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Governance in Foreign Policy-Making in Germany and Poland and Polish-German Relations – the Role of Non-state Actors

Alexander Thomas Wochnik

A thesis submitted for the degree of Doctor of Philosophy

Aston University

July 2012

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This thesis examines the influence of non-state actors on Polish-German relations by considering foreign policy-making towards Poland in Germany and vice versa. The approach chosen for this thesis is interdisciplinary and takes into consideration literature from domestic politics (Area Studies), Foreign Policy Analysis and International Relations (IR). The thesis argues that IR, by purely looking into the quality of inter-state relations, too often treats these relations as a result of policies emanating from the relevant governments, without considering the policies' background. Therefore, the thesis argues that it is necessary to engage with the domestic factors which might explain where foreign policies come from. It points out that non-state actors influence governments' choices by supplying resources, and by cooperating or competing with the government on an issue at stake. In order to determine the degree of influence that non-state actors can have on foreign policy-making two variables are examined: the institutionalisation of the state relations in question; and the domestic structures of the relevant states. Specifically, the thesis examines the institutionalisation of Polish-German relations, and examines Germany's and Poland's domestic structures and their effect on the two states' foreign policy-making in general. Thereafter, the thesis uses case studies in order to unravel the influence of non-state actors on specific foreign policies. Three case studies are examined in detail: (i) Poland's EU accession negotiations with regard to the free movement of capital chapter of the *acquis communautaire*; (ii) Germany's EU 2004 Eastern Enlargement negotiations with regard to the free movement of workers chapter of the *acquis communautaire*; and (iii) Germany's decision to establish a permanent exhibition in Berlin that will depict the expulsions of millions of Germans from the East following WWII.

Keywords: International Relations; Foreign Policy Analysis; domestic factors; European Integration; comparative study

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List of Abbreviations

- AA - *Auswärtiges Amt*, Foreign Service
AWRSP - *Agencja Wolności Roles Skarbu Państwa*, Agency for Agricultural Real Estate
AWS - *Akcja Wyborcza Solidarność*, Solidarity Electoral Action (party)
- BDA - *Bundesvereinigung der Deutschen Arbeitgeberverbände*, Confederation of German Employers' Associations
BDI - *Bundesverband der Deutschen Industrie*, Federation of German Industry
BdV - *Bund der Vertriebenen*, Federation of Expellees
BHE - *Gesamtdeutscher Block/Bund der Heimatvertriebenen und Entrechteten*, All-German Bloc/League of Expellees and Deprived of Rights
BMZ - *Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung*, Federal Ministry for Economic Cooperation and Development
BVFG - *Gesetz über die Angelegenheiten der Vertriebenen und Flüchtlinge/Bundesvertriebenengesetz*, Federal Expellee Law
- CAP - Common Agricultural Policy
CBOS - *Centrum Badania Opinii Społecznej*, Centre for Public Opinion Research
CDU - *Christlich Demokratische Union Deutschlands*, Christian Democratic Union of Germany
CEEC - Central and East European Countries
CFSP - Common Foreign and Security Policy
CIS - Commonwealth of Independent States
COREPER - *Comité des Représentants Permanents*, Committee of Permanent Representatives in the European Union
- DBV - *Deutscher Bauernverband*, German Farmer's Union
DGB - *Deutscher Gewerkschaftsbund*, Confederation of German Trade Unions
DHM - *Deutsches Historisches Museum*, German Historical Museum in Berlin
DIW - *Deutsches Institut für Wirtschaftsforschung*, German Institute for Economic Research
- EC - European Community
ECJ - European Court of Justice
ECSC - European Coal and Steel Community
EMU - Economic Monetary Union
EPP - European People's Party
EU - European Union
- FDP - *Freie Demokratische Partei*, Free Democratic Party
FES - *Friedrich Ebert Stiftung*, Friedrich Ebert Foundation
FNS - *Friedrich-Naumann-Stiftung*, Friedrich-Naumann Foundation
FPA - Foreign Policy Analysis
FRG - Federal Republic of Germany
FWPN - *Fundacja Współpracy Polsko-Niemieckiej/ SdpZ - Stiftung für deutsch-polnische Zusammenarbeit*, Foundation for Polish-German Collaboration

GDR - German Democratic Republic
GG - *Grundgesetz*, Basic Law
GGO - *Gemeinsame Geschäftsordnung der Bundesministerien*, Joint Rules of Procedure of the Federal Ministries
GOBReg - *Geschäftsordnung der Bundesregierung*, Rules of Procedure of the Federal Government

HBS - *Heinrich-Böll-Stiftung*, Heinrich-Böll Foundation
HDB - *Hauptverband der Deutschen Bauindustrie*, Federation of the German Construction Industry
HSS - *Hans Seidel Stiftung*, Hans Seidel Foundation

IGC - Intergovernmental Conference
IR - International Relations

KAS - *Konrad Adenauer Stiftung*, Konrad Adenauer Foundation
KIE - *Komitet Integracji Europejskiej*, Committee for European Integration
KPN-OP - *Konfederacja Polski Niepodległej – Obóz Patriotyczny*, Confederation of Independent Poland – Patriotic Camp

LAG - *Lastenausgleichsgesetz*, Equalization of War Burdens Act
LPR - *Liga Polskich Rodzin*, League of Polish Families

MNC - Multinational Corporation
MSZ - *Ministerstwo Spraw Zagranicznych*, Polish Ministry of Foreign Affairs

NATO - North Atlantic Treaty Organization
NGO - Non-governmental Organisation
NSI - National Strategy for Integration
NSZZ „Solidarność” - *Niezależny Samorządny Związek Zawodowy „Solidarność”*, Independent Self-governing Trade Union "Solidarity"

OBOP - *Ośrodek Badania Opinii Publicznej*
OPZZ - *Ogólnopolskie Porozumienie Związków Zawodowych*, All-Poland Alliance of Trade Unions

PGR - *Państwowe Gospodarstwo Rolne*, State Agricultural Farm
PHARE - Poland and Hungary: Assistance for Restructuring their Economies
PiS - *Prawo i Sprawiedliwość*, Law and Justice Party
PO - *Platforma Obywatelska*, Civic Platform
PP - *Porozumienie Polskie*, Polish Agreement Party
PR - Proportional Representation
PSL - *Polskie Stronnictwo Ludowe*, Polish Peasant Party
PT - *Preußische Treuhand*, Prussian Claims Society

REP - *Die Republikaner*, the Republicans
RLS - *Rosa Luxemburg Stiftung*, Rosa Luxemburg Foundation
ROP - *Ruch Odbudowy Polski*, Movement for the Reconstruction of Poland

SdL - *Sudetendeutsche Landsmannschaft*

SdpZ - *Stiftung für deutsch-polnische Zusammenarbeit*/ FWPN - Fundacja Współpracy Polsko-Niemieckiej, Foundation for Polish-German Collaboration
SKL - *Stronnictwo Konserwatywno-Ludowe*, Conservative People's Party
SLD - *Sojusz Lewicy Demokratycznej*, Democratic Left Alliance
SOZ - Soviet Occupation Zone
SPD - *Sozialdemokratische Partei Deutschlands*, Social Democratic Party of Germany
SU - Soviet Union

TNA - transnational actor
TP - transitional period

UKIE - *Urząd Komitetu Integracji Europejskiej*, Office of the Committee for European Integration
USA - United States of America
USSR - Union of Soviet Socialist Republics
UW - *Unia Wolności*, Freedom Union

WWI - First World War
WWII - Second World War

ZChN - *Zjednoczenie Chrześcijańsko-Narodowe*, Christian National Union
ZEW - *Zentrum für Europäische Wirtschaftsforschung*, Centre for European Economic Research
ZgV - *Zentrum gegen Vertreibungen*, Centre Against Expulsions

1. Introduction

This thesis addresses the question: what is the influence of non-state actors in Germany on foreign policy-making towards Poland and vice versa? This chapter has five sections. Section I explains why Polish-German relations matter. Section II reviews the literature on Polish-German relations and identifies the gap that this thesis seeks to fill. Since this thesis uses approaches from Foreign Policy Analysis (FPA) and International Relations (IR), in Section III these disciplines are introduced and their key concepts, used here, elaborated. Section IV introduces the research design of the thesis, research questions, hypotheses and their testing; explains and justifies the methodologies employed. Section V outlines the structure of the thesis.

1. Empirical Interest – Why are Polish-German relations important?

It could be argued that Polish-German relations are of minor interest since the two countries are friendly neighbours and co-operate as part of the North Atlantic Treaty Organisation (NATO) at the military and defence level and the European Union (EU) at the economic and other levels. Germany recognised the Oder-Neisse border by signing the Good Neighbourly Relations and Friendly Cooperation Treaty in June 1991 and Poland did not object to Germany's re-unification (as discussed in Chapter III). Therefore, judging from the perspective of the international structure, and particularly from the events of the 1990s when Germany supported Poland's accession to the EU and NATO, one could argue that Polish-German relations are not contentious enough to arouse any interest. But such an assessment does not take account of the events of the new millennium. Despite common membership of the EU and NATO, and that World War II ended over sixty years ago, the past still shapes Polish-German relations. At the Intergovernmental Conference (IGC) in 2007 negotiating the Lisbon Treaty, intended to reform the EU, newly enlarged to 27-member states, Poland's delegation, led by Law and Justice,¹ demanded an altered assignation of votes in the EU Council. Jarosław Kaczyński, the then Polish Prime

¹ The centre-right party Law and Justice (*Prawo i Sprawiedliwość*/ PiS) was established in 2001 by the Kaczyński twins and won the 2005 Polish parliamentary elections with 27 % of the votes cast. PiS eventually formed a coalition government with the radical *Samoobrona* (Self Defence) and the conservative *Liga Polskich Rodzin* (LPR, League of Polish Families) in May 2006, omitting the other centre right party Platforma Obywatelska (PO, Civic Platform), which came second with 24.1 %.

Minister, attracted Europe-wide attention by saying, “if it were not for Germany and WWII, Poland would have 60 million people now and would be better represented in the EU.”²

Erika Steinbach, President of the Federation of Expellees (*Bund der Vertriebenen*, BdV) and member of the *Bundestag* for the CDU/CSU parliamentary group figures prominently in the media and is able to stir up feelings on both sides and precipitate debates about the quality of Polish-German relations, not least because she voted against the recognition of the Oder-Neisse line. However, she attracts more attention in Poland than in Germany, where although Steinbach and the BdV are occasionally mentioned in newspapers like the *Frankfurter Allgemeine Zeitung* or the *Spiegel*, they are not of great importance to the public. The BdV under Steinbach’s leadership launched a foundation to erect the Centre Against Expulsions (*Zentrum gegen Vertreibungen*, ZgV), documenting the expulsions and ethnic cleansings of 20th century Europe, including the displacement of some 15 million Germans, predominantly from the former Eastern territories of the *Deutsches Reich*. The Grand Coalition supported the idea of erecting a “Visible Sign” (*Sichtbares Zeichen*), and by 2008 it was clear that a museum depicting this event would be erected in Berlin and run by the Flight, Expulsions, Reconciliation Foundation (*Stiftung Flucht, Vertreibung, Versöhnung*, SFVV) at the German Historical Museum in Berlin. Polish politicians accused Germany of trying to rewrite history by painting the German people as victims, thus assuaging German collective guilt.

Another contentious issue is are property disputes. Some former expellees are demanding compensation from the Polish government for their property losses. The dispute culminated in the founding of the Prussian Claims Society (*Preußische Treuhand*, PT) in 2000, and the filing of 22 individual claims in the European Court of Human Rights in December 2006. Although the Court declared the case to be inadmissible,³ the PT still exists and seeks to be the “strategic instrument for all displaced persons organizations, the victims themselves, and all others who are involved in this matter”.⁴ The German government has repeatedly distanced itself

² Quoted in “*Stimmgewicht in EU: Kaczynski will Kriegstote mitzählen*”: http://www.focus.de/politik/ausland/stimmengewicht-in-eu_aid_64058.html, accessed 20.02.2012.

³ For the ruling see European Court of Human Rights, Application no. 47550/06 by PREUSSISCHE TREUHAND GmbH & Co. KG a.A. against Poland: <http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=841872&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>.

⁴ See: <http://www.preussische-treuhand.org/en/Betrieb.html>, accessed 20.02.2012.

from the activities of the PT, and its actions were condemned in Germany by high profile politicians (including Steinbach) and churches.⁵ Nevertheless, in Poland this issue stirs up strong responses in the Polish media and the public and disturbs good political relations.

These three events alone demonstrate that Polish-German relations are not conflict-free despite favourable international structures. As this short introduction indicates, despite overall good relations between the two countries, it is clear that non-state actors can play a significant role, both constructive and obstructive. Small non-state actors like the BdV or the *Preußische Treuhand* are able to cause major tensions between the two states. A positive example of non-state actors' involvement in Polish-German relations is the Polish Catholic church which played a significant role in initiating dialogue between the Polish and German churches leading to "setting up the floor" for their respective governments to officially start bi-lateral relations. By contrast, organisations like the BdV or the PT are able to cause major tensions between the two states. Therefore, it is not possible to explain Polish-German relations at the governmental level alone, something of which the discipline of IR tends to be guilty. In this case omitting non-state actors would give an incomplete picture of Polish-German relations.

The nature of the Polish-German relationship also matters for all the states that participate in the organisations that Poland and Germany are both part of. Especially for the EU, a difficult relationship between these two countries, the largest and the sixth largest members, would make routine work tedious since Germany and Poland, with 120 million people between them, have considerable weight in EU decision-making. Gridlock at the intergovernmental level has occurred between other states, with Greece and its dispute of Macedonia's name, perhaps the most obvious example.

Before returning to the question of non-state actors' influence on foreign policy-making and their contribution to Polish-German relations, the next section discusses the existing literature on Polish-German relations and identifies the gap that this thesis seeks to fill.

⁵ See for example the article from 19.12.06: *Vertriebenen-Klage - Auswärtiges Amt versucht, Polen zu besänftigen* at: <http://www.spiegel.de/politik/ausland/0,1518,455522,00.html>, accessed 20.02.2012.

II. Literature Review

This literature review is divided into two sub-sections following the two broad areas that it discusses: the first is a literature on Polish-German relations and the second engages with the literature on the role of non-state actors on Polish-German relations.

Literature on Polish-German relations

Most literature on Polish-German relations focuses on the troubled history of the two countries and their reconciliation. A considerable amount of work has emerged during the process of Eastern Enlargement, covering Poland, Germany and the EU. Another branch of literature on Polish-German relations could be labelled “popular relations”. History, as the common denominator, plays a significant role in all these works.

Concepts which constantly recur in historical legacy literature include coming to terms with the past (e.g. Bachmann, 2005: 197-215); collective memory (e.g. Pięciak, 2005: 315-43) and reconciliation (e.g. Gardner Feldman 1999; 2007; 2012). Most significance is attributed in WWII and its aftermath (Góralski 2006). In the early 1990s, Polish-German relations were better than ever before. Germany unified without major Polish objections, and following the Good Neighbourly Relations treaty, Germany became Poland’s prime advocate on EU accession. The literature on Polish-German relations thus compared their relations to the Franco-German case. In fact, it was Polish and German politicians who introduced this comparison (e.g. Pflüger 1996). Gardner Feldman’s (1999) article on reconciliation as principle and practice in German foreign policy concludes: “the German-Polish case [has been] more pragmatic, public and institutionalized, and less fettered by history [in comparison to reconciliation with the Czech Republic], in part due to its earlier start in defiance of Cold War strictures.” (Gardner Feldman, 1999: 355) This analysis is challenged by post-2000 developments and advent of the Law and Justice Party, which stirred up the past. An example of how the past lingers in Polish politics is the academic Marek Cichocki, who from 2007 was also advisor to Polish president Lech Kaczyński.⁶ His analyses (Cichocki 2004; 2005) use the past as a justification for certain policies. This is problematic if Polish-German relations are supposed to improve. Other

⁶ <http://www.prezydent.pl/ludzie-prezydenta/doradcy/marek-a-cichocki/>, accessed 15.07.2009.

opinions regarding history in Polish-German relations also abound, such as that of Krzysztof Miszczak (2011, Interview) (see Chapter II).

Lutomski (2006) stresses that an unmet challenge in the process of Polish-German reconciliation is the acknowledgment of Germany's role as victim. Under the Communist regime, research about the expulsions of Germans was not permitted, nor acknowledged. Joint academic efforts after 1989 closed this gap (Bachman and Kranz, 1998; Borodziej and Lemberg, 2000).

A considerable amount of literature on Polish-German relations emerged during the process of the EU's Eastern Enlargement. Symptomatically for this period, for Freudenstein (1998: 41-54) the relationship between Poland and Germany is crucial both for existing and potential new members. Zaborowski (2004) analyses Polish-German relations through Europeanisation as a normative process, implying a liberal transformation of past dictatorial regime states with political, economic and international dimensions. Zaborowski explains that during the Cold War it was impossible for both states to "Europeanise" since the international structure was not conducive, but following 1991, Oder-Nisse line and cooperation on Poland's EU and NATO memberships, their relations started to Europeanise (ibid: 79-133). However, Zaborowski also uses the Franco-German rapprochement model and points out that for full Europeanisation the interest of both states must evolve from "reconcilability" to "convergence" and warns that this lies in the distant future for Polish German relations.

Literature concerned with "popular relations" focuses on mutual perceptions. Dmitrow (2005: 419-50) concludes that relations between Poland and Germany have worsened in recent years after the positive momentum of 1999 (NATO accession) and 2004 (EU accession) ended because of the persistence of mutual stereotypes. Whereas Germans often view Poles as dishonest (*Polnische Wirtschaft*) and backward, Poles often accuse Germans of chauvinism and neo-nationalism (448-49).

Influence of Non-state Actors on Polish-German Relations

The literature on German non-state actors and their role in foreign policy-making is much more detailed than that on Poland. Therefore, broader strokes are used and the

literature on non-state actors and their role in foreign policy making in the respective countries in general is presented. The theoretical foundation on the role of non-state actors in foreign policy-making is dealt with in a subsequent section, but here I present the literature on Polish-German relations in order to complete the picture and to identify the existing gaps.

Opinion polls have not been presented in this sub-section although public opinion could be treated as a non-state actor or pressure group in its own right. The reasons for this are manifold, but two stand out: public opinion is not a coherent group, and it is not organised. It has been confirmed in various studies that the vast majority of people are misinformed or ignorant about foreign policy issues, and that only about twenty % of the population has a genuine interest in and knowledge about foreign policy issues; the so called “informed or attentive public opinion” (e.g. Kriesberg, 1949; Rosenau, 1961; Neumann 1986). Hence, the above mentioned opinion polls, whilst certainly being representative of mass public opinion at a given point, do not give an insight into the opinion of the informed public, a segment of the public that has usually undergone higher education and is therefore more organised and better able to pressure policy makers (e.g. Copsey, 2010). However, this does not mean that mass public opinion has no influence on foreign policy makers at all since, after all, politicians want to be elected, or, in Key’s words (1961: 96): “Mass opinion *may* set general limits, themselves subject to change over time, within which the government may act.”⁷

A thorough examination of the role of the churches, which initiated the first dialogue between Germany and Poland, has been carried out (e.g. Kerski et al., 2006). The famous sentence, “we forgive and ask for forgiveness” addressed to Germany by the Polish Catholic Church, and on which the bishop Karol Wojtyła (later, Pope Paul II) worked, is well remembered.⁸ In 1962 the German protestant church published a memorandum specifically designed to influence parliamentarians to give up territorial claims east of the Oder-Neisse line spiritually initiating the new *Ostpolitik* of Germany’s Grand Coalition (e.g. Jacobsen, 1992: 35-37, 125-35, 142-45).

⁷ Emphasis added.

⁸ The letter containing this famous sentence was written by Boleslaw Kominek, bishop of Wrocław/Breslau (e.g. Madejczyk, 1994). Without any doubt the spirit of this evangelical gesture stems from the Second Vatican Council (1962-65) in which the young Wojtyła participated and where German and Polish bishops had contact.

