

# IS GERMANY MOVING ON MIGRATION? THE NEW CITIZENSHIP AND IMMIGRATION POLITICS OF THE GOVERNMENT BY SPD AND THE GREENS<sup>1</sup>

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## ABSTRACT

*The German coalition government by the Social Democrats and the Greens is preparing to introduce a second crucial reform concerning the immigrant population. After the 1999 reform of the nationality law, Germany is taking another step towards modelling a comprehensive and long expected organised immigration policy, concluding for the first time officially that Germany is not only a country of immigration, but to state that further immigration is needed. Yet, while citizenship politics in Germany is departing from old ethnic conceptions with the possibility for immigrant children to acquire citizenship by birth and a reduction of the requirements for naturalisation, policies for (labour) migration still remain in an attitude known from the past: immigrants are only “wanted” if they fit to the structural needs of the labour market and the economy. Thus, the planned immigration law is in danger to repeat the failure of former guest-worker policies when treating immigrants just as workers. German immigration policy seems to remain a purely selective mechanism in the global contest for the best qualified labour migrants.*

*PALABRAS CLAVES: Alemania, políticas migratorias, ciudadanía, mercado de trabajo*

*KEY WORDS: Germany, Immigration Policies, Citizenship, Labour Markets*

## INTRODUCCIÓN

The German writer Hans Magnus Enzensberger (1994: 11ff) compared the arrival of foreigners in a country with passengers entering a compartment already occupied by two other passengers. Even if the passengers who are already sitting in the compartment do not know each other they will feel a curious solidarity and association. They perceive the newcomer as a disturbance to their former cosiness. Their ‘own territory’ is at stake. There is smouldering antipathy against the ‘invaders’ and, although there is normally no open conflict, the ‘invaders’ will be stigmatised by the old-established passengers, even when they have become more and more used to them. One can apply this compartment analogy to Europe, and especially Germany, which is discursively perceived in public as facing ‘floods’ of immigrants who are potentially ‘swamping’ the European (German) cultural system and allegedly pose a threat to the “integrity of the nation” (Mitchell/Russell, 1996: 56). One cannot resist recalling the deep fear of the spectre of communism that haunted Europe more than 150 years ago. Today European governments see migration as a major threat, already chosen as the main object of combat being intertwined with drug trafficking and organized crime.<sup>2</sup> After the attacks on the capitalist and politico-militarist symbols of American power on September 11 a dangerous link is emerging, not only in Germany: the danger of equating migrants with terrorists. This linkage casts a negative light on the

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unfolding positive discourse about migration in Germany. The positive effects of migration on welfare and the economy of the host-country are counterbalanced and already detached from public and political discourse by concerns for strengthening control measures against migrants and talks about internal security. In that wake of reshaping internal and external borders for migrants, work on the progressive and long awaited bill on migration and integration was suspended. Now, at the end of 2001, the first ever parliamentary act on immigration in Germany still needs to be implemented. Yet, one cannot deny the importance and significance of such a law to regulate migration and integration. Most importantly it states for the first time that Germany is already a country of immigration and that it needs immigration. This paper basically focuses on the content and effects of this German immigration bill. However, first there will be a short overview of the migration movements after World War II and also some statistical remarks on the extent of the immigrant population in Germany. Then, second, follow some theoretical considerations about the German way of thinking and organising immigration and integration, thereby relating citizenship and immigration politics to the wider context of what can be called population management. After a short description of current foreigners legislation, I will present a more or less comprehensive view on the new Immigration Bill by the German government. Concluding the article, I will try to analyse what kind of progress could be gained by this law and finally I will display some short-comings of this bill.

#### THE GERMAN EXPERIENCE WITH MIGRATION IN THE LATE 20<sup>TH</sup> CENTURY

First of all, it seems necessary to specify what kind of migrants I will be focusing on in this essay. Basically it is important to note that when we are talking about migration to Germany, we can distinguish between at least five groups of immigrants in Germany: Ethnic Germans, EU citizens, non-EU citizens, asylum-seekers or refugees, and family members of permanent immigrants (Rotte, 1998). In the present context I will concentrate on (labour) migrants coming from non-EU countries who are already permanent residents in Germany or are regarded as migrating to Germany under the new immigration act planned. As the above-mentioned categorization of migrants indicates, Germany's attitude towards foreigners can be labelled as deeply hierarchical. This hierarchy means that some foreigners are legally privileged and some are not. In contrast to the EU-citizens and the *Aussiedler* (ethnic Germans) all other foreigners fall under the provisions and regulations of the *Ausländerrecht* (foreigners law) which is basically directed at policing migrants. The latter category of foreigners contains the guest-worker generation, their offspring and families as well as asylum-seekers and refugees. However, before going further into detail with the German immigration policy, I will sketch the development of (labour) migration to Germany.

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2 This attitude is codified in the Schengen Implementation Agreement (19.6.1990), and the decisions made by the "TREVI"-Group. "Schengen" and also the Dublin Convention on the State Responsible for the Examination of an Asylum Claim (15.6.1990) are crucial results of the informal intergovernmental cooperation process (to which "TREVI"

The history of labour migration to Germany since 1945 is one of a constantly growing population of immigrants. Due to the economic boom starting in the 1950s and despite a huge refugee movement from the Soviet Zone of Germany before 1961 – three million refugees emigrated from there to the Federal Republic – problems arose with filling certain jobs, e.g. in agriculture, so that a recruitment treaty was concluded with Italy in 1955. The urgent need for expansion of productive capacities and manpower consequently led to a widening of labour recruitment, which was only temporarily interrupted in the mid-sixties, when many employment contracts were not renewed using the foreign “guest workers” as an “economic buffer to protect the native workforce against unemployment” (Thränhardt, 1996: 203) due to signs of economic crisis. However, to bridge the still rising surplus demand for low qualified seasonal jobs, Germany re-opened the door to expanding the “guest-worker-programme” to workers from non-EEC countries. In 1970, two years after the concluded recruitment treaty, Yugoslavs already outnumbered the Italians, and from 1973 on Turks were the most numerous foreign nationals.<sup>3</sup> The recruitment stop in 1973 happened to be a policy change towards stricter regulation of immigration. However, it did not necessarily stop labour migration in general (Hammar, 1985: 6). Legal immigration was basically only possible from EC countries. Yet, while the numbers of foreign workers sank sharply after the recruitment stop and the oil crisis, it increased again from the beginning of the eighties due to the family unification policy for foreign workers and the rising numbers of asylum-seekers, especially towards the end of the eighties.

