-making processes. The European council gave a mandate for the commission to develop a common immigration and asylum policy in the Tampere summit. Ucarer observes that the commission is now a “sidekick no more” for immigration policy, As per Ucarer, this is because constitutional delegation responsibility by Amsterdam treaty and organizational changes within the commission has strengthened its role in the policy making processes and agenda setting. The commission takes part in the meetings of the council, COREPER, the strategic committee and the working parties. The commission’s communication on migration and asylum of 2000 and that dealing with the coordination of migration policies of 2001 marks a supranational response and provides a better and more

71 PENNINX; p27/28.
72 Other directives such as concerning the status of third country nationals who are long term resident (November 2003), laying down minimum standards for the reception of asylum seeker (January 2003), implementing the principle of equal rights and treatment between persons irrespective of racial and ethnic origin (June 2000) establishing a general frame work for equal treatment in employment and occupation (November 2000) were adopted by council.
73 UCARER; 2001
comprehensive idea of what common policies in these area might look like.\footnote{Moravsik defines supranational entrepreneurialism as exploitation by international officials of asymmetrical control over scares information or ideas to influence the outcome of multilateral negotiations through initiations, mediation and mobilization.} Moreover, a scoreboard was created to set a progressive timetable as well as for developing legislative frameworks according to the Tampere programme. This implied a concrete task to propose certain legal framework during the transition period. These developments also indicate the emergence of new structural approach towards a common immigration policy. Despite the impressive empowerment of commission over time, it is obvious that the member states still holds the regulatory powers and they are the key drivers of the national policies. This is because it is the policy directions are bottom-up, it is the preference of the member states that are taken into consideration, rather than the position of the institutions.

### 3.5.3. European Parliament.

The treaties ‘Amsterdam’ and ‘Nice’ in the area of policy and decision making process gave the European parliament co-decision powers after the adoption of the common principles and the basic rules governing those issues.\footnote{The matter includes movements of TCNs in possession of visa, illegal immigration and the repatriation of illegal resident persons, administrative cooperation in areas under title IV. Policy on asylum and persons under temporary protection will be moved to co-decision after adaptation of community legal frame work on related issues.} Though the transition period is limited and uncertain, the European parliament has periodically produced its opinions and critical views regarding community policies about immigration. It has the committee on civil liberties, JHA dealing with immigration matters. Thus the European parliament has always called for super nationalisation of immigration issues by applying QMV and co-decision.

### 3.5.4. The European Court of justice (ECJ).

Immigration policies at the EU level do not have much judicial constraints as in any other community policies. Because of the fact that national courts have opened the way for social and political space for migrants and their descendants, ECJ could be thought of to have a role to play at the EU level. Despite some constraints, the ECJ right of jurisdiction of title IV issues has been
constrained in three ways: Preliminary rulings can only be sought in against decisions which have no judicial remedy under national law. Secondly, ECJ is excluded from measures relating to the maintenance of law, order and safeguarding of national security. Thirdly, the ECJ can rule on interpretation of title IV on a request from the council, commission and member states. On grounds of the above, the democratic and judicial oversight at EU level may highlight the highly limited role of the ECJ. The above also indicates the great attempt by member states to limit the scope of unintended outcomes of communitarization of immigration issues through treaty provisions that restricted the ECJ’s ability to involve itself in immigration and asylum matters. The commission, in its communication of 2001 proposed to use the open method of coordination (OMC) for community immigration policy.

3.6. Open Method of Coordination (OMC) as an instrument of cooperation for immigration policy.

The OMC is based on soft law whereby, there is no legal base for guaranteeing compliance to the objectives but only to control. In its communication of 2001, the commission proposed to use OMC for immigration policy. Despite the communitarisation of most immigration matters, member states still have sole control and competence over a number of issues such as, economic migration and integration policy. What explains this situation is the sensitive nature of immigration whereby it has the tendency of affecting the civil society in much direct manners. As such, the commission considers that these issues should be discussed openly both at the national level and at the EU level so as to come to a consensus. Thus, for the purpose of OMC, the commission called for a reinforcement of the exchange of information and experiences on migration between member states. The open method of coordination was designed to support and compliment community legislations on immigration and also to provide a frame work for reviewing the implementation its policies and legal instruments with member states. The Commission is deemed to be the sole coordinator in the implementation of the OMC. It will have

77 Ibid.
78 Ibid.
80 E C; 2001: p 6-7.
the responsibilities of preparing European guidelines to be approved by the council, monitoring implementation of legislations, ensuring coordination of national policies, making proposal for new legislations for the implementation of common policies, Also, to promote the exchange of experience and the best practice among member states as well as the evaluation of the implementation of guidelines.81

The above functions and activities point to the commission’s intentions to develop a completely new and common comprehensive policy on immigration. The commission considered that the civil society (politicians, local authorities NGOs, associations of migrants, the media) and other relevant organizations should be actively involved in open and informal debates on such issues both at the national and European levels 82 Soft law mechanism such as the OMC takes into account the national differences and this makes member states more willing to cooperate. The main shortcoming of the OMC is that it depends mostly on goodwill of member states, and their commitment to cooperate. Unfortunately the above mentioned ideas remained only as proposals. Member states turned to be reluctant to implement this progressive methods on immigration. This leads to a situation where the implementation of the ideas from the OMC becomes highly depended on the cooperation of member states and relevance to their contexts.


While the doors to Europe are being closed through restrictive immigration policies both at national and EU level, recent economic and demographic developments has introduced new realities to be tackled. The economic changes stems from the fact that most EU member’s states are facing a high shortage of skilled labour and relatively low labour. For these reason, there have been some domestic legal attempts to open ways for such highly skilled immigrants. Demographic factors such as ageing and low growth rates of the European population are current topical issues of political debates. If demography is destiny, then it appears that destiny for some

81 To this end, the commissions will consult widely by making appropriate arrangement including the setting up of committees and working groups /with senior officials, experts in immigration matters from the member states, representatives of social partners and of local and regional authorities, experts on particular topics under review, and with other representatives of the civil society.