Von Dannenberg (2008: 210-38) touches upon the influence of “interest groups” (West German business elites, the refugees and public opinion), however, her focus is on Brandt’s government and the decision process at the top level. Her summary of the making of the Moscow Treaty is that “the influence of interest groups on the government’s policies was generally rather small... [because] the parties in government had already developed their stance in consultation with different pressure groups [and because] the domestic scene in the FRG had changed by late summer 1969 and revealed clear signs of changed Ostpolitik.” (von Dannenberg, 2008: 210) However, that parties in government consulted pressure groups beforehand means that interest groups mattered. Likewise, if the whole “domestic scene” changed in favour of *Ostpolitik*, a cultural explanatory element is visible in explaining foreign policy preferences, a constructivist approach. Furthermore, von Dannenberg disregards the churches’ role in providing a foundation for the new *Ostpolitik*.

In FPA, there are a number of anthologies, often general and non-theoretical, on foreign policy-making in a specific country which cover non-state actors. On German foreign policy, Eberwein and Kaiser (2001) and Schmidt *et al.* (2007) emphasise that the role played by a specific non-state actor depends on the policy and target region under discussion. The trade unions, for example, “have had paradoxically the best chance of influencing official foreign policy whenever the German government did not have any diplomatic relationship with the state in question” (Bührer, 2007: 293). During the Cold War the trade unions were seen as “bridge-builders” towards the east (von Amerongen in Tudyka, 1978: 88-91).

Le Gloannec’s anthology (2007), which covers Poland, considers political foundations, ethnic minorities and churches, *Länder* and regions, industrial lobbies and small and medium sized enterprises as well as multinational enterprises, and presents their role against the backdrop of a specific policy.

Gardner Feldman (2007; 2012) explores the role of non-state actors in Germany’s foreign policy of reconciliation, comparing reconciliation policies towards Israel, France, the Czech Republic and Poland, but questioning whether these non-state actors behave as catalysts, complements, conduits or competitors towards the state (2007: 15-45). Catalysts in German-Polish relations have predominantly been religious groups driven by a moral imperative. They have managed to set the policy agenda and influence the rhetoric and reality at a specific time, triggering an official response from the German government (Gardner Feldman, 2007: 17-21).

Complements are driven by moral obligation as well as pragmatism. They are linked to the government through either one or a combination of the following links: public funding, an official framework (treaties and agreements), and forums (e.g. school book commissions). Their main influence on the government is the collection and dissemination of information, agenda setting, and direct influence through political leaders who often sit on the intermediary organisations' executive board. In the German-Polish case, scientific and university exchanges, increased media attention, town twinnings and the connection between the SPD and the Polish Workers' Party started to flourish after the German-Polish Basic Treaty in 1972. After 1989 and 1991, further initiatives and societal organisations mushroomed, for example the Fund for German-Polish Cooperation, Help for Self-Help (designed for the German minority living in Poland) the German-Polish Economic Promotion Agency, the Committee for Cross-Border Collaboration and so on (Gardner Feldman, 2007: 21-29).

German political foundations⁹ are categorised as conduits (Gardner Feldman 2007: 29-34). The role of political foundations abroad is generally described as “promotion of democracy” (e.g. Mair, 1997) and “foreign political aid” (Pinto-Duschinsky, 1991: 33-63). The FES and KAS opened an office in Warsaw in November 1989, the former concentrating on projects fostering a social market economy, democracy and pluralism, the latter engaging in projects on decentralisation, economic transformation and NATO and EU accession (Gardner Feldman, 2007; 32-33; Dakowska and Tulmets, 2007: 73-89). The FES gave fellowships to Hanna Suchocka¹⁰ and Leszek Balcerowicz¹¹ even before the Iron Curtain fell. The FNS opened its office in Poland in 1991 and concentrated its activities on political education, democratisation and marketisation whilst the HBS has been present in Warsaw since April 2002 focusing on gender issues, ecology and

⁹ The literature refers to German political foundations when these foundations were established and/or are linked to parties represented in the Bundestag. These are the Konrad Adenauer Stiftung (KAS) linked to the CDU, the Friedrich Ebert Stiftung (FES) linked to the SPD, the Friedrich-Naumann-Stiftung (FNS) linked to the FDP, the Hans Seidel Stiftung (HSS) linked to the CSU, the Heinrich-Böll-Stiftung (HBS) linked to the Greens, and finally the Rosa Luxemburg Stiftung (RLS) linked to Die Linke. They are financed by a fixed annual budget distributed by the Federal Ministry for Economic Cooperation and Development (Bundesministerium für wirtschaftliche Zusammenarbeit und Entwicklung; BMZ) according to the share of the six parties in the Bundestag (e.g. Bartsch, 2001: 206-19; Bartsch, 2007: 280-89).

¹⁰ Hanna Suchocka was Polish Prime Minister from July 1992 until October 1993.

¹¹ Leszek Balcerowicz was Polish Deputy Prime Minister from January 1990 until January 1991 and finance Minister from January 1990 until December 1991. He is most remembered for the Balcerowicz Plan advocating a shock therapy model.

EU enlargement. Dakowska and Tulmets (2007: 77) observe that the prospect of EU accession “gave political foundations important leeway for the transfer of both political ideas and trans-national legitimacy” as the CEEC countries needed advice on how to implement the *aquis communautaire* and the “Poland and Hungary: Assistance for Restructuring their Economies (PHARE)” programme. The activity of political foundations could be seen as the intrusion of another country’s domestic sphere, but they enjoy significant political credit in Poland. They have gained direct information flow and important contact networks and perhaps most importantly have had a big share in changing the perception of Germans as Teutonic Knights,¹² as a Polish NGO leader summarised (in Dakowska and Tulmets, 2007: 79).

Expellee groups and religiously motivated groupings have often acted as competitors to the German government (Gardner Feldman, 2007: 34-40). In the Polish-German case she mentions three events where expellee interests and policies clashed openly with the German government’s official policy: first, during the launch of Ostpolitik rapprochement and reconciliation, all the expellee groups organised under the BdV opposed the government fiercely in its attempts to recognise the Oder-Neisse line as the final border. Second, in the late 1970s and 1980s, when Poland’s Solidarity movement was launched, the SPD-FDP coalition government was less critical of the Jaruzelski regime than many other western democracies. This is in contrast to various religious groupings such as the Bensberger Kreis and the Central Organisation of German Catholics which supported Polish dissidents like Adam Michnik and Władysław Bartoszewski. The links between these non-state actors permitted Germany to declare relations with Poland as a “community of interest” (*Interessengemeinschaft*) in the 1990s (Jacobsen; Tomala; Kerski cited in Gardner Feldman, 2007: 36). Third, in June 2000 Erika Steinbach, the president of the BdV, proposed a Centre against Expulsions (*Zentrum gegen Vertreibungen*) in Berlin, whereas the Grand Coalition government preferred a special exhibition in the House of History (Haus der Geschichte) in Bonn. Moreover, in 2004 the *Preußische Treuhand* (Prussian Claims Society) declared its intention to sue the Polish government for property lost by expellees (Gardner Feldman, 2007: 34-40).

¹² In Poland’s collective memory, the Germanisation of Poland’s western territories and the arrival of the Teutonic Knights in former East Prussia plays an important role and is remembered as an early example of German aggression. The Teutonic Knights were defeated at the battle of Grunwald (in German: *Schlacht bei Tannenberg*) in 1410, used in Roman Dmowski’s vision of Poland based on the territories of the Piast kingdom (e.g. Davies, 2002: 130).

Fewer studies consider non-state actors' influence on foreign policy-making in Poland although the pace to close this gap has gained momentum since the mid 2000s and exceptions are mostly connected to European integration. Sanford (1999: 769-97) gives an account of Sejm's in foreign policy, showing that foreign policy-making in Poland is influenced by the Foreign Affairs Parliamentary Committee, but due to the high fluidity and instability of the Polish party system, the government, in the form of the president and the foreign ministry (MSZ), manages to achieve its foreign policy goals. However, with the rise of two new centre-right parties, PO and Law and Justice, party instability has ended; and, since Poland's EU membership, a new Parliamentary Committee for European affairs has been established, covering relations with other EU member states.¹³

Szczerbiak (2012) and Taggart and Szczerbiak (2002; 2012) engage extensively on the role of parties, mostly in regards to the EU. Szczerbiak's work on Poland within the EU, deals with the preferences of political parties, public opinion and the Catholic Church, but does not engage with non-state actors' preferences towards the EU. Similarly, Gwiazda (2006: 186-190; 2008: 761) notes the parties' positions on foreign policy issues, mostly EU-related. Copsey (2010) analyses the impact of informed public opinion on Polish foreign policy and explores the influence of business interests on Poland's foreign policy in general stating that the business-government links are informal (2010: 63-64). Copsey also shows (2010: 109-133) that the influence of business and popular opinion on Poland's foreign policy decisions (or trade relations) versus Ukraine appear to be significant as shown on an example of the Huta Częstochowa Steel Mill where prejudices against "dodgy" Ukrainian capital prevented the mill be sold to Ukrainian investors in 2004 and 2005. More speculative, the non-expansion of the Sarmatia oil pipeline by Polish authorities to connect the flow of oil from Brody to Gdańsk seems to have been motivated to a large degree by foreign (Russian) and domestic business interests (Copsey, 2010: 121-24).

Elsewhere, Copsey and Haughton (2009: 263-86) investigate Poland's policy preference formation in the EU, to identify the domestic factors which are the sources of these policy preferences. They emphasise that the relation between business and the government is an under-researched topic in the CEECs and that conspiracy

¹³ See the website of the Sejm: http://www.sejm.gov.pl/komisje/www_sue.htm, accessed 26.02.2012.

theories prevail over solid research. This also stems from the unclear link between business interests and the government: the representative is uncertain about what is permissible and hence interviews are often rejected by the parties (Copsey and Haughton, 2009: 282).

Polish-language literature on foreign policy making in Poland are general and legalistic (e.g.: Kuźniar and Szczepanik, 2002; Stemplowski, 2004). Little space is dedicated to non-state actors such as political advisory think tanks, described as a recent set up modelled after western democracies and as independent from the government, but at the same time dependent on state funding (Stemplowski, 2004: 143-46).

Before developing research questions and hypotheses from this literature review, the next section presents literature on the role of non-state actors in foreign policy-making in general. This will put the Polish-German case into context, whilst providing a theoretical framework.

III. The role of non-state actors in foreign policy-making

This section reviews the literature on the role of non-state actors in foreign policy-making in general. It puts the empirical section into broader context and provides the necessary theoretical basis for any engagement with this topic. First, the theoretical foundations of the role of society in policy-making in general is examined showing how foreign policy is embedded in the wider policy spectrum. Thereafter, the theoretical foundation of the role of society in foreign policy-making is reviewed. Lastly I review the literature on non-state actors and their role in foreign policy-making. This review covers literature from IR and FPA. I choose to present the literature in each section as it intersects and refers to the other, since dividing the literature review into separate sections would be confusing.

The debate on whether “society” in the broad sense participates in policy-making in general can be traced back to the debate between pluralists and elitists. Pluralism emphasises the limits placed on the government due to powerful groups being checked by countervailing powers (Galbraith 1963), meaning that a coalition cannot simply “carry out its policies without having to bargain, negotiate and compromise

with its opponents” (Dahl 1963). Elitism, in contrast, insists that society is divided into “a class that rules and a class that is ruled” (Mosca 1939: 50) thereby putting power into the hands of a few elites in the government and business communities (Laumann and Pappi 1973, Laumann and Pappi 1976; Scott, 1991). Following the criticism by Bachrach and Baratz (1962) and Lukes (2004) who argued that analyses should include issues that do not enter the policy-making agenda “pure” pluralist and elitists responded to these critiques leading to a convergence of both schools called neo-pluralism or elite pluralism (e.g. Dunleavy and O’Leary, 1987: 271-318; Smith, 1990; 311-19). Further, Lindblom and Dahl have recognised the shortcomings of their earlier work in their more recent publications (Wenman, 2003: 58).

The study of “governance” has mushroomed recently, putting policy networks into the focus of policy-making analysis. All policy network analysis stresses that domestic actors have to be organised in order to form a policy network (e.g. Knoke et al. 1996: 3-4). Policy network analysis seeks to shed light on the interdependence between public organizations and private interests (Rhodes, 1997: 11-12).

Governance is concerned with four broad topics. First, in public administration and public policy, governance seeks to explain how networks come to the fore, and how the rules of policy formulation and implementation are managed. This debate focuses mainly on the efficiency of networks in comparison to hierarchical structures, but increasingly on the democratic accountability of network structures (Kjær, 2004: 15-16; 19-58). Second, in IR, governance focuses on output-efficiency fomented by problems stemming from globalization. Here, neo-realists and liberalists disagree on the degree of focus on states as the principal actors. In addition, a normative debate on “global democracy” emerged, focusing on the democratic accountability of international organizations (Kjær, 2004: 16; 59-98). Third, the study of EU politics has precipitated its own theoretical model: multi-level governance, which explores how policy decision are made at multiple levels (supra-national; intergovernmental; sub-national) by formal and informal institutions. Here too, the issue of democratic accountability in the light of the EU’s alleged “democratic deficit” has left its imprint (Kjær, 2004: 16-17; 99-122). Fourth, in comparative politics, governance discusses the role of the state in the regulation of economic and social development, particularly in developing states (Kjær, 2004: 17; 123-48). The other core issue of governance in comparative politics has been democratization, and

to what extent agents and structures impact on access to power, the establishment of and changes of regimes (Kjær, 2004: 17-18; 149-71).

The study of governance and policy networks, especially in British public policy, is intrinsically tied to Rhodes (1997). In contrast to “agent models”, where local authorities implement national policies supervised by the central government, and “partnership models”, where local authorities and central departments are co-equals, the so called “Rhodes model” posits that organizations depend on each other for resources and therefore enter an exchange relationship (Rhodes, 1997: 8-9), a *quid pro quo* game in a web of players with a policy-outcome influenced by the participating actors. This theory rests inevitably upon the assumption that players act rationally, based on a “self-interested exchange calculus” (Freund & Rittberger, 2001: 79). Rhodes identifies five different networks: tightly integrated policy communities, professional networks, intergovernmental networks, producer networks and loosely-integrated issue networks.

These networks vary according to membership, general interests, vertical and horizontal interdependence, the resources for which their members compete, and the dominant interest. The difference between a *policy community* and an *issue network* is as follows. Within a policy community, actors working on a policy enjoy a close relationship; the number of actors is limited and some potential actors are consciously excluded; the quality of interaction is high and frequent; consensus prevails over the actors’ values, ideology and broad policy preferences; and all actors have some resources with which they enter an exchange relationship with the other actors leading to a perceived positive-sum-game and a hierarchical structure. An *issue network*, in contrast, is characterised by a large number of participants who mainly consult and do not negotiate a policy outcome; the interaction is fluctuating; the actors conflict over their policy-outcome preferences; and their power relationship is unequal (Rhodes, 1997: 43-44).

Foreign policy continues to be seen overwhelmingly as an elitist enterprise, state or government centric, as evidenced by how authors define the term. Manners and Whitman (2000: 2) define foreign policy as “the attempt by governments to influence events outside the state’s boundaries”. Similarly White (1989: 1) sees foreign policy as “that area of governmental activity which is concerned with relationships between the state and other actors, particularly other states, in the

international system.” However, Putnam (1988) has argued that in democratic societies foreign policy decisions have to be “ratified” by the domestic interest in general. Other authors, such as Milner (1992), argue that powerful interest groups influence foreign policy decisions to a large extent.

Hill (2003: 6) sees this state-centric view as

“ironical given that FPA grew up in reaction to the assumption of classical realism that the state was a single, coherent actor pursuing clear national interests in a rational manner, with varying degrees of success according to the talents of particular leaders and the constraints of circumstance”

Hudson (2005: 1-2) criticises IR, and specifically its theories, for losing sight of its “ground”, which is human behaviour. Rather, IR treats the state as a black box, as a unitary actor in the international system in a “billiard ball model”. She argues that FPA provides this “ground” as it engages with actors, and assumes that all decisions are taken by humans and groups that do not act singly, thus discarding the “state black box model” (Hudson, 2005: 2).

Additionally, it has been argued that a clear divide between domestic and foreign policy does not exist. Rather, both are interlinked. Hartmann (2001: 45) claims that “domestic policy explains one part of foreign relations” and Kindermann (1986: 75) explains that “foreign policy is a product of international and national factors and the existent linkages between both factors.” Hill (2003: 38-39), building on the work of Rosenau (1997), states that “foreign policy has its domestic sources, and domestic policy has its foreign influences.”

Further confusion arises from the blurred and seemingly synonymous labels foreign policy and foreign relations. Eberwein and Kaiser (2001: 4) distinguish foreign policy from external relations in Germany saying that:

While “foreign policy” serves the official interests of the state as a whole, as defined by the appropriate actors and institutions [...] “external relations” entail the totality of relations with the outside world maintained by other political and societal actors, such as those ministries not traditionally associated with foreign policy, as well as political parties and interest groups. External relations can be part of foreign policy, but they do not have to be.

This distinction is interesting as Hill (2003: 3) asks whether foreign policy should include “almost everything that emanates from every actor on the world scene?” With

Eberwein and Kaiser's distinction one could rule out the international activity of NGOs, corporations etc. as (official) foreign policy and label it as part of foreign relations. However, this neat distinction appears to be artificial and ultimately state-centric again. As seen above, and as will be discussed below, whilst various non-state actors can pursue their own relations with other states and non-state actors abroad, separate from the home-government's official policy, they nevertheless have an impact on relations between the two states and influence the home-government to a varying degree depending whether these independent activities stand in competition with the government, whether they complement it, initiate a new policy, facilitate its exercise and so on.

Nye and Keohane (1971) define transnational relations as "contacts, coalitions, and interactions across state boundaries that are not controlled by the central foreign policy organs of governments" (Nye and Keohane, 1971: 331). Transnational interaction, the movements of tangible or intangible items across state borders, might involve governments, but at least one non-governmental organisation must play an important part in it (Nye and Keohane, 1971: 332). Thus, the term transnational actor (TNA) is employed, but often synonymously with "non-state actor" or "non-governmental actor" (Le Gloanec, 2007: 195). Nye and Keohane suggest that TNAs can have five effects in interstate politics, such as changing attitudes of elites; contributing to the internationalisation of domestic politics by creating and interlinking new national affiliates to try to influence government policy; creating and enhancing dependence and interdependence in finance, transportation, communication and travel, making certain policy options too costly; creating new instruments for one government to influence another and emerging as autonomous actors with private foreign policies that oppose state policies (Nye and Keohane, 1971: 336-42). This is groundbreaking as it breaks the "state-centric paradigm", showing the "contamination of interstate relations by transnational relations" (1971: 343). Other scholars also try to replace the state-centric view (e.g. Mansbach *et al.*, 1976; Rosenau, 1980).

Whilst it is apparent that TNAs include actors that act in the international arena, such as multi-national corporations (MNCs), their conceptualisation does not include smaller "societal actors" that act only in the domestic sphere and not globally. These actors can also influence foreign policy decisions by pressurising the relevant decision makers. Also, TNAs act in the domestic sphere and are embedded in a

particular culture as Strange (1996) notes regarding MNCs. Additionally, Nye and Keohane do not examine in detail the difference between a governmental / state actor and a non-governmental / non-state / TNA actor.

Josselin and Wallace (2001: 3-4) define non-state actors as organisations “largely or entirely autonomous from central government funding and control [...], operating as or participating in networks [...] across the boundaries of two or more states, thus engaging in “transnational” relations [...] acting in ways which affect political outcomes, either within one or more states or within international institutions.” However, they stress that a definition based on independence from the state would be misleading (Josselin and Wallace; 2001: 2) since “the universe of non-state actors is [...] necessarily diverse. For example, Halliday (2001: 26) reminds us that many NGOs “are, in effect, contractors for states”. Likewise, many organisations, such as German political foundations, entirely depend on state funding whilst enjoying great political leeway (see above).