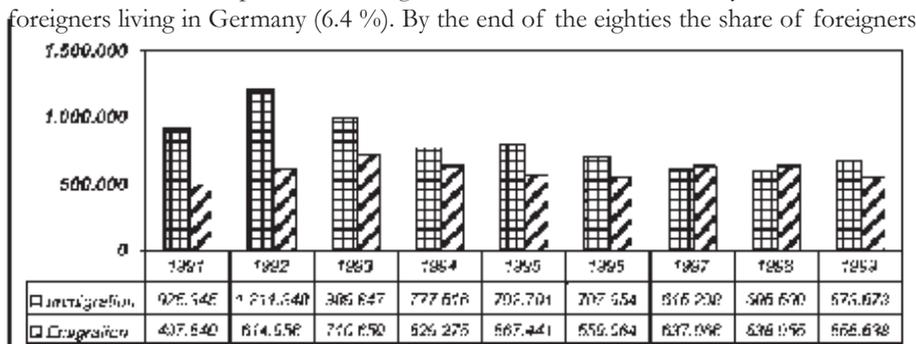
In the aftermath of the German reunification there have not only been big immigration movements by *Aussiedler* who are considered to be ethnic Germans but also by additional labour migrants strongly needed by the industry who came to Germany mostly in order to reunite their families (Thränhardt, 1996: 214).<sup>4</sup> Together with an increase in the numbers of asylum-seekers and refugees in the wake of the wars in former Yugoslavia and further family reunification, the numbers of foreigners rose during the nineties. Yet, although the total number of immigrants rose, the numbers of incoming migrants was coming closer to the numbers of emigrating foreigners. In the years 1997 and 1998 there were even more emigrating foreigners than immigrants (Figure 1). A new category of immigrants was occurring with the tightening of the Schengen regime. The numbers of illegal immigrants increased and it is (unofficially) estimated that there are up to one million immigrants living illegally in Germany. This is lamented by the *Bundesregierung* (Federal government) and is taken as a pretext to conceive even stricter immigration control measures.

*Figure 1: Immigration and Emigration of Foreigners in Germany (1991-1999)*

refers) in the fields of security and public order that begun in the 1970s. For details on “Schengen” see King (1994) and Lavenex (1997). In general both agreements are framed as measures of security and take a tough stance on the internal and external control with regard to third country nationals, especially to non-EU nationals. Although “Schengen” was initially an intergovernmental agreement, the Amsterdam Treaty made the ratification of the Schengen Agreement an essential prerequisite for joining the European Union, see Gimbal (1998).

Source: Federal Statistical Office, in: *Süddeutsche Zeitung* vom 24./25. 10. 2000.

Official statistics show that at the end of 1999 there were 7 343 591 foreigners living in Germany.<sup>5</sup> This number constituted a share of 8.9 % of the total residential population. With this percentage Germany ranks third within the European Union, behind Luxembourg and Austria, which have a share of 34.16 % and 9.09 % respectively, and just in front of Belgium, which has a share of 8.86 %. Italy, Greece (both 1.54 %), Spain, Finland (both 1.55 %), and Portugal (1.76 %) have the lowest share of foreigners in the population of the European Union.<sup>6</sup> The foreign population is constantly increasing. At the time of the recruitment stop for labour migrants in 1973 there were already almost 4 million foreigners living in Germany (6.4 %). By the end of the eighties the share of foreigners



was still below 8 % (approximately 4.9 million). Between 1987 and 1993 the share increased from 6.9 % to 8.5 %, or from 4 240 500 to 6 878 100 foreigners. Since 1995 the share of foreigners living in Germany has remained at a constant level of just below 9 % of the total residential population, as can be seen in Table 1.

Table 1: Population and Foreigners in Germany as at 31 December 1999.

| Key Date                  | Population in 1,000 | Foreigners in 1,000 | Per cent |
|---------------------------|---------------------|---------------------|----------|
| Former federal territory  |                     |                     |          |
| 1973                      | 62,090.1            | 3,966.2             | 6.4      |
| 1980                      | 61,653.1            | 4,453.3             | 7.2      |
| 1989                      | 62,679.0            | 4,845.9             | 7.7      |
| 1990                      | 63,735.7            | 5,342.5             | 8.4      |
| Germany after unification |                     |                     |          |
| 1991                      | 80,274.6            | 5,882.3             | 7.3      |

3 The high level of emigration caused serious disruptions to the labour markets in the sending countries, e.g. 34 % of all skilled workers in Turkey went abroad between 1965 and 1975, see Thränhardt (1996:

|      |          |         |     |
|------|----------|---------|-----|
| 1995 | 81,817.5 | 7,173.9 | 8.8 |
| 1999 | 82,163.5 | 7,343.6 | 8.9 |

Source: Federal Statistical Office, see Federal Ministry of the Interior (2000: 14).

Remarkably, the proportion of foreigners living in the Federal *Länder* of Western Germany is higher than that of Eastern Germany, e.g. the largest proportion lives in Hamburg (19.15 %), followed by Berlin (14.32 %), Hesse (13.96 %), Bremen (12.22 %), Baden-Württemberg (12.11 %) and North-Rhine/Westphalia (11.02 %), whereby nearly 70 % of all migrants in Germany live in the large *Länder* Baden-Württemberg, Bavaria, Hesse and North-Rhine/Westphalia (Kraus, 2000: 250). In contrast, Brandenburg has the highest share of the Eastern *Länder* with just 2.03 %. This split is also manifested in the share of foreign population in German cities (Table 2). In the West the biggest proportion of foreigners in the residential population is to be found in Frankfurt (30.1 %), Stuttgart (24.1 %), Munich (23.6 %) and Cologne (20.5 %). The Eastern city with the biggest share of foreigners is Leipzig (3.1 %), followed by Dresden (2.9 %) and Halle/Saale (2.5 %).<sup>7</sup>

*Table 2: Number of Foreigners in chosen German Cities as at 31 December 1995*

| Cities         | Residential Population | Foreigners | Foreigners (%) |
|----------------|------------------------|------------|----------------|
| Frankfurt/Main | 650.100                | 195.400    | 30.1           |
| Stuttgart      | 585.600                | 141.300    | 24.1           |
| Munich         | 1.236.400              | 292.100    | 23.6           |
| Cologne        | 965.700                | 197.900    | 20.5           |
| Hamburg        | 1.707.900              | 274.700    | 16.1           |
| Berlin         | 3.471.400              | 449.500    | 12.9           |
| Leipzig        | 470.800                | 14.600     | 3.1            |
| Rostock        | 227.500                | 4.000      | 1.8            |

Source : Federal Statistical Office.