82 EC; 2001: p14
countries in Europe and around the world is bleak. The demographic transition in many countries includes a rapidly ageing population, the disruptive potentials of unbalanced migration, increasing economy, social and healthcare burden and a weak diplomatic and competitive position on the world arena. Recent figures indicate that the European Union has 21 of the 25 lowest –fertility in the world. As a result, by 2050, one in three Europeans will be more than 65 years old, up from one in six in 2000.\textsuperscript{83} These changes have two implications which will become more visible with time. There is increasing recognition that the rise in ageing population will lead to a serious reduction of labour supply in the EU. It will also increase the demand for care services for old people and will lead be much more challenging in the welfare state. Besides, the current operational environments of various nations and the EU in general which is the knowledge, economy suggests the necessity for highly trained workers to enable nations or continents like Europe reposition themselves in the global economy. The above situations reinforce the position of immigration in the policy arenas as a complimentary strategy. Immigration becomes viewed as a strategy to reduce the projected decline in labour supplies and in view of achieving the Lisbon target of 70\% employment or Europe as a truly ‘knowledge-based economy’ by 2010.\textsuperscript{84} Taking all the above factors into account, the commission wants to open up a new phase in EU immigration policy that would have a more open approach to immigration. The EU underlines in its various communications, the necessity to foster “pro – active “immigration policy”. This proactive immigration policy entails creating various legal channels for immigration which would address the need for the EU labour markets. The commission expressed the urgency to adopt a more flexible approach common to all member states on the issue of legal migration.\textsuperscript{85} Despite all these efforts by the commission, there have not been very clear political commitments and directives in the council due to the highly political sensitivity of the issue among the population and member state. The council has not yet reached agreement on the admission of TCN’s for employment purpose. The re-insertion of immigration into the socio –economic agenda of the EU is very remarkable as it emphasizes the importance of immigration to European societies and calls for forward looking policies on immigration. It is tantamount to change the negative views about immigrants as “unwanted people in the sense that

\textsuperscript{83} Rand Europe; 2008
\textsuperscript{84} Commission of EC; 2003: p 12-16
\textsuperscript{85} The commission does not propose quotas system on EU scale, which would be “impracticable “, the propose system will produce periodic reports of member states of economic migrants needed in the future.
becomes as a solution rather than a problem in that direction. The clear conclusion is that a common EU immigration policy is underway to its formation. Having examined the Common EU migration policy, the next chapter will be dealing with the EU immigrant integration aspects of EU policy.

CHAPTER FOUR

4. IMMIGRANT INTERGRATION POLICY AT EU LEVEL.

Immigrant’s integration is generating many debates across the enlarged European Union. Some countries have turned from emigration into immigration countries and are confronted with the issue of integration for the first time. Older immigration countries join them in the focus on newly arrived immigrants, but they continue to promote the participation of settled immigrants while changing previous unsuccessful polices. The diversity of approaches represented across Europe suggests different answers to the question of how to promote integration. The concept and practice of integration varies not only as a result of specific immigration histories. Different policy regimes and variations in the role of governments and civil societies have led to divergent approaches to the integration of new immigrants and asylum seekers. This section examines the integrated policy processes on immigrant integration at EU level.

4.1. EU Policy on Immigrants integration.

Immigration and integration policy needs to complement each other in order to achieve long term objectives. According to Penninx, the lack of a consistent and transparent immigration policy is an impediment to effective integration policies. The lack of consistent integration policies and the obstacles to the increasingly diverse streams of newcomers led in turn to mainly negative perceptions of migration and immigrants – hence reinforce defensive immigration policies. Despite all the restrictive policies of European states and EU, immigration to Europe has continued to increase. The post-war immigration created a large amount of immigrant population in Europe with distinct cultures, language and traditions. Currently, there are almost 20 million immigrants leaving in EEA which makes about 5.3 % of the total population.

86 NIESSEN & SCHIBEL: 2004
87 PENNINX: 2004, p1
according to the organization of economic cooperation and development (OCED). According to Ucarer, western societies are increasingly having the apprehension that immigrants will weaken national identity, and that poses a threat to the welfare state by wishing to partake in the welfare benefits that were designed for nationals only. Thus across Europe, xenophobia and discrimination was exhibited against permanent immigrants by nationals. Throughout the EU 45% of the population considered that the number of foreigners were too many and only 10% considered that they were not too many. Despite the economic benefits of post war immigration, it did have its own deficits to the European society, and thus posed a problem in the integration process. According to Messina, “the predominately non white, non western and often non Christian population into the primary white, nominally Christian society of western Europe”. As immigrant integration is relative in the EU agenda; there are limited political activities and development. Two major factors have led to pressure for a more effective EU strategy to promote the economic, social, cultural and political integration of migrants namely: the failure to recognize and integrate past migrants and secondly, the concern about the rise in support for the equal rights of the immigrants in the community. Another factor leading to an increased focus on integration at EU level is the belated recognition that immigration will be part of Europe’s future. Many authors argue that, EU member states have largely failed to properly integrate immigrants; their integration policies have not been sufficiently effective so far. Thus, if the democratic states do not succeed in the proper integration policy, they run the risk of having ethnic and social segmentation. As the EU is acquiring more and more competence in the immigration field, its supranational institutions have been developing more comprehensive and holistic EU immigration policy. Furthermore, EU policy agenda were busy with elaboration of restrictive measures to keep TCNs out of the union, rather than to improve the status of those TCNs nationals that were already settled within its boundaries. This ideology was remedied by the Amsterdam, and following the Tampere council meeting, both meeting had very important

88. OECD; 2008
89. UCARER & PUCHALA; 1997: p8
90. MESSINA; 2002: p 115
91. Ibid p 208.
92. PENNIX & GEDDES; 2003; LAVENEX & UCARE; 2002.
93. Particularly, Amsterdam treaty introduced a new article 13 that extended the anti discrimination provision to include gender, race. Ethnicity, religion etc.creating further opportunity for progress in this field.
roles to play in future development of the integration policy initiatives.\textsuperscript{94} The Tampere council defined integration as one of the four key elements of EU common immigration policy. It states that “the European Union must ensure fair treatment of TCNs who reside legally on the territory of its member states. It prescribes the enhancement of non – discrimination in economic, social and cultural life and develop measures against racism and xenophobia.\textsuperscript{95} The commission has been very active so far to propose legislations, present some common framework by communication on immigration, integration and Employment in 2003. Another important relating document is gained from the commission, the Annual Report on integration of 2004.