Keck and Sikkink (1998) provide a useful framework for classifying the activities of TNAs. They divide their activities into five types, including “issue creation and agenda-setting”, “influence on discursive positions”, “influence on institutional procedures”, “influence on policy change in ‘target actors’”; and “influence on state behaviour” (Keck and Sikkink, 1998: 25). The tactics employed for this include creation of links between civil society, states and international organisations, creating a dense network that helps the TNAs to enter the international stage as significant players (Keck and Sikkink, 1998: 1-2). Here, we can notice the influence of Rhodes (1997) and Keck and Sikkink’s (1998) notion of foreign policy as a network, and usage of the term “transnational advocacy network”.

Building on Keck and Sikkink, Gardner Feldman (2007) identifies four roles that non-state actors assume in relation to the government when it comes to reconciliation between Germany and Poland: they can be conduits, catalysts competitors, or complements. Being a conduit or a complement signifies that the relationship with the government is rather harmonious whereas being a competitor or catalyst is likely to invoke tension. Moreover, Gardner Feldman argues that the role of government is hidden when a TNA performs as a conduit and is more open when the activities of a TNA and government are complementary. Acting as a competitor, the TNA might precipitate an open or a hidden response from the government (Gardner

Feldman, 2007: 15-17). This useful classification could also be applicable to other policy areas.

Risse-Kappen (1995) identifies two key variables which determine the impact of transnational networks in shaping inter-state relations: *domestic structures* and the *degree of international institutionalization* (Risse-Kappen, 1995: 6-7). Domestic Structures, according to Risse-Kappen, determine the availability of channels into political systems and “requirements for ‘winning coalitions’” (Risse-Kappen, 1995: 6-7). Thus, according to Risse-Kappen (1995: 6-7), it is more difficult for transnational actors to penetrate systems of target countries if they have state-dominated structures, but once they break through, they have significant policy impact. But, fragmented states and organised civil society, Risse-Kappen adds (1995: 6-7), are easier for transnational actors to access, though they might face obstacles to coalition building. Risse-Kappen’s (1995) other variable, *international institutionalisation*, refers to “specific issue-area” regulations as achieved through bilateral agreements, multilateral regimes, and/or international organizations.

This overview of literature suggests that political science offers various competing theories on the role that non-governmental organisations play in policy-making in general, oscillating between elitism and pluralism. “Governance” literature emphasises that policies are made within networks; actors depend on each other due to resources. Foreign policy is regarded as state-dominated, paradoxically even in FPA, a discipline challenging IR’s state as a “black box model”. Literature suggests that non-state actors’ success in bringing their ideas into foreign policy making depends on the domestic structure and the degree of institutionalisation. Most literature engages with non-state actors acting across domestic borders, neglecting actors that do not act globally. Literature also states that non-state actors can influence official decision makers directly and indirectly having various means at their disposal, depending on the role that non-state actors assume (competitor, conduit, catalyst or complement).

IV. Research Design, Sources and Methodology

This thesis investigates the influence of non-state actors, defined as “any actor other than the government” (Willetts, 2006: 426) in foreign policy, using Poland and Germany as case studies. It examines the influence of these non-state actors is in determining the state of Polish-German relations. The main research question is:

What is the influence of non-state actors on Polish-German relations?

The loose definition of “non-state actors” as all actors except the government allows the inclusion of actors that have previously remained undetected by the constraining nature of a (too narrowly defined) theoretical radar (LeGloannec, 2007: 2). I will also include public opinion in my research for, although public opinion is not organised, it nevertheless sets important parameters, for democratic governments may act for reasons of electoral ambition (Key, 1961: 96) and may function as a catalyst for the actions of non-state actors.

Following the review of the concept of “policy networks” in policy-making in general, this thesis argues that foreign policy in Germany and Poland stems from a network of various actors drawn from state institutions and society. To demonstrate this, three case studies are presented, testing the hypotheses below. However, as demonstrated by the literature review, *domestic structures* and the *degree of institutionalisation* provide the ground for non-state actors to become involved in foreign policy-making and determine to what extent they can be successful in doing so. This leads to three research sub-questions. The first concerns both countries since it contains the bi-lateral agreements and the institutionalised set up:

1. *What is the degree of institutionalisation in Polish-German relations?*

The following sub-questions will be separated since each country needs to be thoroughly examined on its own:

2a. What are the domestic structures of foreign policy-making in Germany?

2b. What are the domestic structures of foreign policy-making in Poland?

Furthermore, prior to any analysis of “policy networks” and an evaluation of non-state actors’ influence within them, it is necessary to identify the players that have an interest in Polish-German relations. This leads to two two sub-questions that, together with the two previous questions, build the core of this thesis since they will be answered in three case studies:

3a. What influence do non-state actors have on foreign policy-making towards Poland in Germany and what tactics and means do they employ to pursue their interests?

3b. What influence do non-state actors have on foreign policy-making towards Germany in Poland and what tactics and means do they employ to pursue their interests?

Once the thesis demonstrates that non-state actors have influence on foreign policy decisions, it will be possible to judge who the most important actors are.

4a. What are the most important non-state actors in Germany that have an interest in Polish-German relations?

4b. What are the most important non-state actors in Poland that have an interest in Polish-German relations?

The following hypotheses derive from the literature review and will be tested:

H1: Non-state actors have a large degree of influence on foreign policy-making in both countries.

H2: German non-state actors are more successful in influencing the government on foreign policy decisions directed towards Poland than their Polish equivalents have in influencing the government on foreign policy decisions directed towards Germany.

H3: Non-state actors with business interests have the greatest impact on foreign policy-making towards the other country.

I define “having influence” broadly as “affecting policy decisions”. A whole subfield of literature deals with the question of what “influence” and “power” mean (e.g.: Nagel 1975; Morriss 1987; Haugaard, 2002; Lukes 2004). Since the definition of influence determines if and in how far influence can be measured and consequently what methodology can be applied, it is appropriate to clarify this point.

Political scientists often conflate the terms “power” and “influence”. Morriss (1987: 8-35) points out that “power” and “influence” are not the same, and that this confusion has been practised in social science ever since Dahl (1961) talks about power when he actually means influence. Power, according to Morriss, always refers “to an ability, capacity or dispositional property” which follows that it “is neither a *thing* (a resource or vehicle) nor an *event* (an exercise of power): it is a *capacity*¹⁴.” An actor might have *power to do something* or have *power over someone*, but this actor must not necessarily exercise it in order to have this power confirmed. Hence, many social scientists have committed the “exercise fallacy” by identifying the powerful once the exercise of power has been observed, discarding potential or inactive power altogether as it cannot be as easily observed and put into a neat methodological roadmap.

In this thesis I will not assess the *capacity* (power) of non-state actors to influence decision-making but rather *observable results*, and my usage of “influence” as “affecting policy decisions” is congruent with Dahl’s (1961) conceptualisation, which Lukes calls *one-dimensional power*, where the focus is on “*behaviour* in the making of *decisions* on *issues* over which there is an observable *conflict* of (subjective) *interests*, seen as express policy preferences, revealed by political participation” (Lukes, 2004: 19).¹⁵ Following Nagel (1975: 29) I establish and assess “a causal relation between the preferences of an actor regarding an outcome and the outcome itself”. However, non-state actors can also be influential in policy making in a covert way. For example, the government might not put an issue on the agenda in order to foreclose conflict with a perceived powerful non-state actor. Similarly, the government might make a policy decision on an issue where many actors expressed their preferences, but without including them in its final choice. The judgement that on that issue non-state actors are not influential because there is no apparent evidence might come premature because the government might have made this decision to

¹⁴ Emphasis in the original

¹⁵ Emphasis in the original

prevent conflict with a silent non-state actor which has not voiced its preferences. Lukes (2004) calls this the “two-dimensional power” which is more difficult to research since the researcher often needs to detect issues (or actors) that have not entered the agenda and where no official documents exist. Attempts to research this kind of influence have been made by, *inter alia*, Bachrach and Baratz, 1970; Crenson (1971) and Flyvbjerg (1998).

March (1955: 432) notes that “influence is to the study of decision-making what force is to the study of motion – a generic explanation for the basic observable phenomena”, but admits that “there is lacking not only an immediately obvious unit of measurement, but even a generally feasible means of providing simple rankings” (1955: 434). Whilst it is easy to determine the influence of a motor on the velocity of a vehicle and to quantify it at any given time, measuring influence of non-state actors on a policy decisions in quantifiable terms is sheer impossible with absolute certainty since no unit of measurement would be convincing. Besides the occurrence of covert influence mentioned earlier, Dür (2008: 561-62) notes three problems that arise when trying to measure influence: different channels of influence; occurrence of counteracting lobbying; and the wielding of influence at different stages of the policy process. Non-state actors can engage in direct lobbying or outside lobbying by influencing public opinion with, for example, media campaigns. Counter-lobbying complicates the measurement of influence since although the non-state actor has not managed to push through its own preferences it might have avoided an even worse outcome. Influence can be exercised at the agenda-setting stage, when decisions are taken and when they are implemented. The questions whether the researcher should assess every individual stage separately or cumulatively makes the measurement of influence more difficult than measuring power in physics. I would even add a fourth problem not mentioned by Dür (2008): evaluating the time and resources spent dedicated to lobbying. In case a non-state actors has successfully lobbied for an issue to enter the policy agenda or pursued the government to take a decision in line of its preferences one would intuitively conclude that the influence of this actors is high. However, what if this actor had to spent a vast quantity of resources and time to achieve this? Another non-state actor might have been equally successful in terms of outcome but spent fewer resources on the lobbying process and achieved it quicker. Does this mean that this actor is more influential? This is difficult to answer especially when researchers try to compare influence across different issues since

different issues involve a different set of actors, lobbying strategies and used resources.

Since measuring the degree of influence would be positivist and ultimately too contested for the reasons given above I will abstain from measuring influence with a yardstick. Rather, and without providing a ranking, I assess the non-state actors' influence as either high or low by examining whether and to what extent the respective non-state-actors' preferences have materialised in the agenda setting and decision-taking stage of policy-making. Examining actual results avoids the pitfall of identifying influence solely on the basis of evidence of access to policy-makers, lobbying activity and available and spent resources for such cause which does not necessarily lead to influence and only tells us how influence has been achieved (Betsill and Corell, 2001: 69-70). I will not engage with the silent form of influence, or Lukes' (2004) exercise of "second-dimensional power" since it is difficult to operationalise and at times speculative given the often-encountered lack of documentation. Nevertheless, it should be noted that that this kind of influence could also have played a role in the case studies and it represents a potential limitation, although with the method process-tracing (see below) I have tried to minimise the risk of falsely attributing influence to actors that were not responsible for the analysed decisions. Furthermore, I neglect the implementation stage. Although it would add more quality to the thesis, this stage is more difficult to monitor since it would require a longitudinal study which is beyond the scope of this thesis. The research questions can be sufficiently answered if it can be shown that non-state actors' influence is present in the agenda-setting and decision-taking stage.

The discussion of influence as a dependent variable has revealed that quantifying influence is too contested. Likewise, applying a quantitative method would not provide the desired results since this would more likely lead to an attempted ranking or quantifying of non-state actors' influence. Neither would quantitative methods tell us anything about what strategies and tactics these actors used to materialise their preferences, nor would it acknowledge that different means and different actors are likely to be involved across different issues. Consequently, I assess the influence of non-state actors on three issues presented in three case studies. I choose the case study, one of five techniques for comparison identified by Lijphart (1971). Since this thesis examines the influence of non-state actors on foreign policy-making in Germany and Poland, the approach is evidently comparative in nature,

albeit it must be acknowledged that this comparison must be seen as preliminary and can only add limited comparative value. That is because the small sample $N=3$ bears an important disadvantage: small N -studies do not allow us to generalize findings convincingly, especially since small N -studies are often biased towards conflicting decisions that have attained a high degree of media coverage (Dür, 2008: 564-65). This issue is addressed again in the conclusion of this thesis. However, the focus on only three case studies allows an in-depth study reminiscent of single-country scholarship, using its methodological toolkit including the use of the two necessary languages, which is better suited in exploring causality than statistical methods. (George and Bennett, 2005: 21-22). Lees argues (2006: 1001) that the case study as a method is best suited for achieving triangulation. According to Sartori (1994: 23), case studies can only serve as a tool for comparison if a well-defined theoretical framework informs them. I follow this argumentation by using Risse-Kappen's (1995) theoretical framework, extensively engaged with in Chapters II and III, before applying it to the three case studies presented above in Chapters V, VI and VII.

The first case study examines the role of non-state actors in Poland's demands for restrictions on the free movement of capital during EU accession negotiations. Poland has obtained a twelve-year transitional period (TP), until 2016, for the acquisition by foreigners of agricultural land and forests. This is the longest transitional period obtained by any new member state for this chapter of the *acquis communautaire*. Whilst it is true that the TP does not apply to Germany alone but to all EU member states, the main concern, as will be seen, was that German capital would buy up large portions of Poland effectively amounting to a new capitalist form of the "*Drang nach Osten*".

The second case study examines the role non-state actors in Germany's policy decision to restrict its labour market until 1 May 2011 to the eight new member states from CEE joining the EU in 2004.¹⁶ The seven-year transitional period was established in a flexible 2+3+2 model. Germany and Austria were the only existing member states that made use of both possible prolongations of this restriction and the political process of both decisions must be examined together with the initial

¹⁶ The states which joined the EU on May 1 2004 are: Poland, the Czech Republic, Slovakia, Slovenia, Estonia, Latvia, Lithuania, Hungary, and Malta and Cyprus. To the latter two states this restriction does not apply. Romania and Bulgaria joined the EU on January 1 2007.

establishment of the restriction. Whilst Poland was not the only country affected by this policy, with a population of 38 million, it constitutes over 50% of the total population joining the EU in 2004. Moreover, Poland's geographic proximity to Germany is arguably the reason why Poland was Germany's prime concern when the policy was implemented. This policy decision is of particular relevance to Polish-German relations since Germany and Austria are the only existing member states to apply this restriction until May 2011. This policy has an economic dimension, appealing to business interests (cheap labour costs), but also has a considerable social dimension (pressure on wages and particularly high unemployment rate in the new *Bundesländer*) and moral dimension (reconciliation and taking into account that this policy might cause feelings of "second class EU citizenship"). This policy is an ideal case for analysing which actors were most successful in voicing their preferences, thus testing *H3*, which states that business interests have the greatest impact on foreign policy-making.

The third case study examines the process that led to the decision to build a permanent exhibition in Berlin depicting the flight and expulsion of Germans following WWII. This case is of relevance because it caused major friction in Polish-German relations since the idea was put forward by the BdV in 2000. It is a case in which the BdV was a competitor to official German foreign policy towards Poland, ever since *Ostpolitik's* launch in the 1960s. Lastly, it is a case in which economic interests are, at first glance, not the primary concern.

One could argue that three case studies make this thesis automatically skewed towards Germany since the free movement of labour and the museum issue both origin in Germany whilst only the free movement of capital seems to be a "Polish case". However, it will be seen that the salience for the free movement of labour was equally high in both states and non-state actors had voiced their preferences in both countries. The free movement of capital was significantly more salient for Polish interests and mostly insignificant for German interest groups.

The first two case studies concern Polish-German relations in the context of EU accession and it is true that the EU always negotiates in its entirety with each individual candidate. It is thus possible to question whether these cases are admissible for the subject of this thesis, considering that the other fourteen old member states also submitted their respective positions during the negotiations.

Moreover, how can we control for the influence of actors outside of Germany and Poland? When analysing bi-lateral relations it is never possible to completely rule out further actors from outside. States and actors do not live in a vacuum but in a vibrant international context of an increasingly globalised and interconnected world, and with numerous arenas to voice their preferences. For example, when comparing the reconciliation policies of Germany with Japan one must acknowledge the role of the United States in pressuring the German government for *détente* with the Eastern block in the 1960s whereas that pressure was absent in Far East Asia since the US was content to have won a bulwark against Communism and reconciliation with Korea and Japan was not seen as a priority there (Berger, 2012).

The final EU decision to restrict the movement of labour for seven years in a flexible way is not the result of Germany's demands alone. However, German non-state actors have lobbied that the German government adopt a certain stance when communicating its position to Brussels. Therefore simply equating the final outcome with a certain degree of influence of specific actors on Germany's foreign policy would be illogical since other member states and exogenous actors have contributed to the final compromise. The same reasoning applies to the restriction on the purchase of agricultural land until 2016. Therefore, I assess the influence of the actors' influence on their respective government's position and not on the final compromise reached in Brussels.

In order to establish the "causality between the preferences of an actor regarding an outcome and the outcome itself" (Nagel, 1975: 29) the method process-tracing appears to be the best available choice. The qualitative method process-tracing is used to avoid the pitfall of simply equating the correspondence of preference voicing with policy output as influence. Klüver (2009), for example, advocates the measuring of influence with quantitative text analysis. This method would perhaps be useful when assessing interest group influence on technical issues or where financial matters are being negotiated allowing us to conduct large *N*-studies, but cannot rule out that the correspondence of preference voicing with policy outcome is a coincidence since the government might have responded to an interest group which has been omitted in the study. Process-tracing is better suited to assess causality since it investigates each element of the causal chain (Zürn, 1998: 640). It allows an examination of first, the process of preference voicing, i.e. the access to policy-

makers, intentional transmission of information, what tactics and resources were used; second, an analysis of behaviour alteration in response to that transmission by other non-state actors and the government; and third, the evaluation of policy outcome against the individual preference voicing (Betsill and Corell, 2001: 74-78). Process tracing forces the researcher to take equifinality into account, i.e. considering alternative paths through which the outcome might have occurred (George and Bennett, 2005: 207).

This thesis is theory-testing since, for the three case studies, I investigate Risse-Kappen's (1995) hypotheses that two variables are crucial in shaping the degree to which non-state actors influence foreign policy-making: domestic structures and the degree of institutionalisation. Both variables will be explored as regards Germany and Poland in Chapter II and Chapter III respectively. However, since process tracing generates numerous observations within each case it can also lead to theory development (George and Bennett, 2005: 207). In how far the three case studies contribute to theory development is addressed in the conclusion of this thesis.

In order to test Risse-Kappen's hypotheses in three independent case studies I assessed Germany's and Poland's domestic structures in regard to foreign-policy making in general first. This helped identifying possible access points for non-state actors to influence decision-makers. Once the general domestic foreign policy-making apparatuses are known for each state it is possible to assess, for each case study, in how far non-state actors were able to influence the decision-making despite this set-up, and under which conditions. In this step, I analysed the official documents which set up the foreign policy mechanisms of both countries. However, frequently, substantial differences exist between powers that have been granted *de jure* to certain bodies and what *de facto* takes place. Therefore, additional secondary literature on foreign policy-making in Poland as well as Germany was consulted. Lobbying is regulated in Germany quite comprehensively resulting in a much richer literature on Germany on this topic than in Poland. Consequently, I have complemented the secondary literature on Poland with interviews undertaken in Warsaw with representatives of lobby groups. Two interviews were particularly helpful: a representative from PKPP Lewiatan and a representative from AHK Polska.

To analyse the degree of institutionalisation of Polish-German relations, the relevant official bilateral and multilateral agreements were analysed and secondary literature dealing with their content consulted. Further interviews on how far the bi-

lateral agreements and joint institutions shape Polish-German relations helped clarifying this point. Eugeniusz Smolar, senior fellow at the Polish Institute of International Affairs; Markus Meckel, 1994-2009 chairman of the German-Polish Parliamentary Group; Krzysztof, Miszczak, director of the office of the plenipotentiary of the Polish prime minister for international dialogue; and Janusz Reiter, 1990-1995 Polish ambassador to Germany have been valuable interview partners on that issue.

I identified the three case studies to answer sub-research questions 3a-4b, by examining the quality print media in Poland and Germany. This revealed the salient issues in Polish-German relations since 1998. This timeframe was chosen because it includes the events prior to Poland's entry into the EU in 2004 when non-state actors had the possibility of influencing their respective governments in respect to certain policies before Poland's EU entry closed this opportunity, and it allowed an examination of the two countries' policies towards each other with the backdrop of the most recent and undoubtedly most important institutionalisation: joint EU membership. A longer timeframe would be difficult to justify from a political science perspective, and would certainly lean towards a more historical approach. The print media in Germany are: *Der Spiegel*, *Der Focus*, *Die Zeit*, *Frankfurter Allgemeine Zeitung*, *Süddeutsche Zeitung*, *Financial Times Deutschland*, *Handelsblatt*, *die Tageszeitung*. In Poland the following are published: *Polityka*, *Newsweek Polska*, *Wprost*, *Gazeta Wyborcza* and *Rzeczpospolita*. The thesis also examines speeches, interviews, official policy documents and statements of policy makers and representatives of the vociferous non-state actors, and party manifestos - to detect the actors most active in shaping policies.