*Table 3: Number of Foreigners broken down by chosen nationalities as at 31 December 1999*

204f).

| Nationality             | 1994    |       | 1996    |       | 1998    |       | 1999    |       |
|-------------------------|---------|-------|---------|-------|---------|-------|---------|-------|
|                         | 1.000   | %     | 1.000   | %     | 1.000   | %     | 1.000   | %     |
| Total                   | 6,990.5 | 100.0 | 7,314.0 | 100.0 | 7,319.6 | 100.0 | 7,343.6 | 100.0 |
| Europe <sup>1</sup>     | 5,780.2 | 82.7  | 6,000.8 | 82.1  | 5,879.9 | 80.3  | 5,927.7 | 80.7  |
| EU-States <sup>2</sup>  | 1,564.6 | 22.4  | 1,836.6 | 25.1  | 1,851.5 | 25.3  | 1,856.0 | 24.3  |
| Greece                  | 355.6   | 5.1   | 362.5   | 5.0   | 363.5   | 5.0   | 364.4   | 5.0   |
| Italy                   | 571.9   | 8.2   | 599.4   | 8.2   | 612.0   | 8.4   | 615.9   | 8.4   |
| Spain                   | 132.4   | 1.9   | 132.5   | 1.8   | 131.1   | 1.8   | 129.9   | 1.8   |
| Turkey                  | 1,965.6 | 28.1  | 2,049.1 | 28.0  | 2,110.2 | 28.8  | 2,053.6 | 28.0  |
| Yugoslavia <sup>3</sup> | 834.8   | 11.9  | 754.3   | 10.3  | 719.5   | 9.8   | 737.2   | 10.0  |
| Africa                  | 292.1   | 4.2   | 298.7   | 4.1   | 349.5   | 4.8   | 300.7   | 4.1   |
| America                 | 179.7   | 2.6   | 189.6   | 2.6   | 199.4   | 2.7   | 205.4   | 2.8   |
| Asia                    | 662.4   | 9.5   | 745.4   | 10.2  | 7808.0  | 11.0  | 825.0   | 11.2  |

Source: Federal Statistical Office, see Federal Ministry of the Interior (2000: 16).

1) includes the territory of the former Soviet Union;

2) Finland, Austria and Sweden became full members of the EU on 1 January 1995

3) Federal Republic of Yugoslavia

If you take a closer look at the statistics by means of splitting the foreign population according to the hierarchy introduced above (EU citizens and non-EU citizens), it is revealed that foreigners from non-European Union countries constitute three quarters of the entire foreign population (Table 3). The biggest proportion of citizens in the European Union comes from Italy, followed by Greece (8.4 % and 5.0 % of the foreign population respectively). With 28.0 % and 10.0 % of the foreign population most of the migrants come from Turkey and from the countries of former Yugoslavia respectively. Keeping in mind that EU citizens and *Aussiedler* are privileged by law, it is striking discriminatory that the vast majority of foreigners are living under regulations and provisions that make them second class inhabitants in a country what has become their *Heimat* (home). Some 52 % of the 7.3 million foreigners as at 31 December 1999 had been living in Germany for at least 10 years. Approximately 32 % had been living in Germany for 20 years or more. They have been working in Germany, paying for social security, producing a second and a third generation of whom many feel no bonds with the parents country of origin.

#### IMMIGRATION AND INTEGRATION AS PART OF POPULATION MANAGEMENT

Basically the German immigration experience can be conceived as moving from an economically “demand-determined front door migration” to a “supply-driven side

door or illegal back door immigration” (Straubhaar, 2000: 8ff).<sup>8</sup> Yet, to conceive or present migration to Germany purely schematically in this way is to display its facets one-dimensionally. Germany’s reaction to immigration can generally be described as an underlying reluctance against any inflow of migrants (Martin, 1996) and, complementary to this, as a genealogy of seeing migration policy as the management of rights and control in relation to migrants (Morris, 2000). Consequently, German immigration policy lacks a fundamental axiom of any policy labelled “immigration policy”: to provide effective measurements for integration. However, it remains an irony of German immigration politics that the concept of integration is alarmingly void of content, at least content which is agreed upon.<sup>9</sup> There is ubiquitous public and political discourse about integration. However, it seems that integration is considered by the integrating society as being basically connected with inclusion into the labour market and the social order respectively. Additionally, going beyond the socio-structural context, there is an underlying attitude that integration also has an identificatory dimension, an “us” versus “them” dichotomy. Although this differentiation is a semantic one and therefore rather symbolic in nature, it sets meaningful connotations of exclusion (Rauer/Schmitdke, 2001: 290). What follows from this is that the concept “integration” acts like a “multi-vocal” symbol (Turner, 1974) in public (and in academic) discussion. “Integration” operates within these discourses as a concept with a plurality of meanings and different levels of abstraction of which all have certain imperatives to act. In regard to immigration policies we have to accept both the state and politics/politicians in general as the most powerful institutions in presenting the political and legal definitions, norms, regulations, identifications etc. By setting the terms of the public discourse the state and the politicians influence profoundly the operative meaning of “integration“. Thus in public discourse integration seems to be a matter of employment, citizenship rights or language skills, while immigrants view integration from an opposite perspective. They interpret the official (German) integration claim as forcing them to identify with and assimilate into the “host-culture”, a claim which is perceived to be illegitimate (Rauer/Schmitdke, 2001: 290).