4.2. What is Integration?

The diversity of arenas to which the word ‘integration’ applies in the EU renders it difficult for one to make a concise definition. In this thesis, it shall be defined with reference to the Commission’s conceptualisation. According to the commission’s relevant communication, ‘integration’ is defined as “ a two – way process based on mutual rights and corresponding obligations of legally resident TCNs and the host society which provides for full participation of the immigrants. This signifies that it is the duty of the host society to ensure that the formal rights of immigrants are in place in such a way that the individual has the possibility of participating in the economic, social, cultural and civil life. On the other hand, those immigrants respect the fundamental norms and values of the host society and participate actively in the integration process, without having to relinquish their own identity.”\textsuperscript{96} The core elements of integration laid down by the commission are as follows:\textsuperscript{97}

i. The right for an immigrant to maintain his/ her own cultural identity
ii. Rights comparable to that of the EU citizens and corresponding obligations
iii. The respect for fundamental values in a democratic society

\textsuperscript{94} Tampere European council (1999) included the openly stated recognition that EU has become an immigration area, and that legally residing immigrants should have as much as possible rights as EU migrants and that integration of these immigrants should be strive for.
\textsuperscript{95} MELIS; 2001: p31.
\textsuperscript{96} Commission of EC; 2003: p 18.
\textsuperscript{97} Ibid: p45.
iv. The active participation in all aspects of life on an equal footing (social, cultural, economic, political and civil.)

As per Penninx, integration is the process of becoming an accepted part of society. To him the more a society is integrated, the more closely and more intensely its constituents parts relates to one another. There are two parties involved in integration processes: the immigrants with their particular characteristics, efforts and adaptations, and the receiving society with its reactions. The receiving society /its institutional structure and the way its reacts to newcomers – is much more decisive for the outcome of the process.98

Immigrant integration is a multifaceted process. I shall hereby distinguish between the institutional dimension and the normative dimension. Two of the very important aspects of immigrant’s integration emerge from its legal – political and cultural aspects.99

The legal – political aspects define the legal status of immigrants and are affected by the ‘jus soli’ and ‘jus sanguinis’ systems of citizenship of member states. The jus soli system is based on the principle of territoriality; under this system all people resident in a territory have the same rights, irrespective of their ancestry or lineage. The ‘jus sanguinis’ system is acquired by consanguinity (governed by the principle of descent, citizenship and political status. That is; birth passing from one generation to the next along “the lines of blood”100 Cultural aspect also involves two tendencies: multiculturalists and assimilationist. According to multiculturalism,” integration” means that immigrants should adjust to the norm and regulations of the receiving society while being allowed to preserve their own culture. Assimilation on the other hand is when immigrants are expected to assimilate to the host society; it requires a significant degree of cultural adaptation from the immigrants to their new environment, thus assimilation involves the loss of at least some of the distinctive cultural attributes of the minorities.101 The aim of any integration policy is to show how best it can incorporate immigrants into the western societies in a way that satisfies both the aspirations of new ethnic and racial minorities as well as the

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98 Penninx; 2004
99 Entzinger & Bierveld (2003: p.12) define those aspects so: institutional dimension refers to an increase in immigrant participation in the major institutions of society – integration, normative dimension refers to changes in the immigrant’s cultural orientation and identification - acculturation.
100 Entzinger & Bierveld; 2003: p12
101 Ucarer & Puchala; 1997: p 196.
expectations of the majority populations and government of the host society. Based on the above clarifications, it will be necessary to explore the EU level strategies, the instruments, factors and the actors influencing this policy domain.

### 4.3. Legal framework for EU immigrant’s integration

The starting point of EU legal framework for immigrant’s integration was in Tampere 1999. The commission took the principle set out in the Tampere Council meeting. The principles prescribed a “more vigorous integration policy” aimed at legally granting TCNs resident rights and obligations comparable to that of EU citizens as a starting point when it proposed legislations to establish common framework for status of TCNs. The directive on the right to family reunification\(^{102}\) was adopted in September 2003. The establishment of stable family communities guarantee that migrants are able to contribute fully to their new society. The directive recognizes the right to family reunification for TCNs holding two years or more who have reasonable prospects of obtaining permanent residence. In November 2003, the council approved the directive concerning the status of TCNs who are long term residents obtained after 5 years of stay.\(^{103}\) According to the documents, resident (which is permanent) will be legal and continues stay. This status allows TCNs to be within the EU under strict conditions (such as jobs offer), but they are not entitled to move freely and seek a job.\(^{104}\) EU has also developed the legal framework for combating discrimination, which can seriously impede the integration process, and in particular, common minimum standards to promote equal treatment and to combat discrimination on grounds of racial or ethnic origin. EU adopted a series of anti-discrimination measures, such as: the directive implementing the principle of equal treatment between persons, irrespective of racial or ethnic origin and the directive establishing a general framework of equal treatment of employment and occupation which was adopted in June and November of 2000.\(^{105}\) The scope of community legislation banning racial discrimination is wide and covers


\(^{104}\) NISSEN; 2004 : p5-6

\(^{105}\) The lobbying of pro-migrant groups with the sponsorship of commission had played important role in adopting those ant-discrimination measures.
employment, education, social security, healthcare, access to goods and services, and to housing. These directives were to be transformed into national laws within the dateline of 2003 and the commission was to monitor this process. The EU has made progress towards granting the TCNs the same protection as EU workers in the field of social security when moving within the EU. Council regulation 106 was approved in May 2003, extending the provisions of regulation No 1408/71 and regulation No. 574/72 to TCNs that are not already covered by those provisions solely on the grounds of their nationality. The above legal instruments indicate the progress in the field of migrant inclusion and points to the norms setting functions of the EU, even if most of them do not directly address the European integration policy. The reason is that the EU has not yet got the full competence on integration. But it becomes clear that the EU is not prevented from influencing the member states policies.

4.4. EU Policy instruments for immigrants integration.

In its communication, the commission proposed to use a variety of instruments and resources for constructing EU immigrant integration policies at EU level.

4.4.1. Open method of Coordination.

OMC was designed to help member states progressively design their own policy and to do so in a coordinated way at the EU level. OMC establishes the policy guidelines set at community level, which are then translated into national and local policies through national targets. The Commission mainly coordinates this process by creating benchmarks and indicators to measure the progress and exchanges of experiences. The main disadvantage of the OMC as pointed by Bernd Schulte, is that it solely depends on voluntary cooperation and goodwill of the member states and therefore sanctions cannot be enforced if the criteria are not respected107. Despite this positive move of OMC, the council is still reluctant to enforce it as a policy instrument for the immigration policies. Member states have not yet translated into reality the purpose of OMC on immigration.

106 Council regulation EC, No. 895/2003 of 14 may 2003 extending the provision\'ls of regulation (EEC) No. 1408/71 and regulation (EEC) No.574/72 to nationals of third countries that are not already covered by those provisions solely on the ground of their nationality.