As much of the policy process took place behind closed doors, hence this requires elite interviewing to gather primary data.¹⁷ These interviews were semi-structured, with open-ended questions in order to gain in-depth insights that formally structured and identical closed questions would not allow. The semi-structured interviews permit the interviewees to stress *their* definitions and relevant data (Odendahl & Shaw, 2002). To ensure coherence, state and non-state actors were asked about the same issues. This data was verified and triangulated through I consulted think-tank and academic experts. Triangulation is achieved when a multiple

¹⁷ The author followed the advice and instructions of Dexter (2006: 31-72) on elite interviews.

set of data types, sources or methodologies agree with the findings or at least do not contradict it (Miles and Huberman, 1994: 66). In the three case studies, this was achieved by using three data types: the analysis of official documents, interviewing, and the consultation of independent experts. I conducted fieldwork at the *Stiftung Wissenschaft und Politik* (SWP) in Berlin and at the *Polski Instytut Spraw Międzynarodowych* (PISM) in Warsaw, profiting twofold: from cross-examination of data gathered by independent experts working at these institutions and by gaining access to the high-profile decision-makers and personalities. The institutions' reputation contributed to convincing these individuals to talk to me.

Amongst the elites, probably the most authoritative interviews I conducted – adding weight to this thesis – were with Egon Bahr, the mastermind behind *Ostpolitik*; Dieter Kastrup, chief of the German delegation negotiating the Two Plus Four Agreement in 1990; Markus Meckel, chairman of the German-Polish Parliamentary Group from 1994-2009; Erika Steinbach, President of the BdV; Leszek Jesień, advisor to the Polish government negotiation team on EU accession from 1998-2001; Ewa Synowiec, former director of the UKIE and currently Head Representative of the EU Commission in Warsaw; and Krzysztof Miszczak, Director of the Office of the Plenipotentiary of Prime Minister for International Dialogue.

In total some 80 elite interviews were conducted. This includes interviews with policy-makers and independent experts, as well as follow-up interviews. Only the interviews that are cited (33) in this thesis are listed in the bibliography. Not all of the interviews allowed a recording of their interview, which I respected in accordance with ethical research practice. Some of the interviews were conducted on the telephone, which was not ideal since it is more difficult to build the trust this way. However, as Kezar (2003: 405) points out, “this trust was developed to obtain information to expose the elite or gain access.” Moreover, it is questionable whether the “building of trust” for the purpose of obtaining information is ethical conduct.

This research design does not pose any exceptional ethical concerns. Some respondents choose to remain anonymous which I respected. But, certain difficulties were encountered. For instance, I encountered representatives of some Polish non-state actors' who refused to give interviews on foreign policy, and it is likely that they did so because they do not want to be associated with corruption, a contentious topic in the CEECs. Berglöf and Pajuste (2005), for example, notice the poor transparency

of corporate-governance arrangements in Poland, and the reason could be to conceal corruption or association with it. A good indicator for at least the perception of high corruption is the fact that in every electoral campaign this issue was salient (Millard 2007: 51). Part of the reason are the non-existent, poorly regulated or under-used official forums for non-state actors that provide opportunities of voicing their policy preferences (see Chapter II).

I also noted differing institutional cultures in Germany and Poland when trying to contact potential interviewees working in the institutes. Whilst the German officials' response rate to emails with interview requests was very high with answers given within a four-week span, Polish officials often did not respond to emails, but were keen to meet after I contacted them by phone. This, however, did not pose any problems once I adapted to these cultures.

Probably the most important limitation for this research is that many important individuals involved in the three issues examined had died or were gravely ill. These include casualties from the plane crash in Smolensk in April 2010; the Under-Secretary of State at the Ministry of Finance, Krzysztof Ners, who died in 2006 and could have been helpful for the issue of dealing with the free movement of capital; and Jan Kułakowski, the chief Polish negotiator for EU accession from 1998-2001, who died in 2011 after a long illness.

V. Outline of the thesis

Chapter II, by engaging with Risse-Kappen's (1995) first variable, determining the degree of influence that non-state actors have on foreign policy-making, introduces the foreign policy-making systems of Germany and Poland. Conclusions will be made on the role of non-state actors in policy-making in general and in foreign policy in particular in both countries, drawn from the domestic structure that these countries provide for their actors.

Chapter III will deal with the degree of institutionalisation of Polish-German relations. This is the most historical part, since it will introduce bilateral agreements, institutions that both countries have created or joined, and forums where interaction between the two countries have taken place since 1989.

Chapter IV analyses the process of Poland's EU accession since 1989, scrutinizes the motives of Germany, Poland and their respective non-state actors for joint EU membership and shows possible access point for non-state actors during these negotiations. Thus it provides a contextual setting for the first two case studies.

Chapter V presents the first of the three case studies, uncovering the influence of non-state actors and their influence on Polish-German relations. It tries to achieve this by examining Poland's EU accession negotiations with regard to the free movement of capital chapter of the *acquis communautaire*.

Chapter VI engages again with Poland's EU accession negotiations, but deals with the free movement of workers. As will be demonstrated, whereas the desire to restrict the free movement of capital emanated from Poland, in respect to the free movement of workers, German interests were at stake. This gives an excellent opportunity to compare Poland and Germany, although on different topics, but which occurred simultaneously and under very similar circumstances.

Chapter VII deals with the BdV and its proposal to erect a museum in Berlin depicting the flight and expulsion of Germans from the East following WWII. This initiated a decade-long process, resulting in the Grand Coalition's agreement to establish a permanent exhibition as part of the German Historical Museum in Berlin.

Chapter VIII concludes the thesis by returning to the research questions and hypotheses and summarising the results of Chapters Two through Six, discusses the implications of this thesis and points to further research.

2. Foreign Policy-making Structures in Germany and Poland

As outlined in Chapter I, this thesis tests Risse-Kappen's (1995) theory that domestic structures determine to a great extent the way non-state actors can influence state relations. Therefore, this chapter examines Germany's and Poland's domestic structures to determine the conditions of non-state actors in influencing foreign policy-making in their respective environment. Three levels of analysis are considered: first, the official foreign policy-making apparatus; second, civil society; and third, the nature of policy networks linking the two. The analysis renders preliminary results in examining the three hypotheses developed in Chapter I and, hence, sets up the floor for the three case studies which are analysed in Chapter V through VII.

The first part analyses Germany's domestic policy-making structures, while the second part engages with Poland's domestic policy-making structures. Focus is on foreign policy. Due to space limitations the chapter will focus on the foreign policy-making mechanisms that are relevant in the Polish-German context since a detailed description, of e.g. the Foreign Office, for example, would be impossible here. Further, I am aware of the heated discussion of what constitutes civil society. Authors argue that companies are profit organisations and should be excluded from the definition (e.g. Kopecky and Mudde, 2003). Nevertheless, I will treat civil society as including business interests.

1. Structure and actors in foreign policy-making in Germany

As the literature review discussed, scholars often selected Germany or German non-state actors as a case study for examining the role of the latter in (foreign) policy-making. This is unsurprising, given that German scholars were among the first to incorporate elements of the humanities into the disciplines of politics, political philosophy and sociology. For instance, Eckart Kehr's (1975) attempt to shed light on the influence of business interests on German foreign/defense policy is a part of that tradition. He argues that, rather than other states' defence policies, it was the MPs of

Reichstag (parliament of the *Kaiserreich*) representing capitalism that propelled aggressive expansion of the German navy under Kaiser Wilhelm II. Hence, Kehr's emphasis on social structures and economic interests, which later led to the "primacy of home affairs over foreign affairs" (*Der Primat der Innenpolitik*) thesis, can be seen as an intellectual precursor to Risse-Kappen's development of the domestic structures variable. It also demonstrates that, already under the *Kaiserreich*, the structure of German politics allowed at least parts of civil society (according to Kehr the *Junker*¹⁸ and bourgeoisie) to influence policy decisions. This is important in so far as German civil society has had a longer tradition of participation in foreign policy decision making than the newly established post-1989 democracies.

Germany's democracy following WWII was specifically designed to prevent another dictatorship. The concept of "militant democracy" (*wehrhafte Demokratie*) in describing various Articles of the Basic Law (Grundgesetz, GG)¹⁹ illustrate this. The institutional setup also supports this. The sixteen mostly artificially created federal states were vested with extensive powers in areas including education, and were given wide ranging co-decision powers regarding tax expenditure which underscored this principle even further. Parties also play a vital role in safeguarding democracy to such an extent that Germany has been described as a "party state" (*Parteienstaat*) (Schmidt, 2003: 46-55).

Article 21 GG states that parties "participate in forming the political will of the people". Designed to minimise the danger of the direct democracy (referenda) that contributed to the demise of the Weimar Republic, political parties in Germany are meant to help the formation of public opinion and channel the political will to the government. Furthermore, German parties consolidated after 1949, expanding their electoral base, and the two major parties CDU/CSU and the SPD quickly became *Volksparteien* (Kirchheimer, 1966). Thus they no longer articulated narrow interests, nor mirrored religious or ideological cleavages as the case during the Weimar Republic. The resulting party stability has contributed to government stability. Katzenstein (1987) lists political parties alongside federalism and parapublic institutions (e.g. the *Bundesbank*) as one of the three "nodes" of the entire political system. Germany's strong Basic Law and its federal structure (e.g. Scharpf, 1988),

¹⁸ "*Junker*" in its modern meaning stands for Prussian landed aristocracy.

¹⁹ See especially: Art. 9 allowing the prohibition of anti-democratic parties; Art. 18 allowing the restriction of the basic rights of people fighting against the constitutional order; Art. 20 granting the right of resistance as a last resort against anyone wishing to abolish the constitutional order.

along with coalition governments, were designed to ensure the practice of *consensus-based policies*, which only change “incrementally”, (Katzenstein, 1987; Green and Paterson, 2005) since the structure produces a large number of veto players who constrain the executive. This phenomenon is also known as the internal dimension of “semi-sovereignty” (Katzenstein, 1987). Incremental policy change can also be observed in foreign policy. *Ostpolitik*, for example, was not reversed by the CDU/CSU in 1982 when the party came to power, even though most of the party’s MPs abstained from voting on the Moscow and Warsaw Treaties in 1970 (e.g. von Dannenberg, 2008). All parties vote together when issues of European integration are at stake, and the engagement of the *Bundeswehr* in out-of-area operations is continued when new governments are formed (i.e. Kosovo and Afghanistan). An exception to this is *Die Linke*, which is building its profile on fierce pacifism and euroscepticism.

Federalism plays a crucial role in Germany’s policy-making system. It is one of the main factors contributing to the “joint-decision trap” (Scharpf, 1988), where the clash of the federal government and the *Länder* through the *Bundesrat* often leads to outcomes along the lines of the lowest common denominator.²⁰ Katzenstein (1987) identifies federalism as one of the three nodes of Germany’s political system and, together with Germany’s centralised society, it represents an important explanatory factor for the incremental policy changes. Foreign policy is not exempt from this, especially in European policy (Gunlicks, 2003: 360-73; see also below). The *Länder* also participate in foreign relations through cross-border regions and, according to Article 32(2) GG, whenever the federation signs a bilateral treaty which affects the interests of a *Land*, the latter must be heard well in advance. They can, moreover, sign their own treaties if the matter falls within their competences and they obtain the federation’s approval (Art. 32(3) GG). This thesis will demonstrate throughout that federalism indeed plays an important role in influencing Polish-German relations.

Parties also matter in German foreign policy, as various examples demonstrate. An important case in which relations with Poland were affected by a strict party line that incorporated the wishes of certain sectors of German society was the articulation and maintenance of the Hallstein Doctrine²¹ by the CDU. Also, the

²⁰ The recent federalism reforms have not substantially altered the features described here. For the most recent discussion on this issue see, e.g. Auel (2008), Benz (2008), Moore *et al.* (2008).

²¹ The Hallstein Doctrine, practised from 1955 to 1969, when it was abolished along with the launch of *Ostpolitik*, stipulated that the FRG should not conduct any bi-lateral relations with states that recognised the GDR.

inclusion into the CDU of many former members of the All-German Bloc/League of Expellees and Deprived of Rights (*Gesamtdeutscher Block/Bund der Heimatvertriebenen und Entrechteten*: GB-BHE) in the 1950s was probably an important reason why the recognition of the Oder-Neisse line was only possible under a SPD-led government in 1970 with the Treaty of Moscow and Treaty of Warsaw (see Chapter VII).

Katzenstein (1987) coined the term “semi-sovereignty” to explain relatively high degree of fragmentation in German policy making, compared to industrial states. Katzenstein (1987: 367) describes the German system as sectoral corporatist, since the actors in the Political-Administrative System (PAS) maintain a close link to the private actors, and private actors even maintain a policy monopoly in certain areas. The classic example is *Tarifautonomie* in industrial relations, in which bargaining over wage setting takes place exclusively between trade unions and employers’ associations.²²

For Germany, the collective traumatic experience of WWII constitutes a forceful factor in determining state actors’ room for manoeuvre, not only due to external constraints but also due to self-imposed constraints. This “learning from catastrophes” was described in Manfred Schmidt’s (1989) work on Germany’s social and economic policy, where he developed the concept of the “policy of the middle way” (1987; 2006). Katzenstein’s analysis (1987) of “semi-sovereign” Germany cannot explain the institutional structure of checks and balances without referring to the societal and cultural setting and Germany’s traumatic war experience(s), a fact later acknowledged in Katzenstein’s more constructivist work written after unification (1997). Constructivist or cultural explanations of state action have their limitations. It has been argued that in times of instability and uncertainty cultural factors are especially powerful in explaining foreign policy action when they are used as “guides” and “as sources of socio-political meaning” (Gaenslen in Hofhansel 2005: 7) but less so during times of stability and even less so if concrete decisions have to be explained rather than broad patterns (Hofhansel 2005: 7). Nevertheless, Katzenstein’s analysis provides a useful explanation for Germany’s foreign policy-making process, which should be characterised by a large degree of fragmentation and decentralisation with many non-state actors involved in shaping this policy.

²² For an account of recent developments in Germany’s industrial relations see e.g., Streeck (2005).

Paterson (2005) analyses the implications of Katzenstein's semi-sovereignty concept on Germany's European policy. He stresses that external sovereignty was fully restored after unification, but that semi-sovereignty persisted in three senses: first, Germany's behaviour towards other states, especially towards France, could be labelled as semi-sovereign, reflected in her "reflexive multilateralism". However, Paterson detects modifications in this sense of semi-sovereignty occurring under the Red-Green coalition (Paterson, 2005: 269-73); Second, structural and ideational barriers ensured fragmented European policy-making. Paterson cites power sharing between ministries (*Ressortprinzip*), and Article 23 GG granting the *Länder* rights in European Union affairs (Paterson, 2005: 273-75); Last, semi-sovereignty continues in the sense that the German state has to implement EU policies, the downloading side of Europeanisation or EU-isation, and is therefore a significant constraint (Paterson, 2005: 275-76). Hence, fragmentation of German policy-making towards Poland should be expected, as both states are EU members. The following section outlines the structure of and actors in policy-making towards Poland. As defined in the introduction on governance, the actors will be divided into PAS-actors and private actors.

Actors in the Political Administrative System

Chancellor and Chancellery

The principle executive actors of German foreign policy are the Chancellor, the Foreign Minister and the Defence Minister. Article 73 GG only refers to the "Federation" (*Bund*) as responsible for foreign policy.²³ Article 65, however, makes it clear that the Chancellor is responsible for general guidelines for all policies, within which each minister can manoeuvre. This is known as *Richtlinienkompetenz* or *Kanzlerprinzip*. As a result, foreign policy strategies and foreign relations with every single state depend at large on the personal preferences of the Chancellor and his character. The Bonn Republic's first Chancellor, Konrad Adenauer was Chancellor and the first Foreign Minister until 1955, thereby setting an important precedent for

²³ All Articles of the Basic Law (*Grundgesetz*) are retrieved from the website of the *Deutscher Bundestag*: <http://www.bundestag.de/parlament/funktion/gesetze/Grundgesetz/index.html>, accessed 17 May 2009.

the Chancellors' interest in foreign policy. Examples of the Chancellor's dominant influence in foreign affairs are Adenauer, who pursued a resolute rapprochement with France and integration into western structures (*Westbindung*), and Brandt, who launched *Ostpolitik*. The Chancellor is constrained externally by international obligations, and internally by the Foreign Minister with his *Ministerkompetenz* known as the *Ressortprinzip*. Also constraining are coalition obligations, which can initiate a vote of no confidence (Article 67 GG); and public opinion, especially at federal election-time. The Chancellor's is usually amongst the most popular politicians, with only the Foreign Minister ranking higher. This phenomenon is known as the *Kanzlerbonus*.

The Chancellor concentrates expertise in the Federal Chancellery to co-ordinate all policies and to inform and advise. The Chancellery mirrors the structure of the various ministries and is divided into five Directorates-General (DGs) (*Abteilungen*), and policy-area sub-groups (*Gruppen* and *Referate*). All Chancellors have pursued their own, independent foreign policy agenda, highlighting the importance of the DG for Foreign Relations (division 2) (Sturm, 1994: 97-99; Siwert-Probst, 2001: 22). As of February 2010, Group 21 of division 2 focuses on foreign, security and development policy. Division 5 focuses on European policy. This DG was made independent under Chancellor Schröder prior to the Eastern Enlargement to co-ordinate better European affairs.

A constraint on the Chancellor's powers is in Article 15 of the Rules of Procedure of the Federal Government (*Geschäftsordnung der Bundesregierung*: GOBReg). It explicitly states that the Cabinet as a whole shall be consulted for discussions about and resolution of all matters of general domestic, *foreign*, economic, social, financial and cultural significance.²⁴ The Article allows interpretation as to what constitutes *general* and when foreign matters overlap with the special ministries' responsibilities. Since Cabinet meetings are confidential, research on contemporary decision-making procedures is limited. However, the Chancellor's authority usually obliges ministers to align around his/her position (Siwert-Probst, 2001: 24).

²⁴ The Rules of Procedure of the Federal Government (*Geschäftsordnung der Bundesregierung*) were established in May 1951 and have undergone few modifications since (last modification in November 2002). They can be found at: <http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/RegierungundVerfassung/GeschaeftsordnungderBundesregierung/geschaeftsordnung-der-bundesregierung.html>, accessed 12 September 2009. Emphasis added.

Similarly, since Helmut Kohl's narrow parliamentary majority in the 1994 elections, coalition meetings (*Koalitionsrunde*) have evolved into a fixed instrument for policy co-ordination and preliminary decision-making raising the issue of whether this procedure hollows out constitutional competences and the official Cabinet, since these meetings are confidential (Siwert-Probst, 2001: 25-26). This is especially important for foreign policy because, since 1966 when Willy Brandt became Foreign Minister, the smaller coalition partner has held this post in conjunction with the unofficial Vice-chancellorship.²⁵ Coalitions compete for votes at the federal and state level. Hence, the Chancellor and Foreign Minister can conflict over fundamental issues, especially if the Foreign Minister attempts to raise their profile vis-à-vis the Chancellor. However, the Chancellor has the key cards at his/her disposal allowing the Foreign Ministry to be pushed back whenever he/she decides what issue should be given top priority (*Chefsache*). Paterson's (2010) analysis of the 2005-2009 Grand Coalition shows how Chancellor Merkel has completely dominated *Europapolitik*.