This contrasting view on integration by both immigrants and German public is fundamentally entrenched in a fatal premise concerning immigration and especially citizenship politics. Despite all regulations over the years that brought doubtless improvements for immigrants it is obvious that a deep ambiguity exists in German migration politics (Thränhardt, 1996).<sup>10</sup> Generally one has to see German migration policies within the context of the discourse of national identity and socio-economic benefits of migration.<sup>11</sup> This fits the argument concerning the stance on being no country of immigration, a claim that “*articulates not a social or demographic fact but a political-cultural norm, an element of national self-understanding*” (Brubaker, 1992: 174). The national-identity dimension was the driving force behind the CDU/CSU (Christian Democratic Union/Christian

4 The high number of *Aussiedler* (around one million per year in 1989 and 1990) soon caused repercussions, e.g. housing problems. *Aussiedler* were the main object of discontent (besides the asylum-seekers) within the indigenous population, as they were not considered to be real Germans and were only motivated to migrate for economic reasons, see Thränhardt

Social Union) agitation against the new nationality law by the middle-left government of Social Democrats and the Greens in 1999. This law has introduced, in principle, the *ius solis* into German nationality legislation for the first time, replacing the pure ethnic conception of nationality (*ius sanguinis*). The conservative opposition was worried about the reform, which was perceived as an attack on the national identity and even a redefining of the German *Volke* (Buckow/Yildiz, 1999: 58), and tried to stop the law with what can be called a propaganda war, asking publicly for signatures against the planned law (visiting the CDU/CSU-campaign stands in the inner cities one could often hear questions like “where can I sign against those foreigners?” etc.).<sup>12</sup>

The debate about reforming the German nationality law highlighted, as I describe elsewhere (Wydra, 2001: 48-59), a special aspect of immigration policies by nation-states. Immigration policy is not just a matter of curbing migration to or integrating immigrants in a country. It is a tactic within the wider strategy of population management in general, something that Foucault (1999) called the bio-politics of population. With this he meant the political, social and economical organization and administration of life in a given territory, in this case the nation-state. The concept of population management refers to a functional rationalization of governing. Governing should solve problems that are typically for populations, e.g. problems concerning family, housing, living and working conditions as well as public health issues, levels of economic growth, standard of living, and not to forget patterns of migration, either domestic or from the outside (Dean, 1999: 99).<sup>13</sup> In the present context population management means that the state takes care of the general welfare of its population. This also includes the incorporation and integration of immigrants in the domestic society and the societal structures as well as the control and regulation of the conditions and the processes of migration movements in general. Thus population management by the state comprises the “well being” of the societal body as well as the security of the territorial border of the nation-state. While the (external) immigration control measures to Germany are woven into the multi-layered system of the fortification of Europe,<sup>14</sup> (internal) immigration policies that have to be seen as integration policies are part of domestic social politics. One can observe a close relation between regulations of admission and social rights that are granted to immigrants, as can be seen in the graded ensemble of immigrant statuses in Germany. For example, people from Eastern Europe

(1996: 214f). Public discontent led to the establishment of special entry rules for *Aussiedler* (e.g. they have to produce proof of their German origin). Additionally the federal government reacted by cutting back social benefits. However, *Aussiedler* are still privileged compared to migrants from non-EU countries and asylum-seekers.

5 Federal Ministry of the Interior (2000: 14).

6 Source EUROSTAT, from 10 January 2001, in Bundesamt für die Anerkennung ausländischer Flüchtlinge, 2001: 18). The figures are for the year 1998. The figure for Luxembourg dates back to 1 January 1997, (Federal Ministry of the Interior, 2000: 15).

considered to be ethnic Germans are granted full citizenship rights just upon arrival, while labour migrants from Eastern Europe enjoy a much smaller set of rights. The connection between social rights and immigrant status is reflecting the close relation between welfare and immigration. Being in line with my bio-political argument, a welfare-state regime can be conceived as “the specific institutional arrangements adopted by societies in the pursuit of work and welfare” for the population (Esping-Andersen, 1987: 6). Connected to this, immigration policy regimes are institutional arrangements and mechanisms to regulate and organise the admission and the integration of immigrants. There exists a correlation with the continental welfare-state regime and strict immigration control policies. As Faist (1995a, 1995b, 1998) argues, there exists a striking correspondence between conservative models of welfare-state regimes, like the German one, and a restrictive immigration policy model, the Schengen model, “*with strict immigration control, permitting only economically necessary guestworkers and efforts to control tightly refugees and family reunification*” (Faist, 1995b: 222).<sup>15</sup>

The reason for such a strict immigration control seem more or less obvious. It is a strategy to secure the benefits of the welfare-state for the ingenious population. At least this is the way arguments are made, not only by rightist or conservative parties but also by social-democratic based parties, like the election campaign in Denmark in November 2001 has recently shown. Thus, immigration control within welfare-state context appears to constitute a mechanism of social closure. Following that the discourse of immigration is mostly overshadowed by a differentiation between “us” and “them”. The means for this differentiation is the use of the concept *ethnicity*. Additionally, ethnicity is also used as a strategy to form an ethnic based elite within the society (Kössler/Schiel, 1995). Immigrants are excluded from central positions, resources etc. just because they are different and are not belonging to the (ethnically defined) national community. In Germany this strategy has two dimensions. First, it is connected to citizenship politics. The acquisition of German citizenship was, until 1999, particularly based on ethnic difference, which was constructed out of a womb of national myths about a homogenous community. Second, this differentiation is generally present in the discourse about immigration and immigrants. However, in former years it was more or less under the surface of public awareness, because the officially held myth was expecting the aliens to go someday and therefore ethnic difference was not emphasised as a problem in public and political discourse (Schönwälder, 1996). This situation changed in the late eighties and beginning nineties, mostly because of two reasons. On the one hand, German reunification was demanding a re-consideration

7 Source: Federal Statistical Office, as for 31 December 1995.

8 “Front door migration” is to be understood as the recruiting of workers from the Mediterranean countries when structural shortages of unskilled labour occurred at the beginning of the sixties. Consequently, “side door” refers to family reunification or refugees and “back door” to migrants entering Germany illegally.

9 This is even verified by Beck, the *Ausländerbeauftragte* (Commissioner for Matters Relating to Foreigners) of the federal government, in her recent report on the situation of foreigners in Germany, which she is required to submit every two years (Kraus, 2000).

of the question of national identity, on the other ethnicization was revolving around the issue of welfare-state retrenchment and an sharp increase in the numbers of migrants, especially asylum-seekers and *Aussiedler*, in the years between 1989 and 1992.