107 European policy centre,(2004)
4.4.2. The National Contact point on immigration.

The national contact point was created in 2003 following the Thessalonica Council Meeting. The purpose of the national contact point was to reinforce the exchange of information on existing integration policies at national and local level. This approach developed from the fact that the integration process begins at the local and not the EU level. This group of the national contact point meets regularly under the coordination of the DG JHA. The JHA came out with the handbook on integration, which is based on the studies conducted between the contact points. This hand book concentrated on two specific elements of integration programs of member states: introducing programmes for newly arrived immigrants and it also recognized refugees and civic participation. This handbook was designed for policy makers and practitioners.

4.4.3. European migration Network

The European migration network was established in 2002 by the commission as a pilot project to establish a system for exchanging information on asylum, migration and countries of origin. Their main function was to monitor and analyse the multidimensional phenomenon of migration and asylum by covering its political, legal, demographical, and socio-economic implications and identifying its root cause.

4.4.4. Annual Report on Immigration and Integration

The first Annual reports were issued in 2004 and it constituted a new instrument to review the development of the common immigration policy. It is based on information from the different EU policies affecting immigrants, namely: NCPs on integration as well as on the NAPs for employment and the NAPS for social inclusion. The aim of this report is to ensure that the needs of immigrants are properly outlined in all related policy areas such as employment and social inclusion, and to inform the council on the progress made in those police areas.

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110 Join inclusion Report; 2001
4.4.5. Financing integration.

In order to fully support the integration process, the EU set aside some funds for direct or indirect support of the project. One of the relevant sources is the European Social Fund. It supports integration through the equal target programme. Furthermore, community funds are being used under the multiannual programme for Enterprise and Entrepreneurship of 2001-2005 from the European Investment fund for micro-lending activities which benefits immigrants’ entrepreneur. In the field of culture and education, several action programmes targeting the integration of immigrants have been carried out under the Socrates, Leonardo da Vinci Youth, and Culture 2000 programme.\[111\] The European Refugee Fund was also made available to target immigrants. This fund was established in 2000, with its aim being to “support actions by the member states intended to promote the social and economic integration of refugees in view of enhancing, economic and social cohesion. The first phrase of this ERF came to an end in December 2004 and a new phrase was proposed by the commission for the period of 2005 to 2010. It gives more details to the integration activities, including social assistance and active participation in civil and cultural life.\[112\]

While in the year 2003, a new budget aimed at targeting the integration of TCNs came into existence, the INTI programme fund pilot projects for integrating TCNs with an emphasis on promoting open dialogue with civil society, developing consistent integration models, exchanging and evaluating good practices in the integration field and setting up networks at EU level,\[113\] in order to enhance dialogue with migrant’s organizations and as a means to overcome prejudice and intolerance within the EU.

4.4.6. Civic citizenship

Civic citizenship was introduced by the commission in its communication on community migration policy of 2000\[114\]. Civic citizenship was deemed to be an instrument that will give certain rights and obligations to immigrants to be gradually acquired over a certain period of years. This rights and obligations would enable them to be given fair treatment by their host

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112 NIESSEN; 2004: p 24-25.
113 Commission official website on Justice and home affaires 2008.
114 COM; 2000: p 757
states. The Commission underlines the importance of conforming the rights and obligations of legal residents who are TCNs in the frame work of the new constitutional Treaty by the incorporation of the charter of fundamental rights to a legally binding status\textsuperscript{115}. Most of its provisions are applicable to all persons irrespective of their nationality.

4.5. Policy Coordination with Other Important EU Policy Areas.

The multi dimensional nature of the EU integration processes requires the involvement of other policy areas, for instance; the integration of immigrants into the national or local labour market. This problem could be attributed to the fact that top EU level and even national policies could seldom sink effectively at different strata of the policy system down to the local labour markets. Besides labour markets are usually diverse and are controlled by their own dynamics. For this reason, the commission took some comprehensive approaches. This approaches required the involvement of other DGs in the integration policy processes and strategies. Amongst the approaches was the necessity for immigration to be reinstated into the socio – economic agenda of EU.

Social inclusion

This process was initiated in 2000 by setting some common objectives to combat social exclusion and poverty in Europe.\textsuperscript{116} The first NAPs against poverty and social exclusion submitted in 2001 identified ethnic minority and immigrants as being at high risk of social exclusion and discrimination. This situation was later improved in 2003 when NAPs realized that poverty reduction and social inclusion among migrants should be regarded as a priority. The commission encourages that greater attention be paid to issue of immigrants integration in a more comprehensive, integrated and strategic manner. Thus the Joint Employment and Joint inclusion Reports of the commission and relevant committee are called upon to monitor the progress at EU level.

\textsuperscript{115} Modalities of incorporation were discussed in working group 11 of the convention chaired by Mr. Vitorino. see final report of working group 11, WG11-16 of 22/10/2002. 
\textsuperscript{116} To facilitate participation in employment and access by all to resource, rights, goods and services and to prevent the risk of exclusion, to help the most vulnerable and to mobilize all relevant bodies in the fight against social exclusion.
The above mentioned factors affecting integration policies and hindrances to immigrant’s integration give the actors the guidelines to improve on immigrant integration policies. At this juncture, it may be necessary to know the actors in the EU migrant integration processes.

4.6. Actors in the EU Migrant Integration Process

Because of the complexity of the integration process, the issue of immigrant integration seem to necessitate the involvement of various actors at national level (local authorities), governmental and non government organisations (various interest groups) and some EU institutions. It would seem necessary to explore the role of each of the actors in the migrant’s integrations policy process.

4.6.1. EU Institutions

The EU institutions have the most decisive role in shaping the EU level policies on immigrant’s integration. However, they are not equally represented. Since EU supranational institutions do not yet have enough competence on those issues, there are still difficulties in intervening in the daily issues of immigrants. The scope of the EU activities remains limited. Yet, the commission seems to have shown a great interest in taking the lead by proposing a variety of innovative initiatives including budgetary allocations to pursue its pro-migrant and inclusive approaches. For instance; the Commission has been active in funding the programmes of pro-migrant NGOs with the objective of integrating migrants into the society and curbing down discrimination. The Commission also organizes and funds projects and programs that seek social integration for non-national immigrants in member states, to combat racism and xenophobia.\(^\text{117}\)

Although the European parliament remains marginal to immigration issues, it has taken a variety of actions to promote its social benefits in the EU, including dealing with the plight of immigrants. It supports anti discrimination campaigns throughout Europe. It has also been very instrumental in the promotion of the notion of European citizenship and social cohesion. However, due to the lack of substantive basis for the EP activity, its main function has been

\(^{117}\) Within framework of European year against racism 1997, different projects amounted to 4.7 million ECU were organized to raise awareness of racism and xenophobia in member states. Other projects are CAR, LIA.
perceived as being ‘persuader of national governments and potential ally for supranational institution and lobby group in the quest for deeper EU integration on immigrant’s issues.\textsuperscript{118} All of the above actors have great responsibility for a successful integration of TCNs into European societies.