Foreign Ministry

Officially, responsibility for foreign policy rests with the Foreign Minister who leads the Foreign Service, divided into the Foreign Office and the missions abroad. It is argued that the increasing international activities of specialised ministries (over 250 units of other ministries deal with foreign or European policy in addition to the Foreign Office and Defence Ministry) and the growing importance of non-state actors in that policy area have led to changes in the role of the Foreign Ministry, from a foreign policy monopoly towards a policy "manager" as co-ordination policies becomes more important (e.g Siwert-Probst, 2001: 26-26-28, 30). That all Foreign Office officials are generalists and special expertise from other ministries is often required, enhancing inter-ministerial co-operation, aggravates this further. For these reasons, Andreae and Kaiser (2001: 39-40) distinguish between foreign policy as defined by the institutions officially responsible for foreign policy-making and foreign relations as conducted by all the other ministries either as part of foreign policy or independently from the Foreign Office (see Chapter I). Article 11(2)

²⁵ Article 69(1) GG does not refer to a "Vice-Chancellor" as this title does not officially exist. Rather, according to the Basic Law, the Chancellor nominates a Minister as his "deputy" (*Stellvertreter*). In common parlance, however, Vice-Chancellor (Vizekanzler) is used.

GOBReg²⁶ stipulates that negotiations with foreign countries can only be conducted with the Foreign Ministry's consent; a measure to establish a hierarchy in foreign policy-making. Similarly, Paragraph 72 of the Joint Rules of Procedure of the Federal Ministries (*Gemeinsame Geschäftsordnung der Bundesministerien: GGO*) states the same if negotiations lead to a bi-lateral or international treaty.²⁷ However, "in political practice the great number of new non-state actors generate complex networks that to a large extent circumvent such formalised rules." (Siwert-Probst, 2001: 27) Despite these developments and the Chancellor's *Richtlinienkompetenz*, all postwar governments have followed the primacy of foreign policy over departmental policy whenever the interests of the state as a whole were at stake, leaving the Foreign Office in charge of affairs. An illuminating case with relevance to this thesis is the 1991 dispute between the Ministry of the Interior and the Foreign Office over who should be responsible for granting visas. The latter ministry prevailed over the question of lifting visa requirements for Poles (Andrea and Kaiser, 2001: 42-46; 49-50).

The Foreign Service (*Auswärtiges Amt*, AA) is also divided into DGs and divisions mirroring the growing demand to streamline all the foreign policies that overlap with the other ministries.²⁸ EU enlargement precipitated a structural reform of the Foreign Office resulting in moving EU bi-lateral relations from the Political DG (DG2) to the DGE, dealing with European policy. The importance of Germany's relations with France and Poland is underlined by these two special Ministers of State. After the 2009 federal elections, Cornelia Pieper became the new Minister of State responsible for the "co-ordination of Polish-German inter-societal and close-border co-operation",²⁹ replacing high-profile Gesine Schwan.³⁰ This seems to reflect the

²⁶ The GOBReg was amended in 2002 due to the increasing foreign activities of the other ministries <http://www.bundesregierung.de/Webs/Breg/DE/Bundesregierung/RegierungundVerfassung/GeschaeftsordnungderBundesregierung/geschaeftsordnung-der-bundesregierung.html>, accessed 25 June 2009.

²⁷ The GGO is available at: http://www.bmi.bund.de/cln_144/SharedDocs/Downloads/DE/Veroeffentlichungen/ggo.html, accessed 29 June 2009.

²⁸ An organisational chart for the Foreign Service is available at: <http://www.auswaertiges-amt.de/diplo/de/AAmt/Abteilungen/Uebersicht.html>

²⁹ The exact wording in the original is "*Koordinatorin für die deutsch-polnische zwischengesellschaftliche und grenznahe Zusammenarbeit*" <http://www.auswaertiges-amt.de/diplo/de/AAmt/Abteilungen/Uebersicht.html>, accessed 29 June 2009.

³⁰ Professor Gesine Schwan was twice the SPD candidate for the Presidency, each time losing to CDU/CSU candidate Horst Köhler. For more information on the Minister of State see: <http://www.auswaertiges-amt.de/diplo/de/AAmt/Koordinatoren/D-PL-Koordinatorin/D-Pol-Koordinatorin.html>, accessed 29 June 2009.

conviction that supporting inter-societal links leads to the best results in reconciliation and improving Polish-German relations. However, in day-today relations with Poland, this post plays a minor role as reflected by the structure of the responsible DG, since the Minister of State does not command her own staff. Nevertheless, the post is meant to play the role of a “seismograph” and is important in capturing sentiment in Poland and reporting back to the FO (Lübckemeier, 2010 Interview). Division E 08 is responsible for bi-lateral issues with, *inter alia*, Poland. The staff assumes tasks requiring economic, political and cultural competence to bundle the activities of the Foreign Office and the respective embassies (Siwert-Probst, 2001: 28).

Specialised Ministries

As discussed, other ministries deal with foreign policy whenever it overlaps with their responsibilities. Thus, specialised ministries send their officials to the missions abroad and to EU institutions to gain direct insight into what happens there (Andreae and Kaiser, 2001: 41-42). These personnel become valuable assets for their home ministries’ DGs, groups and departments. There is no ministry that has not established at least one unit that deals with the abroad. The specialised ministries communicate directly with their equivalents especially in case of Schengen members for which this is a legal requirement (Andreae and Kaiser, 2001: 51).

For example, the Ministry of Labour and Social Affairs’ DG 2 deals with the labour market and its departments II a6 and II a7, in migration and employment of foreigners respectively. Its DG 6 focuses on European and International Employment and Social Policy.³¹ Between 2002 and 2005, Labour and Economy were under the roof of one Ministry before these policies were divided by Chancellor Angela Merkel (see Chapter VI). Often several ministries could demand a say on a specific issue and conflict can arise over the content and wording of a policy, and delineation of competence. An example relating to Poles is the regulation pertaining to seasonal workers. Whilst the Ministry of the Interior’s DG M deals with migration, policy on foreigners and EU harmonisation, the Ministry of Labour had legitimate claims to this issue as well. The regulations were stipulated in collaboration, supported by the

³¹ An organisational chart for the Federal Ministry of Labour and Social Affairs is available at http://www.bmas.de/portal/32944/2009_04_22_organigramm_bmas.html, accessed 30 June 2009.

Foreign Office (Andreae and Kaiser, 2001: 50). Both types of conflict can occur on three “inter-ministerial levels”. The first involves the Foreign Office as the foreign policy maker and one or several specialised ministries. Secondly, two or more specialised ministries compete among themselves over an issue. Lastly, conflict can occur between the Foreign Office and/or a specialised ministry and the Ministry of Finance, which, with its budgetary control (DG II) can constrain the activities of all ministries.³²

How does effective co-operation happen between these ministries? To resolve disputes and find consensus, “teams”, “working groups” or “commissions” are established at the ministries and meet under the roof of the ministry officially in charge of the issue (Article 16 GOBReg and Article 19 GGO). Depending on whether the issue at stake is a one-time event or is recurring, these *Ressortkreise* are made permanent or *ad-hoc*. The ministries’ groups and divisions can work together directly without requiring rubberstamping from above. Conflicts between the ministries are resolved bottom-up from division to directorate and DG level (Westerhoff, 2001: 118-20).

For example: for Germany as an export-oriented country with a foreign trade surplus,³³ foreign trade relations are important. Hence, the Ministries of Economics and Finance are often involved in the foreign policy decision-making mechanism. All pertinent foreign trade issues are addressed by a working-level, inter-ministerial committee, established in 1995 and comprised of the Foreign Office, the Ministries of Economics, Finance, Economic Co-operation and Development, state representatives and the head of the Chancellery on the side of the PAS actors and representatives of commerce and industry in the form of the Federation of German Industries (*Bundesverband der Deutschen Industrie*: BDI) and the heads of the Association of German Chambers of Industry and Commerce (*Deutscher Industrie- und Handelstag*: DIHT). This represents an official forum for German businesses to voice their

³² An organisational chart for the Federal Ministry of Finance is available at: http://www.bundesfinanzministerium.de/nn_2986/DE/BMF_Startseite/Ministerium/Leitung_des_Hauses/node.html?_nnn=true, accessed 1 March 2011.

³³ Prior to the financial crisis commencing in 2008 Germany exported goods valued at 1179.4 billion Euros and imported goods worth 1023.7 billion Euros (Destatis 2010: 9). For detailed statistics on the German economy see: <http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/EN/Navigation/Statistics/VolkswirtschaftlicheGesamtrechnungen/VolkswirtschaftlicheGesamtrechnungen.psml;jsessionid=D4198156FB77B61D69F52CB5A222710C.internet>, accessed 12 August 2010.

interests up to six times a year. The possible influence of business cannot be overstated as additional bilateral Chambers of Commerce and the Federal Office of Foreign Trade Information (*Bundesstelle für Außenhandelsinformation*: BfAI) have transformed the Foreign Service into almost a DG of the Ministry of Economics, since the promotion of Germany as an investment location is one of its primary tasks (Siwert-Probst, 2001: 29; Westerhoff, 2001: 121; Bettzuege, 2007: 235). The Foreign Minister is accompanied commerce and industry representatives on a mission abroad.

Private Actors

Non-state actors have another official way to voice their interests and give the government expert advice. Article 47 GGO states that legislative proposals have to be passed on to the *Länder*, the umbrella organizations of the German business associations and trade unions (*Spitzenverbände*), experts groups (*Fachkreise*) and the representatives of the *Länder* at the federal level as soon as possible whenever their concerns are touched. This law allows the ministry the discretion to decide when, and to what extent the details are passed on (Art. 47(3) GGO). If the legislative proposal is of special political significance, the Federal Chancellery has to be informed and its consent is required for the private actors to participate (Art. 47(2) GGO).

These legal requirements have an important legitimising value for collaboration between state and non-state actors but informal contacts are likely to be more important. It is unsurprising that representatives of business, industry and labour unions all have offices in Berlin.³⁴

The 1992 Treaty of Maastricht and the EU's subsidiarity principle required an amendment of the Basic Law introducing Article 23 GG, 'the Europe Article' (*Europaartikel*). This article states that the *Länder* have the right to participate in the decision making process when their interests are concerned even where the federation has the exclusive right to legislate. The federation must, however, guard the interest of Germany as a whole (Art. 23(5) GG). The downside of EU deepening for the *Länder* was that they were compelled to transfer substantial competences to the EU.

³⁴ In the same breath, one has to mention that a large number of decisions pertaining to private actors have been transferred to Brussels. Private actors are organised there under various umbrella organisations. However, since foreign policy is largely still in the hands of individual member states, these issues will not be tackled in this thesis.

Minister-presidents often compensate for this representing their *Länder* abroad, in economic discussions, sometimes without the consent of the Foreign Office (Westerhoff, 2001: 122).

The parliament (*Bundestag*) also plays a role in foreign policy in three ways. First, it participates in parliamentary debates on ratification of foreign policies and there is disagreement, when the budget is allocated to the official foreign policy-making ministries, and on presentation of matters of topical interest. Second, the *Bundestag* as a whole has a say in foreign policy decisions. It has powers in regarding widening and deepening of the EU according to Article 23 GG, in deployment of German forces abroad, and Germany's entry into stage three of the European Monetary Union (EMU) (Krause, 2001: 157-72). But perhaps the most relevant is the creation of parliamentary working groups. These consist of MPs from all *Bundestag* parties. The current, 17th *Bundestag*, has established 54 bi- and multilateral parliamentary groups to exchange information with parliamentarians, civil society and the governments of foreign countries.³⁵ A German-Polish parliamentary group exists as well. As Markus Meckel, the leader of the German-Polish parliamentary group (1994-2009) explains, the activities of the parliamentary groups should not be overrated since only one visit by German and Polish MPs is scheduled per year. A lot depends on the initiative of the leader of the bi-lateral groups to organize additional events. In the 1990s and 2000s, Meckel organized conferences on cross-border cooperation, Euroregions and Poland's accession to the EU, where members of the *Länder* parliaments and *Bundestag*, MEPs and members of the Polish *Sejm*, *Senat* and regional *Sejmiks* were incorporated. The Polish side often expressed concerns regarding strong regionalization or even federalization. Other workshops dealt with energy issues (building the Nordstream pipeline through the Baltic Sea) and historical questions. In all, Meckel could not evaluate whether these activities by the bi-lateral groups had any influence on the decisions of the government, but "at least they contribute to the political climate" (Meckel, 2010 Interview).

The federal president – the head of state with ceremonial powers - is also significant. Even though he cannot make foreign policy, the president enjoys a high symbolic status. In reconciliation with Poland, Richard von Weizsäcker's landmark

³⁵ See: http://www.bundestag.de/bundestag/europa_internationales/parlamentariergruppen/allgemein.html, accessed 25 October 2010.

speech before the *Bundestag* on 8 May 1985 and his visit to Poland in May 1990 are just two of many examples (see Gardner Feldman 2012).

Civil Society

Germany's civil society interacts with the government in a consensus-based political culture and stands in a reciprocal relationship to a political set-up designed to allow only "incremental policy change" (see above). The classic example is the country's unique model of social market economy, the "Rhineland capitalism (Albert, 1991) or a "co-ordinated market economy" (Hall and Soskice, 2001). The tripartite relationship between the government, trade unions and employers' organisations is interlocked in many ways.³⁶ The governments and the parapublic institutions strive to guarantee price stability (*Bundesbank*), contribute to high employment and steady economic growth (business, workers and governments), and immunise the German economy against external shocks (governments). As discussed, business and employer interests find enough opportunity to voice their preferences in policy-making, and foreign policy is no exception where the foreign office is simultaneously a promoter of German business. It is therefore unsurprising that Katzenstein (1987) sees a high degree of centralisation of interest groups since this is, for such a model, a precondition for effective co-ordination. The two biggest trade unions – IG Metall representing manufacturing and Ver.di representing the service-sector – have 2.3 million members each (Menz 2005: 201). IG Metall and Ver.di, along with six other unions, are in turn represented by the umbrella organisation the German Federation of Unions (*Deutscher Gewerkschaftsbund: DGB*). German employers' wage-negotiation bodies are bundled into the *Bundesvereinigung der Deutschen Arbeitgeberverbände* (BDA). That the BDA moved to Berlin along with the *Bundestag* in 1999 hints at strong relationship between German politics and business. Although the number of companies in employer's organizations has been falling, and despite a falling proportion of union members among all employees (the figure dropped from 27 % in 1980 to 17 % in 2000. See Streeck and Hassel, 2003: 9), fomented by a dramatic shift away from industry to the service sector, German unification (Menz, 2005: 201) and a perceived superiority and imitation of the Anglo-Saxon model in the 1990s and early

³⁶ For example, many MPs are simultaneously members of the supervisory board of firms, and the state is often an influential shareholder as in the case of Lower Saxony and Volkswagen.

2000s among the big stock market listed enterprises (*Dax-Konzerne*), these bodies are solidly anchored in the German polity.

II. Structure of and actors in foreign policy-making in Poland

As in Germany, history is important in shaping political structures in Poland. After 1989 the framers of the constitution faced a dilemma between a system with a strong executive (presidentialism) or a strong parliament. Poland chose semi-presidentialism to separate and balance powers (Sanford, 2002: 166-68). Since there is no standard form of semi-presidentialism, it is difficult to precisely categorise Poland. Within the semi-presidential spectrum of highly presidentialised regimes, balanced presidential and prime-ministerial powers, and regimes with ceremonial presidents, Elgie (2005: 98-112) places Poland in the middle category (although Poland has largely become a parliamentary system since the new, 1997 constitution). This is because “the prime minister is the primary decision maker, while the president has the power to intervene either sporadically or in one or more specific policy areas, usually foreign and defence policy.” (Elgie, 2005: 107) Supporting the claim that Poland displays a semi-presidential system is the president’s power to veto legislation *a priori*.³⁷ President Lech Kaczyński often used this veto power during the period of co-habitation from 2007-2010.³⁸ The reason for the president’s powers stem from Poland’s transitional period. Following the first partially free elections in 1989 Lech Wałęsa, took over presidential powers from Poland’s last Communist President General Wojciech Jaruzelski which stem from 1981-83 martial law emergency powers. Wałęsa’s confrontational style towards parliament precipitated the consolidation of democracy by “encouraging a coalition supporting the weakening of presidential powers” (Millard, 2000: 40), leading to the current 1997 Constitution.

³⁷ For a lengthy discussion of Poland’s legislative process, including the president’s role see, for example, Nalewajko, Ewa; Wesołowski, Włodzimierz (2007) Five Terms of the Polish Parliament, 1989-2005. *The Journal of Legislative Studies*, Vol. 13(10): 59-72.

³⁸ Until the start of co-habitation in 2007, the President used only one veto. Following Civic Platform’s electoral victory, Lech Kaczyński used twelve vetoes in the first seven months of Tusk’s tenure. See “Trzyście wet prezydenta Kaczyńskiego”, *gazeta.pl*, 16.12.2008: http://wiadomosci.gazeta.pl/wiadomosci/1,114873,6071358,Trzynascie_wet_prezydenta_Kaczynskiego_o.html, accessed 16 May 2012.

Actors in the Political Administrative System

The Polish constitution places the President as head of government and the Prime Minister as Chairman of the Council of Ministers in the position to conduct foreign policy. However, the Constitution of 2 April 1997³⁹ has limited his overall responsibilities and moved Poland towards a model in which parliament is dominant. Two articles of the Constitution provide the basis of the president's foreign policy powers. Article 133 mentions that "the president as the republic's representative in foreign relations" 1) ratifies international agreements and informs the Senate and parliament (*Sejm*); 2) appoints and recalls diplomats; and 3) receives foreign diplomats and representatives of states. Article 134 makes him the Commander-in-Chief of the military forces.

Even though Law and Justice (*Prawo i Sprawiedliwość*: PiS) demanded more political powers for the president under the "Fourth Republic" umbrella project, his powers remain curtailed. The inherent intra-executive conflict of balanced semi-presidentialism, as well as the broad nature of the constitution's Articles which do not go into details regarding specific foreign policy tasks, have led to numerous conflicts about the delineation of powers between the president and the prime minister since the start of co-habitation in 2007, when Civic Platform (*Platforma Obywatelska*: PO) under current PM Donald Tusk won the parliamentary elections. It was debated who should represent Poland at the EU Council Summits⁴⁰ and other international events,⁴¹ and it was argued repeatedly that the Constitutional Court (*Trybunał Konstytucyjny*) should resolve this conflict.⁴² The court's 2009 verdict resolved the conflict in favour of the prime minister.⁴³

Personal preferences and ideological background play a vital part in the president's influence on bi-lateral relations. President Aleksander Kwaśniewski

³⁹ The Polish Constitution (*Konstytucja Rzeczypospolitej Polskiej*) is available at: <http://www.sejm.gov.pl/prawo/konst/polski/kon1.htm>, accessed 2 March 2012.

⁴⁰ See: "Spór rządu z prezydentem o politykę zagraniczną", *gazeta wyborcza*, 29.11.2007.

⁴¹ In 2010 tensions occurred between the president and the prime minister over who should represent Poland during the commemoration of the Katyń massacre. See: "Putin zaprosił, ale kto pojedzie", *gazeta wyborcza*, 12.02.2010.

⁴² See: "Trybunał czy ustawa o MSZ?", *gazeta wyborcza*, 16.10.2008.

⁴³ See: "Wszyscy zgadzają się z Trybunałem, a będzie nadal tak, jak jest", *gazeta wyborcza*, 22.05.2009.

(1995-2005) fostered relations with the USA, sent troops to Iraq in 2003 and played a significant role in mediation during the Orange Revolution in Ukraine due to his personal interest in the matter. President Kaczyński, once a part of the Solidarity opposition, continued the pro-American stance whilst at the same time relations with Russia deteriorated due to Russian and German plans to build the Nord Stream pipeline through the Baltic Sea, and Russia's ban on Polish meat.

The president appoints various counsellors which advise him on domestic and foreign policy. Under Kaczyński's presidency, fifteen counsellors advised the president,⁴⁴ of which the appointment of Marek Cichocki was the most relevant to Polish-German relations. Cichocki published academic works (e.g. 2004; 2005) reiterating the importance of history to Polish-German relations and implying that not much improvement can be made in the future since history cannot be undone. Cichocki's, however, is not the only opinion circulating among the elites and he has been criticised, *inter alia*, by Krzysztof Miszczak (2011 Interview):

We have a new generation: young people on this side and the other and they forget about certain things [...]. I think that history plays an important role in Polish-German relations, but it should not close the horizon for development of Polish-German relations in Europe. We [Poles] think historically. We sometimes exploit this fact to find an excuse. Our weakness is history, i.e. our advantage is history because we think it is an advantage but this is a weakness because nobody deals with this because nobody is interested in this anymore. [...] I have explained it to Marek. I said: there is one important element, [...]: There is NATO, there is the EU, there is a common security policy, i.e. a European and later common because this is evolving of course, whether it works or not. [...] Imagine this situation that someone is attacking Germany and we are defending Germany. There is a common security space, which has emerged all over the sudden.