#### ETHNIC SEMANTICS AS THE BASIS OF THE GERMAN FOREIGNERS LAW

The growing ethnicization of German immigration politics over the past few decades (Faist, 1995b), was particularly one that displayed itself in the nationalist discourses about the restriction of the right for asylum at the beginning of the nineties, although this process of ethnicization may have been triggered off by various causes, like the economic burden of the reunification process or the longing for a stabilised national identity. However, it is with the very beginning of what can be called welfare-state retrenchment or reconstruction that trans-national migration and the integration of immigrants into the state and society emerged as a visible political issue.<sup>16</sup> Clearly, when arguing thus one must keep in mind that ethnicization in regard to migrants was already in existence, noting that neither its conflict potential nor its underlying causes have really been discussed (Schönwälder, 1996). Ethnicization is an effective instrument in immigration politics. Both ethnic and national categorizations and identifications are part of the processes and practices to establish and maintain a congruency between the (territorial) state and the indigenous population that is the national community. Modern states are functionally differentiated political systems. This means that these systems establish their authority for internal political regulation, thereby succeeding in making collectively binding decisions. This authority is externally restricted and internally it is merely claimed within a territorially delimited communicative space (Bommes, 1994). Joppke (1998: 6) is right in stating that this territorial state is a strange anomaly in a world perceived as based on non-territorial, functional differentiation: “*This functional order integrates individuals only in specific respects (e.g. as workers, consumers, or churchgoers), but never in their totality, thus requiring them to be multiply orientated and allied, and in this sense perpetually flexible and mobile. States are an exception to this. They include the individual as a whole and involuntarily by ascription at birth, further expecting her to be attached to just one state among a plurality of similarly conceived states, and not to change this attachment over a lifetime.*”<sup>17</sup> While this is not the place to contest the reality of nation-state *per se* and especially nation-state-based policies on immigration,<sup>18</sup> it has to be asserted that state authority depends genuinely on ethnic and national semantics. Ethnic identifications and ethnic semantics are potentially useful mechanisms to legitimate political action as well as backing the articulation of claims made by the national community. However, ethnic and national categorizations are not only part of public and political discourses. In these discourses the social difference between immigrants – who are allegedly posing a problem for the structural integration of the welfare-state regime – and the indigenous population is presented as a cultural one, as a difference based on national identity. These categorizations are manifested in juridical practices based on and articulated through law. The German *Ausländergesetz* (foreigners law)

10 This can be seen best in the juxtaposition of “national principles” concerning incoming ethnic Germans (*Aussiedler*) and “universalist

sets the basis for the terminology concerning immigrants. The juridical definition says that one is a foreigner who is not German (Foreigners Law, § 1.2). Because being a German is basically defined ethnically, this differentiation constituted an “ethnic boundary” (Barth, 1969). While one could consider this merely a symbolic separation between ingenious and immigrant population, it constitutes the chance to impose special laws and regulations on immigrants, not only in regard to political rights (which was mainly a struggle for the acquisition of citizenship), but concerning social and economic rights. Thus, in Germany the reformed *Ausländergesetz* from 1993 is a graded categorisation of immigrants statuses with the aim to integrate foreigners (guest-workers) and their families into the society, to balance the supply and demand of (foreign) labour, and to regulate employment rights and the access to the labour market as well as to social benefits. The underlying conception of the foreigners law is to regulate the status of foreign residents in Germany according to what can be labelled “civic stratification”. The *Ausländergesetz* fulfils thereby important control and distribution functions within the welfare-state system: “*Central amongst them are job protection, welfare protection, surveillance and deterrence, albeit in the context of trans-national obligations*” (Morris, 2000: 237). Thus the German foreigners law conceives a hierarchy of limited and unlimited resident statuses including residence permits but also residence titles for special or exceptional purposes. The different statuses are connected to different rights concerning social benefits, employment rights etc.<sup>19</sup> To receive German citizenship at the end of a naturalisation process one has to run through all of the statuses, however always keeping in mind the impending fact that their residential status is insecure until they will become a German citizen. Table 4 gives an overview of the statuses.

*Table 4: Residence status of foreigners living in Germany as at 31 Dec. 1999*

|   |                  |
|---|------------------|
| <b>Total number of foreigners in Germany:</b> |                  |
| of those                                      | <b>7,343,591</b> |
| Right of unlimited residence                  | 824,099          |
| Limited residence permit                      | 1,757,746        |
| Unlimited residence permit                    | 2,027,128        |
| EC residence permit                           | 760,807          |

principles connected to asylum-seekers” (Lash/Urry, 1994: 185). Consistently, the official German phraseology speaks of *Aussiedler* as refugees and of asylum-seekers as foreign refugees.

11 The national identity dimension manifests itself best in the politics of citizenship and the heated debate about the provisions of conferment of citizenship, see Brubaker (1989, 1992), Fulbrook (1996), Buckow/Yildiz (1999), Wydra (2001). The socio-economic dimension is best seen in the Green Card initiative by the federal government, which

|  |           |
|--|-----------|
| Residence title for specific purposes    | 231,231   |
| Residence title for exceptional purposes | 173,718   |
| Rest <sup>1</sup>                        | 1,568,862 |

Source: Central Aliens Register, see Federal Ministry of the Interior (2000: 40).

1) this includes people staying in Germany under Duldung (toleration), people under the age of 16 as long as they do not need a residence authorisation, and people who do not have (yet) a residence authorisation at all.

If it is correct to state that modern political power gains its form not through the domination of subjectivity and subjects but that this power depends on a web of technologies for erecting and maintaining the self-government of the individuals/citizens (Miller/Rose, 1990: 28), this statement is also true for the regulations conceived in the German *Ausländergesetz*. This feature of self-government means that immigrants have to fulfil and in fact have to learn to be in compliance with and adapt actively to the requirements of the provisions of the foreigner law. This is not only true in regard to the established hierarchy of the *Aufenthaltsstatus* (status of residence) but also (and especially) to meeting the rules for acquiring citizenship. One must understand this as a process of adapting these requirements as a step towards integration into German society. This reflects the long held stance that immigrants have to integrate (that means to assimilate) and even convert to a fully-fledged member of society.<sup>20</sup> Full political, social and cultural (citizenship) rights have been viewed on as the target of integration, not as the beginning of integration. Brubaker suggests that the legal changes concerning citizenship politics in Germany may be indicative of a slight but still significant “assimilationist turn” without giving way to the former belief that complete assimilation is the prerequisite for citizenship. He states that, “*the liberalization of naturalization law broke expressively with this principle, previously enshrined in the regulations governing naturalization. The new practices, policies, and discourses surrounding citizenship are assimilationist, rather, in the sense of politically recognizing, legally constituting, and symbolically emphasizing commonality rather than difference. Assimilation, (...) means becoming similar, or treating as similar, and this new inflection in the policies and practices of citizenship in the 1990s has involved a modest but significant assimilationist turn in both senses*” (Brubaker, 2001: 538f). Just to get an impression of what Brubaker views as the “assimilationist turn” one has to review the processes and changes in German citizenship law and immigration policies from the beginning of the 1990s. To begin with the (temporary) end, the significant change in immigration policy in general occurred with the advent of the new coalition government of the Social Democrats (SPD) and the Greens (BÜNDNIS 90/DIE GRÜNEN) in 1998.