4.6.2. National Governments

National governments are the main actors; because they are responsible for designing and financing the overall integration policies and strategies within the national borders. They are also the main actors responsible for implementing of EU level integration policies at national level. The commission notes that strong political leadership is required to promote pluralistic societies. Since governments are sole decision-makers in council, they can achieve very positive common solutions if they are willing to co operate. But national governments will seem to be constantly reluctant in situations where common roles may imply sacrificing their sovereignties.

4.6.3. Local Authorities and Actors.

Local authorities are responsible for the implementation of the integration policies. It is being observed that local authorities require more resources and instruments to act adequately and also, to involve the community and social services providers in the process. The social partners are facilitators of everyday integration in the jobsites. Local authorities are successfully collaborating with commission in certain projects that seeks the social integration of immigrants, to combat racism and assist refugees such as cities against racism (CAR)\textsuperscript{119} and local integration /partnership (LIA)\textsuperscript{120}.

4.6.4. Non-Governmental organizations and Interest groups.

Both at national and EU level NGOs play a central role in advocating on behalf of migrants and persons enjoying international protection.\textsuperscript{121} Geddes argues that, pro-migrants NGOs at EU level

\textsuperscript{118} Geddes; 2000
\textsuperscript{119} CAR ran in 1995-97 period and brought together local authorities and NGOs from 30 EU towns and aimed to promote the development and implementation of good practice and combine this with EU level exchange of experience between grassroots actors.
\textsuperscript{120} LIA involved 23 cities developing local action plans against racism.
\textsuperscript{121} EU Conference on immigration (2002)
turns to be relatively weak because public opinion across EU tends to be anti-immigration while non national migrants have limited access to local and national political systems.\textsuperscript{122} The most prominent EU level pro-migrant lobby groups are: Start line Group, European Union migration Forum (EUMF), European Council on Refugees and Exiles.\textsuperscript{123} The main function of all these groups is to lobby for the fair treatment of TCNs, social inclusion, anti-discrimination laws and for the free movement of TCNs. Pro- migrant advocacy groups at supranational level seek to exercise informal agenda – setting influence on EU level by establishing alliances with community institutions. They advocate “more” not “Less” Europe\textsuperscript{124} in immigration issues. This is, because ‘more’ Europe signifies more competence for supranational institutions on community issues. From the perspective of pro-migrant NGOs the solutions for fortress Europe, is not to return to start sovereignty, but rather more powers for the commission, ECJ, and parliament. That is; deeper European integration is a counter balance to the lowest common denominator decision – making.\textsuperscript{125} EU level pro-migrants groups are mostly based in Brussels and receive financial support from the EU. They are mostly umbrella organizations representing the interest of sub national and national organizations.\textsuperscript{126} The commission also has an interest in sponsoring interest groups as a way of adding legitimacy to EU decision-making while developing pro-integration coalitions.

4.7. EU Policy Contexts on Immigrants Integration

The EU aims in relation to immigration, economic growth and social cohesion all requires a focus on integration. The Union has competence to address a range of issues vital to integration. These include: post entry rules on immigrants, EU laws on discrimination, targeted programs like equal attention to integration in mainstream strategies on employment and health. EU also recognizes the “incremental approach”\textsuperscript{127} to integration which involves the development of a balance of rights and obligations over time. At the same time, it also stresses that integration measures and some rights for newly-arrived immigrants should be available as soon as possible.

\textsuperscript{122} Geddes; 2003: p.143-44
\textsuperscript{123} Geddes; 2000: p.623-649
\textsuperscript{124} Geddes; 2003: p.6-9
\textsuperscript{125} Ibid.
\textsuperscript{126} Geddes; 2000: p.623-649
\textsuperscript{127} Commission of EC; 2003: p.18.
Moreover, the commission argues that refugees, including resettled refugees and persons enjoying temporary protection\textsuperscript{128} should also be eligible for integration measures. The long term nature of the integration processes may necessitate special attention to the second generation migrants including those born in the EU to avoid social exclusion and criminality. The Commission also urges the EU to take holistic approaches to the integration of immigrants. Such holistic approaches may be necessary cover the overall economic and social aspects of integration as well as cultural aspects, religious diversity, citizenship, participation and political rights. Thus, the involvement of immigrants in all aspects of the society is the goal of such policy. Some specific issues that were considered important for a comprehensive integration strategies were shown in the communication\textsuperscript{129} as will be examined below.

\section*{4.7.1. Education and Language Skill}

Most immigrants usually face a problem with the host country recognizing their academic qualifications and professional skills. Worst of all, is the lack of language skill of the host countries which seems to be one of the greatest barriers to integration. Most host countries are increasingly concerned about the language factor and are trying to solve this problem by providing language courses for newly arrived immigrants. EU notes that education system\textsuperscript{130} can be a good factor for the encouragement of diversity with respect to both immigrant population and the host society and thus for combating discrimination. Thus to make use of the immigrants it is better to also access their academic and professional qualification acquired outside EU.

\section*{4.7.2. Integration into the labour market.}

Access to employment has also been identified as being one of the greatest barriers to integration and a priority within national integration policy by member states. Faced with the labour and the increasing unsuitability of training and in order to avoid illegal immigration, governments are realizing the necessity to facilitate immigrants’ entry to the labour market, especially skilled labour.


\textsuperscript{129} Commission of EC; 2003: p.18-23.