Like the German Chancellor, the Polish president has also a Chancellery, divided into fifteen offices and one Current Analysis Team.⁴⁵ The Foreign Affairs Office, run by either a Secretary or Under-Secretary of State: 'prepares analyses of issues connected with foreign affairs', coordinates organisational and technical activities, prepares President's foreign visits, and organises foreign visitors to Poland and various bilateral and multilateral meetings.⁴⁶

⁴⁴ See: <http://www.president.pl/en/counsellors/>, accessed 25 October 2009.

⁴⁵ See: <http://www.president.pl/en/chancellery/>, accessed 2 March 2012.

⁴⁶ See: <http://www.president.pl/en/chancellery/foreign-affairs-office/>, accessed 2 March 2012.

According to Article 146 of the Constitution, the Council of Ministers (*Rada Ministrów*) conducts domestic and foreign policy and the Foreign Minister executes foreign policies. Most of the decision-making process is delegated to the foreign ministry (*Ministerstwo Spraw Zagranicznych*: MSZ). The MSZ's current organisational chart⁴⁷ reveals a hierarchical structure with the Foreign Minister at the top, two secretaries of state beneath, with six under-secretaries of state below them. The secretaries lead 23 departments, organised by themes, regional policy targets and administrative tasks. Alongside, a Director-General commands the Foreign Service, divided into ten Bureaus and one Centre. Foreign policy-making towards Germany falls under the European Policy Department and the Department of Western and Northern Europe. As with the MFA in Germany, responsibilities might overlap where, for example, the economy is concerned.

Since 1989 the MSZ has been restructured and re-organised several times due to the internal transformation process and external requirements. The transformation process from a planned to a market economy posed many challenges to the MSZ and other ministries. However no other ministry was as affected by Poland's NAT and EU accession, resulting in a fundamental priority change towards western integration (Kupiecki, 2002: 99-125; Parzymies, 2002: 67-98). EU integration resulted in the 1996 creation of an independent department, the Office of the Committee for European Integration (UKIE), preparing Poland's accession and facilitating the adoption of the *acquis communautaire*. In January 2010, the UKIE merged with the MSZ. The merger was taxing, with internal struggles concerning the higher remunerations that former UKIE officials receive compared to MSZ officials, and concerning the organisation of the "new MSZ" and the responsibilities attached to it. An independent expert reveals that by December 2009 UKIE workers still did not know in which departments they would be working from January 2010 onwards:

"Nine vice-ministers were initially installed to accommodate the higher paid UKIE officials accordingly, and by January 2011 it was still difficult to reach people in the MSZ via phone, not even mentioning finding the names on the website half a year before Poland's EU Presidency." (Anon. a 2011)

⁴⁷ Available at: <http://msz.gov.pl/Organizational.chart.of.MFA,32560.html>, accessed 29 October 2009.

Ewa Synowiec (2011 Interview), former director in UKIE, comments that the merger will bring new input into the rather slow working MSZ, whereas UKIE officials had to be dynamic in their work style. In general, coordination between ministerial bodies in Brussels and Warsaw and between line ministries in Warsaw has been poor so far (Copsey and Pomorska, 2010). A thorough analysis of Poland's institutional design for domestic policy coordination is still needed (Copsey and Pomorska, 2012) before an accurate evaluation of the reforms of the past years and its effects could be delivered.

Foreign Policy-making vis-à-vis Germany in Poland represents an exception in the sense that, following Tusk's (PO) 2007 electoral win, the Office of the Plenipotentiary of the Chairman of the Council of Ministers for International Dialogue was created, with the aim of coordination. It commenced operation in February 2008 and is responsible for Germany, Israel and relations with the Jewish Diaspora.⁴⁸ The office is located in the Chancellery, and is directly responsible to the Prime Minister. Moreover, Władysław Bartoszewski (twice Foreign Minister: March - December 1995 and June 2000 - October 2001) became the office's Secretary of State aged 86. Bartoszewski is also well respected in Germany and is an Auschwitz survivor (1940-1941). He earned a standing ovation for his April 1995 *Bundestag* speech, commemorating 50th since the end of WWII. He underlined that the expulsions of Germans was an act of evil.⁴⁹ Tusk's creation of the office was a symbolic gesture for a new start following two years of tedious Polish-German relations under PM Jarosław Kaczyński. It also reflects the standing Germany enjoys in Polish foreign policy. Germany is Poland's most important trading partner. In 2009, Germany accounted for 26% of Poland's total exports and 22% of imports⁵⁰ so that practically every Ministry in Poland is involved in policy towards Germany (Miszczak, 2011 Interview). Raising foreign relations with Germany to the highest level and underlining the importance of the partnership, was not emulated in Germany. There, Bartoszewski's equivalent is the Minister of State at the Foreign

⁴⁸ See: <http://www.bpdmen.kprm.gov.pl/index.php?id=228&id2=219>, accessed 2 March 2012.

⁴⁹ The whole speech given on 28 April 1995 in Bonn is available at: http://www.bundestag.de/kulturundgeschichte/geschichte/gastredner/bartoszewski/rede_bartoszewski.html, accessed 2 March 2012.

⁵⁰ Information retrieved from the Polish Ministry of Economy at: <http://www.mg.gov.pl/Wspolpraca+z+zagranica/Wspolpraca+gospodarcza+Polski+z+krajami+UE+i+EFTA+niemcy.htm>, accessed 18 January 2011.

Office responsible for Polish-German relations, Cornelia Pieper. Her location at the Foreign Office does not suggest that Poland plays as important a role as Germany does for Poland. As the director of the office, Krzysztof Miszczak (2011, Interview), explains:

Germany does global policy and it is evident that when you do global policy you do not see your smaller partners on the way. [...] Germany will only respect Poland as a serious partner when Poland's level of economy will match Germany's.⁵¹

Though since 1999 Poland has been divided into sixteen regions - voivodeships (*województwa*) - their political powers are limited and have no role in the *Senat*, Polish parliament's upper chamber, in contrast to the German *Länder*. Before 1999 reform, Poland was divided into 49 voivodeships, but EU accession precipitated the strengthening of the regions so that they could compete at the supra-national level (Ferry, 2003). Their foreign policy activity is limited to the representational level within the EU, where their priorities are those of economic development. The centralised system poses some difficulties to the pace of decision-making as far as cross-border co-operation is concerned. As an official at the German embassy in Warsaw reveals, the German side spent months negotiating co-operation over medical services in the border regions. The German *Länder* were in favour of such an agreement, along with the Polish voivodeships, but the decision makers in Warsaw took a long time to decide (Anon. b).

Poland's party and government landscape is unstable. From the first free parliamentary elections in 1991, neither the political left nor the right could establish parties which would consolidate over time and stabilise. However, two general trends can be identified. Until 2005, the communist-successor party SLD dominated the centre-left, winning every second election. Governments oscillated from the centre-left SLD to centre-right or right wing parties, rooted in the Solidarity movement. This "tradition" was broken in 2005, when the SLD, shattered by numerous corruption

⁵¹ The German press has started to acknowledge to an increasing extent Poland's importance for Germany, and the EU called Poland a "pioneer" and "role model" on the eve of the 2012 UEFA European Football Championship. This is a major shift from the 1990s when Poland was widely perceived as a country "full of car thieves and post-communist drabness". See: "The Miracle Next Door – Poland Emerges as a Central European Powerhouse", *Spiegel-online* 25.05.2012: <http://www.spiegel.de/international/europe/poland-has-become-the-success-story-of-eastern-europe-a-834413.html>, accessed 29 May 2012.

scandals,⁵² fell from over 40% in the 2001 election to 11% in 2005 and has not recovered since. Thus, since 2005 the main political divide is between PO and PiS, both centre-right parties⁵³ that claim to be the legitimate heirs of Solidarity. This could be the end to party instability and the emergence of a consolidated bi-polar centre-right party system, but due to “the high levels of electoral volatility and low turnout, low levels of party institutionalisation and weak links between parties and their supporters” it is too early to give a definitive assessment (Szczerbiak, 2008: 3). The electoral volatility and party instability is identified as a weakness in Polish politics and severe consequences for Polish foreign policy as well. Krzysztof Miszczak (2011 Interview) comments:

The worst is the fast political rotation we have in Poland. This is the weakest point in Polish politics. You conduct some politics for four years, then comes change, new people. They have to work into the stuff, and [politics] again remains trash. You cannot throw out those specialists and say that is because he is a PO or PiS member because this is a loss for the state. And if you look at Germany, there is continuity. There is no change like in the US where a new President arrives and changes all the main staff. In Germany the Minister changes, the Secretary of State, the parliamentarians and that's it. [...] However, a state like the US can permit itself for this, but in a poor country like Poland this is counterproductive. Germany has here an immense advantage, the continuity of structures and the continuity of institutional memory. [...] You know when I understood this? When I talked to Pofalla. [...] and he said and this is the organisational chart of the German Chancellery and there were names like Globke and Adenauer on it with the same structure that works to date. And we asked him if anything changed since then. And he said absolutely nothing. [...]

The Polish Peasant Party (PSL) has been very successful considering that it has niche appeal (however, farmers are approximately 20% of the population), and it always passes the 5% threshold. It formed coalition governments with the SLD in 1993 and the conservative PO in 2007. Protecting farmers' interests might be expected as a top policy priority in Poland, especially in accession negotiations (see Chapter V of this thesis).

Since the 2007 parliamentary elections only four parties (PO, PiS, the SLD and the PSL) have passed the 5% threshold,⁵⁴ entering the *Sejm*, the lower chamber.

⁵² The most prominent scandals, contributing most to SLD's demise, were the Rywin affair (*afera Rywina*) and the PKN Orlen affair (*afera Orlena*), also known to the Polish public as Rywingate and Orlengate respectively.

⁵³ PiS is often portrayed in western media as a populist-nationalist party of the far right, but this assessment is inaccurate. Hanley *et al.* (2008: 416) label both PO as liberal-conservative and PiS as national-social conservative parties of the centre-right.

⁵⁴ The German minority is exempt from the five % threshold and gained one MP in 2007.

Previously six parties or more in the *Sejm* was the norm, making three party coalitions and minority governments common. Of the five governments⁵⁵ between 1991 and 1997 formed under the Little Constitution, two were minority coalitions, breaking up over constructive no confidence votes. Two governments resigned due to pressure from the co-habiting president Wałęsa. This was one reason for the 1997 reduction of presidential powers: making it easier to override his veto, and the president's loss of power to nominate three key government ministers (Millard, 2007: 40). But following 1997 constitution, governments continued to be unstable. Between then and April 2012, twelve governments were formed. Four coalitions split, the prime minister resigned twice, and twice the coalition was re-formed (Millard, 2007: 41). This high turnover of prime ministers and cabinets triggered by parliamentary crises makes the *Sejm* an important player in controlling the executive, making Poland a system in which parliament dominates – Poland can also be seen as a rare case of assembly government, echoing the French Third and Fourth Republics (Taras, 2007: 130).

Since 2005, politics has not revolved around the pro-market or pro-interventionist stances seen in other post-communist CEEC countries, but more around historical, social and moral issues (Millard, 2007: 49-50). The reasons for this can be located in the early transition period. Criminal elements of the Communist regime were not prosecuted. Davis (2002: 437) explains that the influential *Gazeta Wyborcza* warned against a “witch-hunt” and Prime Minister Mazowiecki decided on a policy of drawing a “thick line” (*gruba kreska*) under history. However, this is an erroneous interpretation of what Mazowiecki actually meant in his 1989 opening statement to parliament, when he chose the wording *gruba linia* meaning that his government should only be responsible for what it itself would do. The Mazowiecki government's inaction regarding the past makes his policy comparable to Spain's (Ash, 1998). This is odd since the strong societal upheaval of the Catholic Church and Solidarity movement not only brought down the regime in Poland, but also initiated the fall of the Iron Curtain.⁵⁶ In 1997 Liebich subsumed:

⁵⁵ The government attempted by Waldemar Pawlak in June 1992 failed to obtain the necessary vote of confidence.

⁵⁶ In a representative poll in May 2009, 62 % of Poles opined that after the partially free election of June 1989 it was right of the Mazowiecki government to find an agreement between the old regime and the opposition and to use all layers of Polish society in the construction of democracy. Only 23 % answered that the old system and their officials should have been made to account for their deeds (CBOS, May 2009).

In virtually all post-communist countries [...] familiar faces from the communist past dominate [...] Until age attrition takes its toll the best prospects for success under democracy will belong to those who were successful under communism. (Liebich, 1997: 68)

Unsurprisingly this and the numerous corruption scandals among the political elite, including SLD politicians, contributed to PiS's 2005 success, when it promised to "clean up" the old structures, beginning the "witch-hunt"⁵⁷ feared after 1989. The lustration law also affected the foreign ministry. Under Anna Fotyga, PiS foreign minister, 2005 to 2007, over 800 staff members were searched and around 20 removed.⁵⁸

Corruption is a constant feature in Polish political culture.⁵⁹ It was salient in every electoral campaign (Millard, 2007: 51) and the media (Grigorescu, 2006: 526-30). In January 2004, 90% of Poles responded that corruption in Poland was rather a big or a very big problem. Also, 69% of the public were convinced that it was possible in Poland to 'buy' MPs and to achieve agreements or legislative change (CBOS, January 2004). This was a significant cause of the public's continuing negative attitude towards government, politicians and institutions. In November 2009 69% believed *Sejm's* activities to be "decisively" or "rather bad" (CBOS, November 2009).⁶⁰ Longitudinal studies of the public's trust in key politicians reveals that only three or four politicians regularly enjoy trust figures of 50% or higher. Trust in political institutions matters since there is a strong correlation between trust in state institutions and the level of associational membership and voluntary activity. Low trust in public institutions usually corresponds with the weak societies seen in CEEC (Sissenich, 2007: 161-77). Thus, politicians are wary of being associated with private sector representatives, as lobbying is seen as something 'dirty' and corrupt. As Rusewicz (2011 Interview) from PKPP Lewiatan explains:

Lobbying is very badly understood in Poland. This is also not understandable for us, and it should not be like that since the lobbying law should make the whole process

⁵⁷ The lustration law, intended to de-Communist Polish society, even targeted well-respected political figures not from the communist camps such as Bronisław Geremek, minister of foreign affairs between 1997 and 2000 from the previous Christian Democratic Freedom Union (*Unia Wolności*: UW).

⁵⁸ See, for example: "Fotyga czyści dyplomację do dna", *gazeta wyborcza*, 23.05.2007.

⁵⁹ For recent changes in the perception of corruption in Poland, Poland's measures for fighting corruption and the influence of international pressure on corruption in Poland see Gadowska (2010).

⁶⁰ For a cross-national study on trust in the legislative and civil service see for example: Catterberg and Moreno (2005) *The Individual Bases of Political Trust: Trends in New and Established Democracies*. *International Journal of Public Opinion Research* Vol. 18(1): 31-48.

transparent. However, the moment someone gets registered he is immediately suspected; i.e. lobbying has a negative, pejorative perception.

No official fora for private actors exist in which the policy preferences can be openly voiced, unlike in Germany, as discussed. In Poland, involving the non-state actors in policy making is unthinkable: foreign policy is strictly separated from other policies. Following the corruption scandals, the government tried to make the rules on lobbying transparent by passing a bill regulating lobbying in the process of legislation.⁶¹ The bill was criticised for the lack of a satisfactory definition of ‘lobbying’, and that most lobbyists would not register as required, since the bill stipulates punishments for non-observation but does not mention not rights (Makowski and Zbieranek, 2010). EU membership and lobbying in Brussels had no impact on procedures in Poland. Soszka-Ogrodnik (2011 Interview) from AHK Polska explained explains this:

[...] to date in Poland informal lobbying is still most effective, a lobbying based on the tradition that who has the possibilities of approaching the lawmaking source is effective. The people who are effective do not necessarily use the formal possibilities of lobbying of which the law is talking about. It is based on networking. You need to have acquaintances, you need to be in the political-business circles and act in this way. [...] The law has not changed the common practice. Lobbying was and still is based on individual practice. You even say in Poland: ‘what is effective is not always loud’. It means if someone wants to get something done, he will not announce it, and will not necessarily want to pass it on to the media. The issue will only leak into the media in case the ministry or relevant department is completely deaf to the request. Then the media start to stir up the issue asking” ‘why is the department not reacting?’ And then the department has to react since the issue has become loud. However, making something public is the last instrument in the lobbying process. If you can handle it discretely then you do it discretely. [...]

Private Actors

Civil Society and intermediary organisations

In the early 1990s Poland was viewed as an exception in central and Eastern Europe, where civil society and organisational membership is generally weak. The Solidarity movement; the strong Catholic church and the non-collectivisation of agriculture, were initially seen as indicators of a strong Polish civil society (Ekiert and Kubik, 1999). Studies suggest that “Polish exceptionalism” should be applied to Poland’s

⁶¹ Ustawa z dnia 7 lipca 2005 r. o o działalności lobbingowej w procesie stanowienia prawa. Available at: <http://www.sejm.gov.pl/prawo/lobbing/lobbing.htm>, accessed 30.01.2011.

unusually weak civil society, as the country has lower levels of organisational and religious membership than other post-communist societies (Barnes, 1998: 127). Perhaps civil society was not that strong in the pre-transitional period in the first place, as Mudde suggests (2007: 220). That Solidarity disintegrated as soon as regime change was achieved, supports this.

Poland's figures for party membership are low (but the data relies on party information so it problematic). Mair and van Biezen (2001: 9) estimate the total membership at 326,500 for the year 2000. With Szczerbiak's (2001) upper estimate of 450,000 individuals, this is still only 1.15 to 1.5% of the electorate and is low compared with Slovakia (4.1% in 2000), and Germany (2.93% in 1999). More importantly, local structures have weak grassroots representation. PiS, 2005 election winner, had the lowest membership and the "organizational model was emphatically that of a cadre, leadership vehicle" (Lewis, 2007: 183). This stands in a reciprocal relationship with the extreme party fluidity and instability.

Although 44% of Poles think that the activities of the labour unions are good for the country (CBOS, January 2009), union membership is very low (CBOS, February 2008). This is partly due to most people's belief that they have little influence on state decisions (CBOS, January 2009). The most important unions are the National Commission of Independent Self-Governing Trade Union Solidarity (NSZZ *Solidarność*) and the Polish National Association of Trade Unions (OPZZ) founded in 1980 (as the opposition) and in 1984 (by the state), respectively. Smaller unions such as FZZ Forum (split from OPZZ in 2002) are also present. The high level of union fragmentation does not allow the unions to represent workers with a single voice, and the generally low membership, does not give unions enough bargaining power to exercise significant pressure on the government, especially since neither Solidarity nor OPZZ enjoy public support. Nevertheless, Solidarity tends to be well-regarded by governments, partly for historical reasons, personal ties and its influence in key sectors, including shipbuilding and coal-mining. The more left-wing OPZZ, appears to have a more difficult relationship with the government due to its historical background.

Organisations representing Polish business include *PKPP Lewiatan* and the Polish Business Council (*Polska Rada Biznesu*), and are even more fragmented. On matters of European policy their stances are more reactionary than proactive (Copsey

and Wochnik, 2009). This does not mean that links to government are weak or ineffective. To bridge this fragmentation, and in order to achieve greater impact, the Entrepreneurship Congress (*Kongres Przedsiębiorczości*) was formed in 2008, consisting of the American Chamber of Commerce, the Polish Chamber of Commerce, PKPP Lewiatan, AHK Polska, Pracodawcy RP and the Polish Craft Association (*Związek Rzemiosła Polskiego - ZRP*).⁶² Whilst the five members managed to find a few common positions (for example a joint position condemning the unofficial ties that exist between business and politics in the making of legislation),⁶³ due to its broad membership, this forum is not flexible and finding consensus is an arduous task (Soszka-Ogrodnik, 2011 Interview).