started in 2000. The Green Card was introduced to provide incentives for foreign IT-specialists to come and work in Germany. Here, one can see clearly an example of the substitution and complement functions of labour migrants to fill certain jobs, which are vacant, because there

For the first time it was officially recognised that Germany is a country of immigration.<sup>21</sup> The new government called for a reform of the nationality law as the “vital element” of their immigration policy and implemented the Act to Amend the Nationality Law, which took effect on 1 January 2000. It ended a period of almost one hundred years of citizenship law based purely on ethnic criteria (*ius sanguinis*).<sup>22</sup> However, one has to ask why any salience should be laid on citizenship law? Here is not the place to develop the genealogy and the multiple dimensions of the concept of citizenship. For the present context it is sufficient to view and conceptualise citizenship as a mechanism for modern nation-states of sorting, identifying and classifying people, especially considering migration. Consistent with that citizenship is an instrument of exclusion, inclusion, separation, closure, differentiation, and restriction (Brubaker, 1992: ix-xi). Similarly, citizenship laws are referring to the role of the nation-state as “controller, regulator or gatekeeper” (Hammar, 1990: 29).<sup>23</sup> Before the reform of German nationality law citizenship politics in Germany were part of what can be labelled anti-immigration policy. ~~German citizenship policies reflected a deep societal ambivalence concerning foreigners. On the one hand the strict provisions were an expression of profound mistrust in regard to the migrant population, and on the other it was officially asserted that the will to integrate these migrants was the driving force behind all policies towards the foreign fellow-citizens, even if the official policies were exactly the obstacle to achieve this aim (Hagedorn, 2001: 220).~~<sup>24</sup> Citizenship politics in Germany as elsewhere remain, even after the positive reform of the nationality law, an instrument for regulating and controlling the immigrant population in a certain way. This is also true for the reform bill to control and limit immigration to Germany.

#### THE BEGINNING ERA OF A POSITIVE IMMIGRATION POLICY?

The plans for this bill were publicly not only introduced as the start of a new chapter in immigration policy but also as the turning point from an anti-immigration policy to an immigration policy that is worth its name. What are the new provisions of Schily's Bill to Control and Limit Immigration and to Regulate the Residency and the Integration of Citizens of the European Union and Foreigners (*Entwurf eines Gesetzes zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und Integration von Unionsbürgern und Ausländern*)?<sup>25</sup> This article can only provide a short overview.<sup>26</sup> The central amendments compared to current (valid) law can be divided into the aspects concerning: (a) new structures; (b) labour migration; (c) family reunification; (d) admission on humanitarian grounds; (e) obligation to leave the country; (f) social benefits; (g) integration; (h) provisions concerning citizens of the European Union and (i) asylum procedure.

(a): The core of the coming immigration act will be a restructuring of the *Ausländergesetz*

exists a lack on German computer and communication specialists. It is widely recognised that immigration was essential for the German *Wirtschaftswunder* (economic boom) after World War Two. Generally, it is proved that immigration has at the final count a positive influence on the economical, social and demographical development of Germany (Loeffelholz/Köpp, 1998).

with special focus on residence and employment (Residence Act). The previous residence status should be reduced to and replaced by a (limited) residence permit and an (unlimited) “settling permit”. The act is guided by the purposes of the stay (e.g. employment, family reunification or education) and not by the former residence status. Additionally a new *Bundesamt für Migration und Flüchtlinge* (Federal Agency for Migration and Refugees) will be installed. This agency will mainly be responsible for the co-ordination of information regarding labour migrants between the different administrative bodies, the labour administration and the embassies in the sending countries. Furthermore it will manage an optional recruiting system for labour migrants, develop a general programme on integration, be in charge of the *Ausländerzentralregister* (central foreigners register) and finally execute measures to promote the voluntary return of migrants and asylum seekers (chapter 7, § 74 of the immigration bill).

(b): Labour migration is now generally regulated according to regional requirements. It will be organised more flexibly so that the labour administration gains more control and ability to regulate the influx of migrants. The employment permit will be conferred together with the residence permit (one-stop-government). Highly skilled labour migrants, on the other hand, will gain direct access to a settling permit right from the beginning (ch. 2, § 19). Additionally a special selection procedure is introduced as an optional instrument to find a limited number of “specially qualified” migrants who may receive an entry permit (ch. 2, § 20). This selection is dependent on criteria such as self-maintenance and vocational training, as well as age, language skills, relations to Germany and the country of origin.<sup>27</sup>

(c): Family reunification is also one of the core issues of the bill. The planned provisions have already fuelled hot dispute between the coalition partners, because only children of “high-skilled” migrants with a settling permit are allowed to follow their parents up to the age of 18 (ch. 2, § 27ff). Otherwise (for low-skilled migrants, asylum-seekers and refugees) the possibility to follow would exist only up to the age of 12. Additionally late arrivals are prone to discretionary practices of the administration which are based on various conditions, e.g. sufficient language skills in order to facilitate integration. Yet, if the family as a whole wants to migrate to Germany, children are generally allowed to follow up to the age of 18.<sup>28</sup>

(d): The provisions for admission on humanitarian grounds specify former legislation considered by the government to have produced unsatisfactory results. Basically strict differentiation is introduced to distinguish between people who *cannot* return and people

12 The conservative agitation was mainly raised against the *Doppelpass* (dual citizenship) claiming that a person can not split his (political) loyalty. This protest was successful. The ban on dual citizenship was not removed by the reform of the nationality law and is still official policy. However, as it was under the former conservative government, while immigrants who apply for German citizenship have generally to renounce their previous citizenship, empirical data show that the exception of retainment of one’s previous citizenship is in fact

who *do not want* to return to their country of origin. The practice of *Duldung* (toleration) of those who are refused asylum but cannot be deported because of the absence of documents etc. will be cancelled.<sup>29</sup> The government pursues the aim to promote the voluntary return of people who are obliged to leave the country. In that context some provisions found in the Schengen-Agreement are included. These refer to the issue of securing identification of migrants when they apply for visas. People from “*Problemstaaten*” (problematic states) are forced to provide their fingerprints and a photograph of themselves.<sup>30</sup> Migrants who convey false information about their identity or nationality will be prosecuted and eventually deported.