\textsuperscript{130} Education system is evaluated not only as a place to gain knowledge, but also as a lace for acquiring formal and informal information’s on norms and values in society and as a cultural bridge.
However, matching demand of skilled labour with supply remains one of the greatest difficulties. Moreover, the effects of such skilled migration to developing countries is become one of the areas of concern especially with regards to brain drain, segregation of the international labour market. Such phenomena may also have the effects sustaining dependency on immigration for certain categories of jobs\textsuperscript{131}

\section*{4.7.3. Housing and urban issues.}

The lack of affordable quality housing in ethnically mixed areas is a problem many immigrants encounter. Comprehensive urban and regional planning strategies which take into account issues such as housing, transport, health service, school facilities and the needs of the labour market can help to overcome ethnic and social segregation in cities and its consequences.\textsuperscript{132}

\section*{4.7.4. Health and Social Service.}

Immigrant populations may suffer from particular health problems (poor living conditions, problems arising from the uncertainty and insecurity in which they find themselves) associated with difficulties in accessing high-quality health and social services. An increased participation of persons with different ethnic backgrounds in the planning and delivery of these services should help to prevent discrimination and ensure that the services take account of cultural barriers. Such would seem to equally be a key issue for integration.

\section*{4.7.5. Social and cultural environment.}

The active involvement and participation of immigrants in civil life and particularly in sports and other clubs is an important step in adapting immigrants to their new environments. Promoting a generally positive attitude in the public towards immigrants requires strong political leadership in order to avoid resentment and the rise of racism. Politicians and the mass media have a major responsibility in their role as educators of public opinion. In this wise, accurate information on immigrants and their positive economically and culturally contribution to the EU societies needs

\footnotesize{\textsuperscript{131} Europa.summaries of legislation, Immigration integration and employment.; 2008\textsuperscript{132} Ibid.}
to be publicised. Failure to meet this challenge may fuel resentment, social exclusion and the rise of racism and xenophobia.

4.7.6. National citizenship and respect for diversity.

The Commission stresses the importance of acquiring nationality and civic citizenship as a means of facilitating positive integration. The Tampere meeting endorsed the objective that long-term and legally resident third-country nationals are offered the opportunity to obtain the nationality of the Member States in which they reside. The concept of civic citizenship guarantees immigrants a number of rights and obligations, even if they are not naturalised, including the right to free movement, right to work and the right to vote in local elections. Some countries have granted immigrants some political rights at local level. This is a very crucial step in offering foreigners similar rights and obligations as EU-nationals. This also takes away the object image of immigrants and instead gives it the opportunity to be the potential actor in political process.

If all those measures set out in both commission communication and council conclusions properly implemented, they would make a significant contribution to the economic, social, cultural, and political integration of migrants across the European Union.

4.8. Policy Coordination and Bench making as a Policy Mode for Immigrant Integration Policy.

EU has newly gained competence or is on the way to get it. Such competences may eventually lead to a shift of a multiplicity of local issues to the supranational venues. Immigrants’ integration would seem to be one of the potential policy sphere on which bench making policy mode can be relevant. Thus, the commission in its communication mode and reports has prescribed to the EU the function of policy coordination in the area of immigrant integration. This requires that the EU can coordinate certain national policies and develop common basic principles and frame work for immigrants’ integration. Bench marking and coordination would seem to be a very suitable policy in that direction.
To explore the possibilities of using benchmarking in issues of immigrants integration at EU level, the commission has sponsored several studies. Because the adoption of common immigrant integration policies is a novelty to member states, the findings of most of the studies indicate certain impending difficulties in relation to benchmarking. Integration itself is a multi-faceted process that involves social, economic, political, and cultural and many other aspects of human life. As such, immigrant integration becomes seen as a complex process. Benchmarking may require the development of comparable indicators to all the member states. Three major categories of difficulties which seem to hinder the effective implementation of immigrant integration policies in the member states are difference of definition and registration, ambiguity of certain indicators, and differences in policy approaches.

Nevertheless there also exist some similarities among the EU member states in their endeavour to promote integration. Niessen states that in all countries, adopted measures such as securing legal residents rights, facilitating equal access to employment, housing, and political decision-making, and equal access to the institutions of welfare states, must be viewed by most member states as a primary condition for the integration of immigrants.\footnote{NIESSEN; 2001: p 31.} At a more equal basis and specific cases, it does not seems possible to draw fruitful and justifiable comparison between situations that are relatively similar.\footnote{ENTZINGER & BIEZVEL; 2003: p 44-45.}

The EROMER study\footnote{Ibid.} elaborates potential indicators for measuring the effectiveness of immigrant integration in member states were. These can be classified into four different dimensions namely: socio economic integration, legal-political integration, cultural integration and altitude of the host society. Such classification strengthens the validity of benchmarking in the promotion of immigrant integration. Though immigrant immigration is a very diverse and complex policy field there is the necessity to lay emphasis alleviating related hindrances at the local levels prior to effective implementation at a larger scale. To conclude on this issue, the commission calls for a more coherent and long term European framework for integration to ensure that immigration contributes more effectively to the new demographic and economic environment in Europe.
Chapter 5

5. ANALYSES OF EMPIRICAL FINDINGS AND CONCLUSION

5.1. Theoretical Findings

Every theory that has been used in this research work has contributed to some extent to understanding about the EU immigrant integration policy. For this reason, one may assert that the empirical findings are compatible to a great extent with the theories. The question to be answered here is: why has there been this policy shift on issues of immigration from national levels to EU level? Two reasons account for these:

First, the increasing perception among the European populations that immigration flows was a new threat, and therefore was regarded as a matter of political pressures. Failure to meet these pressures with domestic instruments due to domestic constraints resulted to the search of new policy arenas that could facilitate the reassertion of immigration control.

The second reason came as a result of the single market project. This project required that the abolition of internal boarders also needs coordinated control of the external boarders.

Thus theoretically EU cooperation on immigration issue points out that liberal intergovernmentalism, the “two level game” theories and new institutionalism is a framework for different stages of cooperation. This is because member state have sought to avoid domestic legal and political constraint by developing new European level cooperation with only limited scope for scrutiny and accountability. This analysis justifies that the shift from domestic/national to EU level, thus strengthens rather than weakens state executive.

The ‘two level game theory’ turns out to be functional in the case of immigration. Various empirical studies shows that increasing inter-state cooperation on immigration issues is partly a function of the political pressure which are brought to bear on national governments by their predominantly illiberal electorates as well as anti immigration interest groups and political parties. When the governments are not able to responds to these pressures due to constraints coming from liberalness of the system, they escape to Europe. This is exactly what liberal
intergovernmentalism would seem to suggest as an explanation for EU cooperation, states benefit from and use the institutional environment of the EU for purposes of domestic legitimacy and pursuit of preferences. Thus, all the developments from informal intergovernmentalism of Schengen to intergovernmentalism of Maastricht treaties provide evidence of intergovernmentalism in immigration cooperation. For this reason, liberal intergovernmentalism and two level game theories are suitable theories to explain the cooperation formation and policy preferences of government and their behaviours in negotiations regarding immigration issues. When it comes to the role of institutions in policy making process, such perspectives become weak.