In Poland, overall membership in voluntary associations is very low compared with other EU members. In 2004, the country ranked 23rd, with 0.39 organisational memberships per person, barely half the CEEC average of 0.64, less than half of Germany's 0.74, and significantly lower than the 1.23 average for the EU-15. Even the figure for active involvement (mere membership in organizations does not tell us anything about the quality of civil engagement) is lower than anywhere in the EU except Lithuania (Sissenich, 2007: 161-64).

The relationship between civil society and the state since 1989 has continued to be one of "antipolitics", understood as civil society's inherently anti-state attitude towards state institutions (Mudde, 2007: 220). Civil society understands itself as the "pure we" against the backdrop of a "homogenous corrupt elite" (Mudde, 2001).⁶⁴ The "hierarchical relations cross-cut by informal, personalised loyalties and undermined by widespread clientelism" (Gąsior-Niemiec, 2010: 95) has still not been sufficiently addressed. As a result, a (neo-)corporatist tripartite arrangement of labour, government and business, as steers the socio-economic development of Western Europe and especially of Germany, is unthinkable in Poland. A tripartite commission for socio-economic matters was founded in 1994 and has operated on a legal basis since 2001⁶⁵, but in December 2008, in a representative poll, 49 % of Poles responded

⁶² See: <http://www.kongresprzedsiębiorczosci.com.pl/>, accessed 3 March 2012.

⁶³ Stanowisko Kongresu Przedsiębiorczości w sprawie udziału organizacji obywatelskich w procesie stanowienia prawa from 19.10.2009. Available at: <http://www.kongresprzedsiębiorczosci.com.pl/index.html?action=sai&ida=488>, accessed 30 January 2010.

⁶⁴ Some authors (Arato, 1991; Curry and Pankov, 2001) blame the continuing existence of Solidarity for the continuation of "antipolitics" and weakness of civil society post-1989. This hypothesis is hard to verify since Poland is no exception in this respect to other CEEC countries.

⁶⁵ See USTAWA z dnia 6 lipca 2001 r. o Trójstronnej Komisji do Spraw Społeczno-Gospodarczych

that they never heard of the commission, while 33 % had heard of it but could not say what it did. Of the 14 % that were aware of the Commission's work, only 21 % evaluated its activity as good (CBOS, January 2009). Gąsior-Niemiec (2010: 94) summarises that the various directives, informal recommendations and invitations flowing from ministries to the Third Sector lead to the establishment of multiple but inefficient communication, consultation and collaboration between political-administrative and civil society elites. Moreover, civil society was "unable to play the role of social partners in the system of good governance [...] aggravated by the unwillingness of some other stakeholders – in particular politicians and public administration – to share public resources and decision making with these newly established partners." (Gąsior-Niemiec, 2010: 95)

The following answer to my question 'How well do the partners of the **trilateral Commission work together?**' by Małgorzata Rusewicz from PKPP Lewiatan (2011 Interview) illustrates how difficult collaboration in this forum is, and how the Polish government tries to impose its own stance on the social partners rather than finding a policy *after* consulting them:

I do not remember that we [trade unions and business] ever reached any consensus on any content. I have the feeling that the presence of the government does not help but rather obstructs. The governmental representatives very often do already have a position and they often insist that their position should be supported. Depending on who is closer to the position, the employers associations or the trade unions, in that way the talks are being conducted. Hence, there is no level of real dialogue. The problem is also that the consensus reached must not be implemented into national law, the last decision lies within the Prime Minister what also makes the activities more difficult. We had very stormy negotiations regarding the anti-crisis law that ultimately has been concluded with a consensus between the employers' associations and the trade unions, but the government did not sign the consensus. Later, further acting of the government had to be forced, and that was one of the most spectacular consensuses recently; however, only within the socio-economic background. There was no other solution; the government did not want to take certain decisions and the leaders of both sides, the employers and trade unions came to the conclusion that the trilateral commission is a place where we can improve bilateral talks and take certain decisions. However, frankly, there are not too many successes within the commission regarding reaching a consensus. I think often we agree on certain facts [...] but we identify the diagnosis and causes somewhere else and we look for different solutions.

One would expect that EU accession had an impact on social dialogue, since the EU insisted on "good governance" and the inclusion of social partners into the

political process of enlargement. However, Grosse (2010) shows that this is not necessarily the case. European institutions supported social dialogue to improve the effectiveness and legitimacy of public policies, but EU accession was based on the quick transposition of the *acquis communautaire*, which is not subject to negotiation, thereby weakening social dialogue and leading to the survival of political traditions dating from the socialist period.

Also, the combination of weak civil society organisations in terms of low membership and high fragmentation has contributed more to contentious action rather than interest mediation (Ekiert and Kubik, 1999: 1989-91). It means that preference formation, agenda setting and representation is mainly left to political parties (Sissenich, 2007: 158). Paired with the political culture of “antipolitics”, and insufficient fora for civil society to voice their preferences, this results in the fostering of informal ties and serves interests that are relatively well organised.

III. Conclusion and implications

The subject of this chapter was the examination of Germany’s and Poland’s domestic structures to determine the *a priori* conditions of non-governmental actors in influencing foreign policy-making in their respective environment. Three levels of analysis were considered: first, the official foreign policy-making apparatus; second, civil society; and third, the nature of policy networks linking the two.

Concerning the first level for Germany, one can say that the foreign ministry is in charge of foreign policy-making. However, the chancellor has been deeply involved in foreign policy and is at times able to overshadow the activities of the foreign minister. This conflict is supported by the fact that usually the offices are filled with personnel from different political parties. Specialised ministries all have their own departments which deal with foreign policy and especially European integration. This means that foreign policy-making, though concentrated in the foreign office and federal chancellery, has strong constraints from other policy areas. Secondary literature indicates that co-operation between the different specialized ministries is not only a priority, but also works well, as working committees on specific issues are the norm rather than an exception. Federalism also has have an impact on foreign policy whenever the interests of the *Länder* are touched. This

usually happens in questions pertaining to European integration, but the minister-presidents have in the past also liked to “parade” as envoys of Germany abroad. Overall, the authority of the state is unquestioned and the state is accepted as a caretaker, as Germany’s social market economy dictates. The usually high popularity figures of the foreign minister might hint that the foreign ministry’s activity as a promoter of German business abroad is much appreciated by the public and foreign visits by the foreign minister are usually a good opportunity for him/her to raise his/her popularity level.

Poland, as a semi-presidential state, has often experienced a power struggle between the prime minister and the president over who should represent the country in foreign affairs. Foreign policy is unquestionably delegated from the council of ministers to the foreign office. In Poland, foreign policy is seen as very traditional and the separate areas of responsibility are treated as such, while co-operation and co-ordination between the different ministries and between the president’s office and the prime minister is not conducted as well as in Germany. Although European integration has precipitated devolution, the regions remain weak and cannot challenge the central government in foreign policy-making. Moreover, the state is not accepted as a caretaker and due to the experience of 40 years of Communism, state authority tends to be challenged by the culture of “antipolitics”. Table 2.1 summarises the findings about the German and Polish foreign policy-making systems.

Table 2.1 *Germany's and Poland's official foreign policy-making structures*

Component	Germany		Poland	
	Yes	No	Yes	No
Strong concentration of foreign policy-making power?	X		X	
No bureaucratic infighting existing?	X		X	
If several offices are in charge of fp do they co-operate well?	X			X
Executive controls legislative process?	X		X	
Centre (government) controls periphery (regions)?		X	X	
State accepted as a caretaker? State authority unquestioned?	X			X
<i>In general the official foreign-policy-making system is</i>	Centralised	Fragmented	Centralised	Fragmented

The second tier of domestic structures concerns civil society. The task was to find out whether the countries' civil society can be described as weak or strong.

Even though business interests tend not to be regarded as part of civil society (see above) the author has included this category as part of civil society along with organized labour interests and voluntary organizations. Examined were questions of how far organisations claiming to represent these interests are fragmented or centralised, and how active they are. The author also asked if cleavages exist, whether politics revolves around them, and how easily the public can be mobilised for political causes. Table 2.2 comprises the findings.

Table 2.2 *Germany's and Poland's civil society*

Component	Germany		Poland	
	Yes	No	Yes	No
No deep religious, ideological or class cleavages? Political attitudes do not revolve around them?	X		X	
Societal demands can easily be mobilised for political causes?	X			X
Interest groups, societal coalitions and organisations are centralised?	X			X
<i>In general civil society is rather</i>	<i>Strong</i>	<i>Weak</i>	<i>Strong</i>	<i>Weak</i>

As can be seen, it is quite easy to decide that Germany's civil society is much stronger than Poland's according to the criteria applied. In Germany, the party landscape better resembles the classic left-right split, but, as in most industrialised states, this cleavage has increasingly dissipated and the mainstream parties have moved more into the centre. In Poland, it is more difficult to detect this classical political cleavage, and the country is more homogenous in terms of religion. We have seen that Germany's trade unions and business interests are very well organised and that they are easily mobilised for political causes when their interests are touched. This is of course strongly correlated to the formalised corporatist structures. Even though membership in these core organisations has fallen over the last two decades, both labour and business representatives have their place in German politics. Corporatism aside, Germans are also more likely to be active in voluntary organisations than their Polish counterparts. The Polish labour and business interest organisations are heavily fragmented and therefore face more difficulties in mobilising the masses behind their cause.

The last tier of the domestic structures to be researched was the nature of the policy networks linking state institutions with civil society: whether they are consensual or polarised. The subject of examination were the questions of whether intermediary organisations such as political parties pass on civil society's policy

preferences to the official foreign policy-makers, and whether the political culture puts any emphasis on compromise. A missing element in Risse-Kappen's (1995) scheme which should be included is the existence of official fora allowing civil society to voice its preferences openly or whether lobbying has to be conducted clandestinely. Official fora are likely to support a consensual culture since it is accepted that non-governmental bodies have the right to voice their preferences and partake in the policy process. The necessity of unofficial lobbying leads to the conclusion that this practice is not accepted and the political culture is more likely to be polarising. Table 2.3 comprises the findings for Germany and Poland.

Table 2.3 *Germany's and Poland's policy nature of policy networks*

Component	Germany		Poland	
	Yes	No	Yes	No
Intermediate organisations pass preferences of civil society on to official fp-makers?	X		X	
Do official fora exist where private actors can voice their policy preferences?	X			X
Does political culture emphasise policy compromises?	X			X
<i>In general civil society is rather</i>	<i>Consensual</i>	<i>Polarised</i>	<i>Consensual</i>	<i>Polarised</i>

In both countries parties pass political preferences to the government. In Germany, parties are fixed organisations important in political life and designed to help shape and channel political opinions into the policy processes. The close relationship of expellee interests to the CDU/CSU has even had significant repercussions in Polish-German relations (see Chapter VII of this thesis). In Poland, parties have been unstable over the past twenty years, although party fluidity and instability might have come to an end. A successful party channelling the interests of one particularistic segment of society is the Polish Peasant Party, and its role in foreign policy must not be underestimated, especially in bargaining over the CAP in EU accession

negotiations. Also, parties have played an important role in the *Sejm*. Scandals, disputes and minority coalitions have often allowed parliament to topple the government. This is perhaps a further point where private interests are executed via the parties, with severe consequences for the government. Where Germany and Poland differ decisively is the existence of fora where non-state actors can voice policy preferences. Whereas in Germany this is anchored in legal documents regulating the policy process, in Poland official fora are only beginning to materialise and are not yet used. Rather, unofficial links have led to allegations of corruption. Also, whereas Germany's corporatist and "semi-sovereign" structures favour a culture of compromise, in Poland this is not the case. Prevailing from the divide between one-party rule and Solidarity dissidents during the last decade of communism, one can observe a confrontational culture of "antipolitics". Also, the instability of governments hints to the fact that reaching political compromise is a difficult task in Poland. Table 2.4 puts all three tiers of the countries' domestic structure together.

Table 2.4 *Germany's and Poland's domestic structures in foreign policy-making*

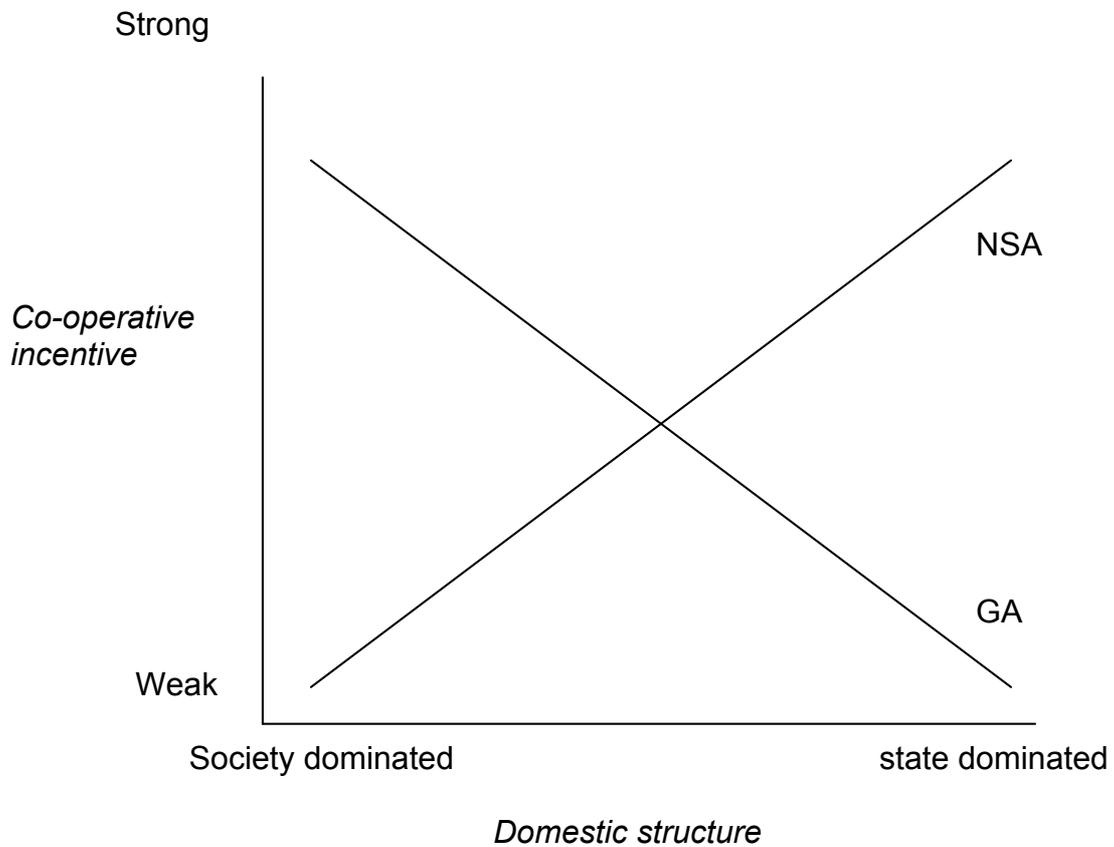
	Germany	Poland
Tier of domestic structure		
Official foreign policy-making apparatus	Rather centralised	Rather centralised
Civil society	Strong	Weak
Nature of policy networks	Consensual	Polarised
<i>Domestic structure is</i>	<i>Corporatist</i>	<i>State dominated</i>

The question requiring an answer at this point is: what can be deduced from the results pertaining to the question of whether non-state actors have an influence in foreign policy-making in Germany and Poland?

It has to be reiterated that the results can only render general trends about foreign policy processes rather than accurate predictions about the influence of non-state actors in specific foreign policy issues (see above). Also, domestic structures only deliver certain pre-conditions for different actors' possible involvement in the policy process. Preconditions, opportunities and success are separate issues that need

to be examined on their own. However, Germany's domestic structure fits the description of what Risse-Kappen calls "corporatist" since in Germany powerful intermediary organisations (political parties) exist and actors, in a constant bargaining process, operate in a consensus-oriented political culture (Risse-Kappen, 1995: 24). Katzenstein's and Tsujinaka's analysis (1995: 79-111) shows that the decision-making process is slow in such systems and that the goals of societal actors are achieved in an incremental way. Moreover, once results are on the table they tend to be institutionalised and to last for a long time (Risse-Kappen, 1995: 27). Poland's foreign policy-making process seems to be state-dominated since the weak society cannot balance the official foreign policy makers and the polarising culture of politics does not serve private actors since "officials" are not obliged to include their preferences in policy outcomes. This does not mean that they cannot have any influence *per se*. Once single non-state actors gain access to the dominant state actors their preferences can be put into practice directly since a compromise with additional actors is not needed (Risse-Kappen, 1995: 26-27). Furthermore, this analysis allows us to map the co-operation incentive of government actors with non-state actors (see Figure 2.1).

Figure 2.1 *Incentive for non-state actors (NSA) and governmental actors (GA) to cooperate in foreign policy-making depending on the domestic structure*



Source: adapted from (Börzel, 2010: 13)

According to this model, Germany’s corporatist structure should provide enough incentive for non-state actors (NSA) and governmental actors (GA) alike to cooperate in foreign policy-making. Since Poland’s foreign policy-making apparatus is rather state dominated non-state actors should have a higher incentive to persuade the government to undertake certain actions.

3. Institutionalisation of Polish-German Relations

This chapter applies Risse-Kappen's (1995) second variable, the degree of institutionalisation, which determines non-state actors' degree of *a priori* influence on foreign policy-making, to the Polish-German context. By examining the most important bi-lateral treaties in Polish-German relations this chapter renders preliminary results to the hypotheses developed in Chapter I and puts the case studies which follow in Chapter V through Chapter VII into context.

The rest of this chapter discusses the most important bi-lateral treaties signed by Poland and Germany. Since particular treaties pertaining to the free movement of labour, such as the Polish-German labour treaties signed in the 1990s, are the subject of analysis in Chapter VI, these will not be analysed in further detail here. Rather analyse the two most important treaties signed since 1989: the German-Polish Border Treaty of 1990 and – more important for inter-societal relations – the 17 June 1991 Treaty of Good Neighbourly Relations and Friendly Co-operation. Joint EU membership, as the most important institutionalisation of relations is subject in the separate Chapter IV since it prepares the case studies in Chapter V and VI that deal with negotiated transitional periods for Poland and Germany respectively.

1. Border Treaty

The “Treaty between the Federal Republic of Germany and the Republic of Poland on the confirmation of the frontier between them”, reaffirming the Oder-Neisse line, was signed on 14 November 1990. The border treaty seems unimportant for the main topic of this thesis since the treaty⁶⁶ itself merely reaffirms the border that had been the *de facto* frontier between Poland and the GDR since the end of WWII. It does not provide any legal basis for the creation or activities of any non-state actor, and yet it was crucial in setting the parameters of behaviour for one important German non-state actor which has been paramount in Polish-German relations ever since WWII ended:

⁶⁶ The treaty is available at: faolex.fao.org/docs/pdf/bi-5137.pdf, accessed 5 March 2012.

the federation of expellees (BdV) and its respective *Landsmannschaften*.⁶⁷ This is because Article III of the border treaty effectively ended any possibility of legal demands by the expellees to the German government to reclaim the former eastern German territories of 1937. What is also more than noteworthy is what the treaty does not contain: any provision regulating possible reparations. This is the official reason why 23 CDU/CSU MPs did not vote in favour of the treaty's ratification in the *Bundestag*, one being Erika Steinbach who in 1998 became the president of the BdV. This fact has left bitter feelings on the Polish side, making it difficult for any Polish government to trust Steinbach and the BdV in their attempts at reconciliation with Poland, no matter whether those attempts might be genuine or not (see Chapter VII). Moreover, a treaty between two states can never rule out private organisations pursuing other ways to achieve reparation payments. A stronger formulation of the treaty might arguably have precluded the foundation of the Prussian Claims Society (*Preußische TreuhandI*, PT), which sought in the new millennium to force reparation claims by legal action. As a result, it is also important to mention the Border Treaty in the context of the case study dealing with the BdV's attempt to erect a Centre against Expulsions in Berlin, which is done in Chapter VII of this thesis.