(e) and (f): The new amendments refer to persons obliged to leave the country (non-consolidated right of residence) and asylum-seekers. From now on they should receive benefits according to the *Asylbewerberleistungsgesetz* (Act on Benefits for Asylum-Seekers) for the whole period of their asylum procedure.<sup>31</sup>

(g): Another salient part of the bill is concerned with the measures to improve integration of migrants and foreigners in general (ch. 3, § 44f). The Federal Government aims at developing legislation to create state-based facilities for integration incentives like language courses, introductions into the juridical and cultural system of Germany, as well as German history. Foreigners who reside permanently in Germany will be given the right to claim for integration courses. There will be compulsory language courses for people without command of the German language who have been living in Germany for less than six years. As stated before, general language skills and basic knowledge of the societal system and the general living conditions in Germany are key criteria for gaining an (unlimited) settling permit, the decisive step towards acquiring citizenship by naturalisation.<sup>32</sup>

(h) and (i): These parts of the bill focus on the elimination of the residence permit for citizens of the European Union, who are merely subject to an obligatory registration. The most remarkable amendment within the asylum procedures is the elimination of the possibility for asylum-seekers to change from the asylum-procedure to the process of immigration on grounds of employment, which has up until now been the case.

All of the provisions briefly sketched above signal the very beginning of a new era in immigration policy in Germany. The Act to Reform the Nationality Law of 15 July 1999, whose main provisions took effect on 1 January 2000, was aimed to facilitate integration of foreigners and migrants. Though this act can be considered the cornerstone of the new German immigration policy that provides the opportunity for immigrants to become a *citoyen* with all rights and duties (Laubach, 2001), the long awaited re-conceptualisation

the rule (Çinar, 1994).

13 See also Ivison (1998). Governing is not an abstract concept, it is strictly oriented at the implementation of norms, rules regulation etc. Dean (1999: 102) stresses that “all modern forms of government of the state need to be understood as attempting to articulate a bio-politics aimed at enhancing the lives of the population through the application of the norm, with the elements of a transformed sovereignty that targets subjects within a given territory and whose instrument is the law.”

14 For a specific description of the “fortification” of Europe towards

of immigration policy adds the external dimension of controlling the entry to Germany (connected with a basic outline of further integration measurements) to internal integration efforts (nationality law). Yet, while the bill is indeed a step towards recognising Germany as an *Einwanderungsland*, it still does not mean equal treatment for all people residing and living in Germany. The main critique hinges on humanitarian aspects with respect to refugees which appear to be worsening. However, the regulations concerning immigration are also considerably incomplete on other grounds.

#### CRITICAL REMARKS ON THE NEW IMMIGRATION LAW

I will give just a brief sketch of the shortcomings of Schily's bill on immigration. First and maybe the most discriminating part of the new provisions is the bi-partition of migrants in high-skilled and low-skilled labour migrants. The settling permit is a juridically stable status, yet it is conferred only to highly-qualified migrants (e.g. for computer specialists, engineers and executive personnel in science and research). Only their children are allowed to follow up to the age of 18. All other migrants are granted an insecure residence permit and are dependent on discretionary practices of both government and authorities when prolonging it as well as when applying for the settling permit after a certain period of time. Their children are only allowed to join them up to the age of 12. Critics stress correctly that this provision contradicts the axiom of equality under article 3 of the German Basic Law. Only when children join their father/parents right from the beginning is the age limit set at 16. This means, as Prantl (2001) asserts, that a normal (low-skilled) worker is more or less forced to bring his family with him even if he is unsure whether or not he will more or less successfully integrate into the host-society. Generally, this provision contradicts European (Union) standards where the age at which children are allowed to join their parents is oriented towards the majority of the children.<sup>33</sup> Additionally, one cannot dismiss the basic rights – article 6 of the German Basic Law – concerning marriage and the family which also refer to foreigners.

Second, the requirements for granting a settling permit are too hard to meet, especially for the vast group of older, ill-educated and untrained immigrants that have been living in Germany for many years – some of them for over twenty years. It is expected that many of the 1.7 million immigrants holding a limited residence permit will not be able to claim for the unlimited settling permit (Laubach, 2001: 28). Third, connected with this is the non-specification or absence of any criteria for granting and extending residential permits. Consequently, the bill leaves the applicants in a state of insecurity, fusing the residence of a migrant with the somewhat mysterious “*interests of the Federal Republic of Germany that have not to be interfered with or endangered*” (Immigration Bill, ch. 2, § 5.1.3.).<sup>34</sup> Fourth, the relation between labour administration and foreigner authorities is not yet specified the East, see Mihalka (1994) and Convey/Kupiszewski (1995).

15 Esping-Andersen (1990) distinguishes “three worlds of welfare capitalism.” He classifies a liberal (Anglo-Saxon countries), a conservative (Continental Europe) and a social democratic regime (Scandinavian countries).

16 Faist (1995: 220) claims that class-race cleavages have developed in German welfare-state politics, especially since the late 1980s, which

so that both organisations are allowed to withdraw the residential permit according to their own specific regulations. Other shortcomings of the bill include first and foremost provisions concerning asylum-seekers and refugees, e.g. people who stay in Germany under the special status of *Duldung* (toleration) are in danger of sliding into illegality when, according to the bill, this kind of status is removed.<sup>35</sup> Judicial doubts are raised concerning the proper legitimacy because the *Bundestag* (Parliament) and the *Bundesrat* (Chamber of the Federal *Länder*) are excluded – according to the bill – from decisions about size and detailed regulations of immigration.

Yet, one has to concede that there is still debate about modifications within the coalition government in Germany, and it is to be expected that the Greens, who favour a more liberal stance on immigration, will succeed in some respects. However, the discussions are overshadowed by the consequences of the terrorist attack on America. Schily took the opportunity to connect the conceptualisation of the immigration law with the tightening of domestic security measures to curb and control extremist foreigners who want to enter German territory or are already residing there. That is why there will be only moderate modifications and these are not yet known, especially because the federal government also needs the approval of the *Bundesrat* to pass the law and the coalition government of the Social Democrats and the Greens does not have a majority in it. Therefore one has to wait and see how the detailed provisions will be in the end. The original plan to pass the law by Christmas 2001 seems highly improbable and so it will be spring 2002 when the final decision will be made over this bill. Of course, that is just an hypothetical estimation, because with the beginning of 2002 Germany will already be in the wake of the electoral campaign for the parliamentary vote held towards the end of 2002. And as the 1999 campaign against the reform of the nationality law has shown, immigration is a considerably explosive issue and the conflicting partisan positions of the different parties, especially the Greens and the CDU/CSU, appear to be rather irreconcilable. So, because the government needs the approval of the CDU/CSU in the *Bundesrat*, this bill, at least in the present form, may never become reality.