New institutionalism would also seem to provide an appropriate insight for analyzing institutional dynamics of integration policies, the influence of supranational institutions, and their role on formation of state preference. Here we see that the institutionalist standpoint can be developed in a way which the EU’s institutional context reshapes understanding of the control dimensions of policy, and gives structure to debates about EU level migrants inclusion. But it is worth considering that some assumptions such as the ability of the institution to shape the policy preference have turned to be real in immigration cases. This is because by keeping democratic and judicial oversight of EP and ECJ very limited, member states minimize the unintended consequences of integration on immigration issues which can reduce the control capacity of member’s states.


EU immigration policies were reactive in character, oriented towards specific issues on control by emphasizing more on security concern. This restrictive measure was directed at those forms of migration regarded to be of threat such as asylum and illegal immigrants. EU cooperation was achieved more successfully in those areas dealing with the control of asylum while member states remained responsible for a number of significant issues. Such were particularly evident with the admission of migrants and for immigrant’s integration policy. The most important finding under this common EU policy on immigration is that, there is no supranational common EU policy on immigration. This is because it was only after the Amsterdam changes that real
community based policy frame- work on immigration there began to emerge. The fact that an actual common EU immigration and asylum policy does not yet exist can be explained by two reasons\textsuperscript{136}.

i. Member states were not willing to share more sovereignty, to give up more competencies to EU level. They were not ready to give up the unanimity rule applying to decision making on immigration matters which consequently resulted to “lowest denominators” decision-making with emphasis on security and restriction. Thus, Policy –making at EU level engages member states in a dual debate such as issues at hand and on how to best cooperate. Member’s states have agreed on the outline of a common approach, but are constrained by a reliance on unanimity reflecting the sensitivity of the issues involved.\textsuperscript{137}

ii. Europe still lacks the vision and determination for a coherent immigration policy. Many forms of immigration such as economic, asylum, family reunion and illegal immigration were perceived as threats and unwanted. As a result of such perceptions, EU policies were mostly reactive, dealing with crisis over unwelcome arrivals, rather than proactive, making efforts to attract, encourage and integrate immigrants, and to protect asylum seekers. But the post Amsterdam period of immigration policy has been marked with some positive developments. Most especially, the Tampere council meeting which was entirely dedicated to immigration played a very important role in defining the common EU frame work in general terms.

Findings on this policy area, shows that the commission’s progressive and comprehensive proposals are usually blocked by member states in the council. Some very important ones, such as directives on admissions of TCNs for employment purposes were never agreed upon so far. Nissen argued that, adopted directives were in such a low level of harmonization that they were almost meaningless, except that they served as a “first step” towards a common legislation such as family reunion.\textsuperscript{138}But in recent times the commission intensively tries to bring up the issue of legal immigration, admission of labour migration into the socio – economic agenda of EU and presents a comprehensive set of proposal covering all points of the Amsterdam agenda. Thus, admission of economic migrants outside the EU made a comeback on the agenda for the labour

\textsuperscript{136}NISSEN; 2004: p42/43
\textsuperscript{137}GEDDES; 2003: p.197-199.
\textsuperscript{138}NISSEN; 2004: p44
market and demographic reasons.\textsuperscript{139} Despite the debate on high skilled immigrants needs, the place of immigration on the socio-economic agenda was not secured because of the high unemployment and popular reactions throughout Europe. But Nissen stood for the point that migration must be given the place in European socio-economic agenda.\textsuperscript{140}

The EP was also actively involved in immigration debates through its reports on every legal policy initiatives. However, analyses shows that ECJ and EP do not have “regular community” competence in immigration issues and therefore projects the lack of a democratic deficit and judicial oversight. However, Geddes argues that, this democratic deficit could be used in progressive way such as: new political opportunities for pro-migrants can arise where decision makers are relatively shielded from direct political pressures, and later by enhancement of ECJ. Thus it can serve to open up the political and social space for migrants at EU level.\textsuperscript{141} Although the commission and EP had developed its relations and dialogue with some NGOs and civil society on the issues of immigration, it seems not to be enough. This is because there has been more emphasis on the support for intergovernmental cooperation and projects at the long term level. For a long time, European countries felt that immigration was unwanted. The reason is that immigrants enter Europe just to reap from it without investing anything in return. This therefore called for restrictive policies. Thus, there would seem to be the necessity for open debates\textsuperscript{142} about immigration in Europe. These may require more efforts to educate public opinion about the impacts of immigration. The above may suggest why the Commission proposed OMC on immigration to compliment community legislations and provide a common framework for review and could be useful as a soft instrument. But member states have still not brought into reality this innovative proposal. The formulation and implementation of EU policy depends on a balance between interests of member states and the pursuit of common EU objectives by supranational institutions.

\textsuperscript{139} The need for high specialized labour in the labour market and the ageing of EU population became more and more evident. \\
\textsuperscript{140} NISSEN; 2004: p52/55 \\
\textsuperscript{141} GEDDES; 2003: p5-8. \\
\textsuperscript{142} This open debate will serve two purposes: one is that it will engage the public in the process of policy-making; secondly the public will be informed and will understand that the presence of immigrants is not really detrimental to the European societies.
5.3. Prospects and openings for a common EU Immigrant integration Policy

The main decisive point is that the Amsterdam treaty did not grant any legislative competence to the Union on the immigrant integration. Although the Tampere council meeting included immigrant integration in its conclusion as one of the four main elements of EU common immigration policy, this conclusion still seems to be weak as many member states insisted that the most draft conclusion on integration be wiped out. Most of them considered that it is the responsibility of the member states to pursue integration policies while confessing that they have not succeeded in that challenge so far. Looking at the analysis of integration in the previous paragraphs, it is evidently clear that proactive immigration policy needs effective immigrant policies at EU level. Moreover the exclusionist policies of the welfare state are not relevant, because the social exclusionist of “unwanted” immigrants through the formation of a new underclass threatens the equality ethos of the welfare states. According to Brochmann, punishing groups by withdrawing benefits may equally punish the society in the long run. On the other way round, excessive attention paid to immigrants can challenge the majority’s sense of justice.