## CONCLUSIONS

Nevertheless, as already stated, this bill has prepared the ground for the recognition that Germany needs and will need immigration and that Germany has to handle this issue within parameters that include not only integration but also the possibility of civil and political articulation of migrants. The new bill seems to open the door to a positive step towards a reasonable immigration policy in Germany. Besides its fundamental correction of the fictitious stance on not being a country of immigration it introduces “integration courses” that are, although compulsory in nature, a clear approach to preparing migrants better for what can be seen as the “fight for membership” (Mackert, 1999) of German

he considers to be the period of retrenchment of welfare-state politics in general. Most importantly is the type of welfare regime determines both the “admission and the selection of immigrants (immigration policies), and the politics affecting the insertion of labour immigrants into the political and socio-economic life of the country of settlement (immigrant

society. Now, forty years after the signing of the recruitment treaty with Turkey (30.10.1961) and with more than 2.4 million Turks living in Germany, an immigration and integration policy will be conceived which is formulated in a positive way.

However, recognising the dawn of an immigration rather than an anti-immigration policy is not to forget that the specific regulations concerning migrants from non-EU countries are still woven into a web of keeping and handling migrants as a separate part of society. Migrants are still focused on under the regulations of the foreigners law. It is true that with the new nationality law, children of migrants are granted German citizenship when meeting certain provisions. Yet, the bulk of migrants remain in the above mentioned organised hierarchy of privileged foreigners from EU countries, *Aussiedlern* and migrants from non-EU countries. And while the new bill pretends to *amend* the positions of immigrants with the reduction of residential status for foreigners it simply reorganises this hierarchy within the group of non-privileged foreigners. This is because immigration is still conceived under terms of economic advantages that can be derived from certain migrants. The differentiation between high-skilled and low-skilled migrant workers is quite discriminatory. This categorisation follows the dictum that some migrants are useful for German society and some are not, as the Bavarian Minister of the Interior asserted a couple of times. Yet, the usefulness of a migrant is not measured according to the particularity of a person or their social capital, rather the value of the migrant depends on his skills and especially on the requirements of the German economy. It may be legitimate that a nation-state selects the migrants who are allowed to enter. This is polemically reflected in the wide held belief that the societal capacities to integrate foreigners are already overstrained. However, one has to ask how this practice is in line with any democratic principles referring to equality or even the standards of the human rights regime at all.

What is inherent in the new developing strategy of German immigration policy is the shift and embedding of immigration and also integration control from within German territory and society beyond the borders. Germany's intended immigration policy is woven into the multi-layered and expanding system of the fortification of Europe. It will already select the immigrants in the countries of origin. Immigrants will therefore be treated as applicants for jobs and not as people, of whom cultural and social benefits could be gained. Yet, a rigid selection process may undermine fundamental requirements for Germany in economic, political, cultural and social perspective. This considerably true when connecting a rigid selection process with the nationalist discourse that are sidelining every policy on immigration and immigrants and enjoy widespread resurgence. Thus Faist is right in asserting that „*the analysis of available empirical evidence suggests that nationalist-populist policies also have the greatest potential to undermine social rights of populations in the receiving welfare states, because a strict enforcement of the rotational principle and the extra-territorial status of migrant labour could create precedents for radical deregulation of labour markets and social rights*“ (Faist 1995b: 245).

Generally, it seems that there must be a considerable amount of (labour) migration to Germany in the future, merely to minimize the decrease in population. However, as

policies).” This argument is in line with viewing German migration politics as part of a bio-political management of societal life.

17 Also see Bommers and Halfmann (1994). In this context, Brubaker

Hradil (2001) states, this would probably only minimize the shift of the age structure. Yet, migration is not expected to level the ageing of the employees or the lack of fee-paying members of the welfare system. Hradil assumes that there must be up to five million immigrants to per year to level the age structure and avoid increases in pension spending. Immigration of this scale hardly appears to be politically acceptable considering the ongoing general security discourse about migration. The prospect of the EU enlargement is already raising fears of increasing numbers of immigrants from Eastern European countries. Yet, because general expectations are going to see more and more migrants coming from other than the European cultural sphere, the task of integrating migrants will get even harder. Here one can see that integration is not only a juridical matter connected with the acquisition of citizenship or the adaptation of the national identity, however conceived, but also a very sociological one due to being highly “visible” as a “foreigner” because of different habits, appearance and so on. This is further complicated by the failure of political practice in the past, first, to correct general negative attitudes towards migrants and, second, to cling to an ethnic definition of nationality and national identity. It is surely right to assert that policies to increase labour migration will be problematic to promote considering, for example, the large-scale unemployment in Germany. This is not to say that labour migration contributes to unemployment but that unemployment is successfully used as a strategic argument against immigration of any scale.

Finally, to answer the question if Germany is moving on migration, one has to state: it is moving. From a symbolical point of view this “moving” is quite a big jump away from archaic concepts of immigration policy or, as the case of the reform of the nationality law has shown, in regard to citizenship politics. However, these reforms are just a little step when seen from a political perspective. Additionally, to a great extent the reforms are not the sole effort of German politicians at all. To some the truth is not always palatable and so the German government does not recognise that they are just producing an immigration policy that is the *forced* consequence of the developments of the past German immigration experience and that Germany is just beginning to meet the political reality that emerged with nearly 10 % immigrants (and their dependants) living in Germany. And while Germany is definitely on the way to move in a positive direction in regard to immigration policy, it is still facing at least two important tasks that have to be solved. First, there is the problem of nationalist-populist policies and discourses that are portraying immigrants as a burden for the host society. Additionally, these policies and discourses still seem to succeed in denouncing liberal immigrant policies to „*mean unrestricted immigration policies*“ (Faist, 1995b: 245) and therefore are producing hate against foreigners. Second, even if the situation of immigrants in Germany is improving, immigrants are still not fully included (like in all other states of the European Union) into the political and social order of the European Union. As Føllesdal states, immigrants are „*(i)invisible in the eyes of the European polity, they are socially dead in the political order of the European Union*“ (Føllesdal, 1999: 108). Considering that the states and the societies of Europe are moving closer, this is another critical task for any future immigration policy.

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