Thus, the prospect for EU level immigrant integration policy has revealed several findings for analysis. The fact that EU member states have failed in their immigrant integration policies and are aware of the pending danger such as: segmentation of society, anti-immigrant resentment among natives, gives the opportunity for a solution to be found at the EU level. If there is no EU competence on integration, EU can be the venue where member states exchange their experiences, learn from practices and define general principles and frameworks. Soft policy mechanisms such as OMC, policy coordination and benchmarking can be very good for starting. Positive answers and effective implementation would depend on the ability and willingness of member states to cooperate, because of the non binding characters of most the measures.

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143 Dispersal, removal of right to work, and the replacement of cash benefits with vouchers have helped to place asylum seekers outside of the community legitimate receivers of welfare benefits.

144 BROCHMANN 1999: p2.
As far as the future prospects for EU immigrant integration policy are concerned, Spencer come out with some good analysis and many other suggestions were also brought to book. These suggestions can be summarized as follows

i. Monitoring and enforcement by the commission could help to ensure implementation of the Discrimination Directives by member states, giving immigrants and refugees the right to work so that they become a productive part of the society.

ii. To conduct a review to identify which community policies, programs, budget and policy level are most relevant to integration, including strategies on employment and social inclusion and health.

iii. To create a mechanism for dialogue and coordination between member states across the commission to facilitate ideas for the EU integration strategies to develop and to converge

iv. To review existing and proposed EU immigration and asylum measures to ensure that they provide migrants with a secure legal status and with the maximum possible access to the rights that promote integration.

The fact that immigration requires a long-term process signifies that its related strategies must be on a long-term basis to influence the behaviours of both immigrants and the host societies. However, it may remain deficient if the policy process is simply perceived as a top down process. Penninx notes that integration processes takes at the local not at the EU level. Therefore local communities and other partners must be given funds and a framework to conceptualized integration policies that are functional in their specific environments.

5.4. Future Developments for EU immigration Policies.

Despites all the challenges towards the attainment of a common EU migration policy, several developments seem to provide some positive signals. Amongst which, various new constitutional treaties at EU level and which are currently in the phase of ratification. These new treaties include changes on immigrant’s issues regarding both decision making and policy competences.

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145 SPENCER; 1994: p2-3
146 European policy centre; EPC-KBF migration Dialogues, June 30, 2004
As far as procedures are concern, the commission’s sole right of initiative will be confirmed and migration and asylum will come under the co-decision procedure. This means that the EP will gain power of joint decision–making. Therefore, Qualified Majority Voting will be applied to all aspects of immigration and asylum policies\textsuperscript{147}. Otherwise, ordinary community procedures will be fully operative. The European council has already agreed in 2004 to use QMV and co decision in the field of asylum, illegal immigration and border control\textsuperscript{148}.

The constitution will also extend the EU’s competence in the area of immigration and asylum.\textsuperscript{149} The Union will have explicit competence to conclude readmission agreements. Issues relating to the conditions of employment will remain under the unanimous decision making although there is transitional provision leading to change QMV. The incorporation of the charter of fundamental to the constitution is a positive progress to improve the status and rights of TCNs.

\begin{footnotesize}
\footnote{NISSEN; 2004: p54}
\footnote{Luxemburg official website; 2005.}
\footnote{The Luxemburg official web mentions that “In asylum issues ,the term of European Asylum system were incorporated to treaty ,the adoption of minimum rules will be abandon in favour of establishment of uniform status and common procedures”.
}
Conclusion

Migration as has been earlier mentioned is not a new issue in our world of today. For as long as there is a difference between economic, social, political and climatic conditions in various countries, this process will continue to exist. Thus, the most important thing is to know how to manage migration flow and their integration properly and according to the norms of the 21st century.

The aim of this study was to examine the EU immigration policies in the light of policy and decision making process and to understand the background, objectives and rationale of the upward shift of immigration policy issues from the national to the EU level. The researcher was interested in examining if the policies provide a comprehensive EU Framework on immigration. The relationship between immigration and state sovereignty implies that the Europeanization of immigration policies can introduce a new stage in the integration process towards a “Political Union”. In issues like immigration whereby each state may always seek to pursue its own interest, there would seem to be the necessity for greater consensus.

Legal migration and immigrant integration issues are to a larger extend under the competence of member states. However, the forecast of a future shortage in the European labour force has led to the emergence of new policy frameworks. This leads to decision making competences gradually shifting from member states to the Unions institutions. The fact that immigration in the recent years has been a great issue in the socio economic agenda in the EU has brought so many changes that are very necessary for the further advancement of events. Attitudinal and perception changes will soften the security and boarder control policies there by looking at some other practical realities of the EU.

The difficulties faced by Europe in the formulation and implementation of a common immigration policy may not be perceived as a weakness because such issues require long term procedures and hands-on and longitudinal experiences. Such issues may usually necessitate cautious and dual faceted strategies to integrate already-settled and in-coming immigrants. On grounds of the analyses in this thesis, it can be concluded that immigrant’s integration has become a Europeanized and not communtarized issue as before. The prospect for EU level migrants integration policy will depend more on the legal base, resources and the competence on
the issue which determine EU capacity to act, cooperate and the configuration of institutional context in the future.

As the EU presidency changes from one country to another, the future of immigrant’s integrations becomes increasingly highlighted as the current European Union council president Nicolas Sarkozy of France puts it in his opening speech to the European parliament in Strasbourg: The European Pact for immigration is an essential document for the French presidency, from two points of view. The first (…) is that if we all, European countries give ourselves a European immigration policy; we remove immigration from national debates (…). The only way to have a responsible debate on immigration is to make it a European policy (…) compelling countries with different sensitivities to work together. What has been proposed (…) seemed to me a priority, showing that Europe doesn’t want to be a fortress, that Europe isn’t refusing to take people in, that Europe needs worker immigration, but that Europe can’t take in everyone who’d like to come to Europe. Let me add that, when it comes to political asylum, it isn’t normal for one person to be able to submit 27 applications in 27 democracies and for these 27 democracies not to take the same attitude in the face of the same problem. Let me add that for development with Africa, we’ll be stronger working together. This is the French presidency’s second priority.150

This is good news because immigration policy is now gaining stronger grounds, though not in its totality. For some European countries especially those with a stronger nationalistic feeling are still against the idea of immigrant’s integration. An example of such a country is Austria .Such countries being members of the EU hinders the development of integration policy.

In several European countries the role of neo fascist and far right parties has strengthened .Recent developments, such as the success of the freedom party in Austria, are good example of this phenomenon. It should also be noted the media play a certain role in the dissemination of negative stereotypes concerning immigrants and thinking their presence with increases of crime, terrorism151 and drugs smuggling.

150 SARKOZY; 2008
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