The GDR government, following a Soviet dictum, recognized the Oder-Neisse line as early as 6 July 1950 with the Treaty of Zgorzelec/Görlitz. West Germany also recognised the border in the Treaty of Warsaw on 7 December 1970 as an essential part of Brandt's *Ostpolitik*.⁶⁸ However, whilst the SPD-FDP coalition government recognised the Federal Republic's border, the Warsaw Treaty, as the German Supreme Court ruled in both 1973 and 1975, would not be valid for a unified Germany since it does not supplement a Peace Treaty as required by the Potsdam Declaration of 1945. In fact the Potsdam Declaration states in point VIII Section B, when discussing Poland's western border, that a "final delimitation of the western frontier of Poland should await the peace settlement".⁶⁹ The end of the Cold War and the prospect of German unification therefore required a new treaty that would close that chapter forever. During the 2+4 negotiations, the outcome of which represents a

⁶⁷ As is explained in detail in Chapter VI, the federation of expellees (BdV) is the umbrella organisation to which several *Landsmannschaften* belong.

⁶⁸ The Border Treaty of 1990 refers to the previous treaties in Article 1

⁶⁹ The full text of the Potsdam Communiqué is available at http://www.pbs.org/wgbh/amex/truman/psources/ps_potsdam.html, accessed 5 March 2012.

de facto peace treaty as mentioned in the Potsdam communiqué,⁷⁰ the border question was raised. Dieter Kastrup, West Germany's chief negotiator at the highest diplomatic level during the five-month long talks, confirms that "the border question was indeed the most difficult" (Kastrup, 2010 Interview). When the Berlin Wall came down on 9 November 1989, the Polish reaction was restrained. Lech Wałęsa, the leader of the Solidarity movement, was on the one hand happy for Germany, seeing her communist little sister to the east on the verge of collapse,⁷¹ but on the other hand he feared that Poland might pay the price for German reunification; fears that Kohl's advisor Horst Teltschick shared (Teltschick, 1991: 16; Genscher, 1995: 720). When Kohl published his ten-point plan in the *Bundestag* on 28 November 1989,⁷² the Oder-Neisse line was not mentioned. This precipitated Polish fears of another Yalta where the fate of Central Europe would be decided without the participation of Poland. The then Foreign Minister Krzysztof Skubiszewski tried to link the question of German reunification with the border issue and proposed that a border treaty be signed prior to re-unification and ratified by a united Germany (in Zaborowski, 2004: 82-83). Christopher Mallaby, the then British ambassador to West Germany, confirmed to the author that Poland successfully lobbied for participation in the 2+4 talks, concerning her western border, with the help of France (Mallaby, 2010 Interview). France, Germany's traditional partner in the EC, understood Poland's fears after Germany communicated to Poland that prospects were dim for a border treaty if Poland did not refrain from future reparation claims arising from WWII and if the German minority did not gain extensive rights.⁷³ One can only grasp Poland's perception of a possible

⁷⁰ Some expellees are convinced that this is not the official peace treaty required by the Potsdam communiqué (Anon., Interview). However, signing a peace treaty, thereby officially and *de jure* ending WWII, "would not have made any sense" (Stern, 1999: 2071). Moreover, the title of the 2+4 Treaty as well as Article twelve of the preamble make it clear that the treaty has a final character and therefore substitutes a peace treaty (for an excellent legal discussion of the 2+4 Treaty see Stern (1999: 2069-72).

⁷¹ Certainly at that point, Poland's Solidarity politicians preferred having democratic neighbours rather than being surrounded exclusively by communist regimes.

⁷² Kohl's speech is available at:

<http://webarchiv.bundestag.de/archive/2009/0109/geschichte/parlhist/dokumente/dok09.html>

last accessed 3.November 2010

⁷³ Although Kohl demanded on 2 March 1990 that in return for a border treaty the rights of the German minority should be written into Polish law, and Poland should abstain from reparation claims (Bingen, 1998: 267), the Bundestag did not pass these demands in a motion for a resolution on 8 March 1990, but declared that Germany acknowledged Poland's 1953 renunciation of reparations and recognition of German minority rights as valid (Bulletin 34, 9.March 1990: 268). Chancellor Kohl was moreover irritated by Poland's tactics in approaching the French and had to clarify this issue with French President Mitterrand (Kohl, 2009: 220-22). The German wish to recognize Germans living in Poland as a minority was later codified in Article 20 of the Co-operation Treaty (see below), and was motivated

German threat if her behaviour vis-à-vis the Soviet Union is taken into account. It was only after the border treaty was signed in November 1990 that Poland asked the USSR to withdraw all troops from Polish soil, and agreed to dissolve the Warsaw Pact, since prior to that moment the Soviet Union was seen as the sole guarantor of Polish sovereignty. Certainly, for the Polish public the withdrawal of Soviet troops could not happen fast enough after more than 40 years of occupation (Zaborowski, 2004: 84).

The German coalition was split. Genscher, the then Foreign Minister from the FDP, would have agreed to an immediate recognition of the Oder-Neisse line. The CDU/CSU, with Chancellor Kohl at its head, had more difficulties with immediate recognition.⁷⁴ Cordell and Wolff's (2005: 52) anonymous interviewee speculates about three reasons for Kohl's hesitation: first, he might have feared a challenge by the Supreme Court that had made it clear in its previous rulings what the order for a legally binding and definite border treaty must be;⁷⁵ second, he might have underestimated the extent of Polish fears; fears that were augmented when Kohl paid Moscow a visit in February 1990, making it difficult for Poland to assess Germany's intentions (Bartoszewski, 2000: 9-14); third, he feared for the influence of expellees on his voters. This is a valid and important point. To suddenly affront expellees so close to the December 1990 federal elections might have been fatal. As described in Chapter VII of this thesis, the expellees initially found their political home in the SPD. It was not until Brandt's launch of *Ostpolitik* in the late 1960s, culminating in the Warsaw and Moscow Treaties of 1970, that the expellees abandoned the Social Democrats and found a new political home predominantly in the CDU and CSU. The expellees were well-heeded under Kohl's rule as the steadily rising government subsidies to the BdV and its projects demonstrate (see Chapter VII). *Ostpolitik* could, therefore, justifiably and repeatedly become a spark for party-migration if the

to a large extent by Germany's aim to contain the migration of these people to Germany (Koch, 2009: 381-82). Since German citizenship law was then purely based on *jus sanguinis*, these people had the right to do so. If minority rights had been granted, Germany would have had reason to restrict the further inflow of migrants. After the Co-operation Treaty was signed, Germany indeed undertook such measures and the inflow of Germans under its citizenship law was restricted mainly to the (former) Soviet Union.

⁷⁴ The CDU parliamentary president Rita Süßmuth suggested that the GDR and the FRG should pass a joint resolution guaranteeing the Oder-Neisse line. The SPD forwarded a petition based on Süßmuth's idea in January 1990. Kohl prevented a vote on this petition through skilful manoeuvring, redirecting it to the conciliation committee (Korger in Bingen, 1998: 263).

⁷⁵ In fact, the BdV and eight MPs took legal action in September 1990 trying to prevent the border treaty from being signed. The Supreme Court dismissed the legal action on 18. September 1990 (see Bingen, 1998: 278-79).

expellees would not accept *Ostpolitik* themselves. Tewes (2001: 59) correctly takes this line of argument, stating that by postponing the border question Kohl was able to make expellees realise that, in order to achieve the unique historical chance of German re-unification, accepting the Oder-Neisse line was inevitable (Bingen, 1998: 275-77), thereby locking the BdV and its members into the norm consensus of *Ostpolitik*. In fact, Kohl himself acknowledges in his memoirs that he waited for the right moment (after the December 1990 federal elections) to reaffirm the border since “three quarters of the expellees were voting for the Union” (CDU/CSU) and he “did not want to risk the prospects of the Union” (Kohl, 2007: 254-57).

As seen in Chapter II, Germany’s federal political structure designed for semi-sovereignty makes steering between all actors quite difficult, even though not all are apparently directly involved in foreign policy-making. The Republicans (*Die Republikaner*; REP), a right wing party, entered the Berlin state parliament in January 1989 with 7.5 percent, and the European Parliament with 7.1 percent to the detriment of the two Union parties. Kohl was therefore well advised to deal carefully with the border question as such an issue could have been excellent fuel for exploiting right wing nationalist and revanchist sentiments close to upcoming elections in North Rhine-Westphalia, Bavaria, Lower Saxony, the Saarland and later the federal elections of December 1990 (Bingen, 1998: 265). This was a difficult balancing act since the big opposition parties, the FDP and even some CDU MPs (see above) demanded faster recognition of the border. In addition, in a statement by Polish and German Catholics in late 1989, Kohl (as a Catholic) was further pressurised: “[it is] irresponsible to leave the border question pending and to heed the illusion of the return of Germany’s eastern territories.” (Grycz, 2005: 282-88)

During the 2+4 negotiations it was stipulated in Article 1(1) that with the coming into force of the 2+4 Treaty, Germany’s “external borders shall be the borders of the Federal Republic of Germany and the German Democratic Republic and shall be definitive.” Article 1(3) rules out further territorial claims.⁷⁶ Nevertheless, Article 1(2) forces Germany and Poland to sign another treaty reaffirming the border, which would be binding under international law. With this provision, acceptance of the Oder-Neisse line “was made watertight” (Kastrup, 2010 Interview) and appeased

⁷⁶ The full legal text of the Treaty on the Final Settlement with Respect to Germany, as the 2+4 Treaty is officially called, is available at: <http://usa.usembassy.de/etexts/2plusfour8994e.htm>, accessed 5 March 2012.

Polish fears. In fact, the Poles who were involved in the part of the negotiations which concerned Poland's borders insisted on a separate treaty to "demonstrate their new-found independence" (Anon. in Cordell and Wolff, 2005: 52). Therefore the Border Treaty was finally signed on 14 November 1990. Article 1(2) of the 2+4 Treaty, however, does not stipulate what exactly the wording of the border treaty should be, and this was left to Poland and Germany. As mentioned above, the border treaty is brief and does not contain any reference to possible reparation claims, nor to compensation payments concerning the loss of property by German expellees, or to reparation payments to Poland arising from the consequences of WWII⁷⁷ and to Poles who suffered from the Nazi-regime (by forced labour). The latter required a solution, since the London Debt Agreement postponed some German debts after re-unification and did not address claims by the eastern bloc.⁷⁸ Poland simply argued that, since Germany had lost its eastern territories, former property holders had lost all title to the properties now located in the western part of Poland.⁷⁹ In the words of Cordell and Wolff (2005: 54), "the two sides agreed to disagree on the issues of property and compensation". Germany did not want to touch the 1953 London Debt Agreement in which all reparation claims prior to and incurred by the war were settled.⁸⁰ Additionally, the USSR and Poland had waived their rights to war reparations in 1953 and the *Bundestag* made this position clear on 8 March 1990 (Stern, 1999: 2071). Kohl (2007: 255-56), during his talk with Polish Prime-Minister Mazowiecki on 9 November 1990, was sure about Germany's strong legal position, but "from a human perspective this was no good excuse". Therefore, the Chancellor promised talks about the creation of a fund that would compensate victims of the Nazi regime after ratification of the treaty.⁸¹

The omission of these issues from the treaty did not sweep the problems away

⁷⁷ Poland officially waived its right to WWII reparations only on 10 September 2004, by an act of parliament. (Koch, 2009: 377).

⁷⁸ For an extensive discussion of the London Debt Agreement see, for example, Guinnane (2004)

⁷⁹ The Potsdam Communiqué itself does not mention whether expellees should be compensated for their property loss or not.

⁸⁰ If the German government had paid any compensation to Poland, Bonn would have breached the London Debt Agreement and several other states might also have demanded payments (Kohl, 2009: 84)

⁸¹ The Foundation for Polish-German Reconciliation (FPNP) was founded in 1992 and, following negotiations for the 17 June 1991 Treaty of Good Neighbourly Relations and Friendly Co-operation, Germany and Poland agreed on a payment of 500 million Deutschmarks to victims of forced labour: <http://www.fnpn.pl/>, accessed 5 March 2012.

The 500 million DM were used as seed capital and later fed by further sums stemming from the Foundation Memory, Responsibility and Future (EVZ) founded by the Bundestag in 2000: <http://www.stiftung-evz.de/>

but postponed them, and they resurfaced in the new millennium. As will be seen in Chapter VII, some members of the BdV demanded that Poland's EU accession should be linked to the question of compensation for the loss of property; a topic that was used by candidate for Chancellor Edmund Stoiber in the 2002 federal election campaign. More importantly, expellees still hopeful of receiving compensation from Poland for their loss of property founded the PT in 2000. In 2006 their activism culminated in the filing by the corporation of 23 individual claims against Poland at the European Court of Human Rights. Even though the court declared the cases inadmissible,⁸² the issue led to major frictions in Polish-German relations. The Polish PiS-lead coalition government rightly argued that this situation was only possible because the German government refused to accept reparation claims against her, and responded to requests from expellees with a letter pointing to "private lawsuits in the affected states and international institutions".⁸³ In December 2006, the German and Polish press even claimed that PiS Foreign Minister Anna Fotyga had demanded a renegotiation of the border treaty to correct the failure to address this issue.⁸⁴ This was corrected by the MSZ in a press release stating that the border treaty should not be renegotiated, but that the problem of compensation could be included in the 17 June 1991 Treaty of Good Neighbourly Relations and Friendly Co-operation.⁸⁵

An interesting note regarding the border treaty is the wording of Article 2: "The Contracting Parties declare that the frontier between them is *inviolable* (*unverletzlich; nienaruszalna*) now and in future and mutually pledge to respect unconditionally their sovereignty and territorial integrity",⁸⁶ a wording that was taken over from the Warsaw Treaty. In international law this only signifies the *renunciation of force* (crossing of the border by force) and not the definitive *recognition* of borders. Only the word untouchable (*unantastbar; nietykalna*) would have done so. At the time

⁸² The court's "Decision as to the Admissibility of Application no. 47550/06 by Preussische Treuhand GmbH & Co. KG A.A. against Poland" is available at:

<http://cmiskp.echr.coe.int/tkp197/view.asp?action=html&documentId=841872&portal=hbkm&source=externalbydocnumber&table=F69A27FD8FB86142BF01C1166DEA398649>, accessed 5 November 2010.

⁸³ See: "Eine besondere Art von Heimweh", *Der Spiegel*, 9.08.2004.

⁸⁴ "Reaktion auf Entschädigungsklagen: Warschau stellt deutsch-polnischen Grenzvertrag in Frage", *Spiegel-online*, 19.12.2006: <http://www.spiegel.de/politik/ausland/0,1518,455424,00.html>, accessed 5 March 2012. "Polska kwestionuje traktat graniczny", *Wprost* 24, 22.12.2006: <http://www.wprost.pl/ar/98854/Polska-kwestionuje-traktat-graniczny/>, accessed 5 March 2012.

⁸⁵ MSZ (19.12.2006) "Komunikat prasowy Ministerstwa Spraw Zagranicznych RP – sprostowanie": http://bip.ms.gov.pl/Komunikat_prasowy_Ministerstwa_Spraw_Zagranicznych_RP,-_sprowadzenie_8648.html, accessed 5 March 2012.

⁸⁶ Emphasis added by the author.

when the border treaty was crafted, France was actually aware of the misuse of words but assumed that this would be corrected, implying that Germany had no serious intentions of undermining the Oder-Neisse line (Koch, 2009: 375-76). The problem is that, strictly speaking, the Federal Republic of Germany continues to exist as an entity of the former German *Reich* and its 1937 borders. Proof of this can be seen in the 1993 version (!) of the *Lastenausgleichsgesetz*⁸⁷ (LAG) in which the German *Ostgebiete* are referred to as “currently under foreign administration” (*zur Zeit unter fremder Verwaltung*). The latest version corrects this formulation to “the previously under foreign administration maintained *Ostgebiete*” (*den ehemals unter fremder Verwaltung stehenden Ostgebieten*) (Koch, 2009: 383). Christoph Koch, chairman of the Deutsch-Polnische Gesellschaft der Bundesrepublik Deutschland e.V.,⁸⁸ believes that Poland was outmanoeuvred during negotiations over the border treaty, and did not pay attention to the detail of the exact wording in which, according to the saying, the devil lies (Koch, 2010 Interview). Neither the German nor the Polish side has ever raised this issue and, since the 2+4 Treaty definitively confines Germany within the borders of the Federal Republic and the GDR, the theoretical question of whether a hundred percent watertight *de jure* border treaty exists or not is probably just splitting hairs.

II. Co-operation Treaty

The more extensive treaty, equally important, if not more so, was the 17 June 1991 Treaty of Good Neighbourly Relations and Friendly Co-operation (hereafter Co-operation Treaty). Its importance lies in those elements which address the two states' societies. Long before common EU-membership was possible, it tackles normative issues and adds an institutional level to Polish-German relations. In fact it represents the basis for extensive collaboration between various non-state actors, thus putting Polish-German relations on two levels: the inter-governmental and the inter-societal. This initiation of a “multi-layered approach” has intensified contacts between Germans and Poles, helped to overcome stereotypes, and made it possible for inter-societal relations to remain good and solid, even when inter-governmental relations

⁸⁷ This law was passed in 1952 to lessen the burden on expellees who had lost most of their property by paying them compensation (see Chapter VI)

⁸⁸ See: <http://www.polen-news.de/>, accessed 5 March 2012.

turn sour, as during the PiS government's term of office (see Chapter I) (Smolar, 2010 Interview). The three case studies in this thesis, it could be argued, are all negative in the sense that all the governments' policy decisions were subject to mutual criticism: the restriction of the free movement of workers, restrictions on purchasing land in the former German *Ostgebiete* until 2016, and the creation of a permanent exhibition in Berlin depicting the flight and expulsion of Germans from the eastern territories. These "negative case studies" are not, however, by any means representative of the daily practice of Polish-German relations as initiated by the Co-operation Treaty. The reader should bear this in mind when reading the three case studies presented in the subsequent chapters. That being said, the co-operation treaty both addressed and fails to address some issues that proved to be contentious when the treaty was written and over the following two decades. Furthermore, since the co-operation treaty is so wide-ranging, not all of its 38 Articles can be analysed here in detail. Rather, I have selected the points that seem to be most relevant for the subsequent case studies.

The forerunners of the Co-operation Treaty were eleven individual agreements collected in a 78-point joint declaration,⁸⁹ signed during the visit of a German delegation to Poland in November 1989, which already put topics such as youth exchange, preservation of nature, establishment of joint cultural institutes and joint protection of capital investments on the agenda. During that meeting the protection of the rights of the German minority was addressed and Germany pledged financial assistance. Already in 1975 the Schmidt administration gave Poland a so-called "Jumbo-loan" of one billion DM. By 1989, Poland could not repay the loan because her economy had stagnated throughout the 1980s. Kohl and Mazowiecki therefore agreed to abate the majority of the debt if Poland would agree to pay the remaining 570 million DM into a fund that would sponsor joint civil projects. The Fund for Polish-German Collaboration (Stiftung für deutsch-polnische Zusammenarbeit SdpZ; Fundacja Współpracy Polsko-Niemieckiej FWPn) was registered in Warsaw in December 1991 and has managed these funds since then. Both governments nominate an equal proportion of the board of managers.⁹⁰ Over 8,000 projects have been funded

⁸⁹ See also Kohl (2009: 104). See point II(8) of the declaration, available online at: <http://www.fwpn.org.pl/?module=articles&id=19>, accessed 5 March 2012.

⁹⁰ See <http://www.fwpn.org.pl/?module=articles&category=6&lng=pl>, accessed 5 March 2012.

so far, amounting to over €250 million, and currently over 600 projects are funded annually, contributing immensely to co-operation between the two societies.⁹¹

Furthermore, on the basis of one of the eleven above-mentioned agreements, the German-Polish Chamber of Industry and Commerce (AHK Polen; AHK Polska) was founded on 15 September 1994.⁹² It very quickly became the largest bi-lateral chamber of commerce in Poland, and as of November 2010, 1,048 firms are members of this chamber of which 835 are Polish and 213 German.⁹³ The fast-growing chamber of commerce not only testifies to growing trade and economic interdependence between both countries, but also mirrors Poland's fast growing economy which in 1992, only two years after the injection of "shock-therapy", turned from recession to growth (e.g., Jackson *et al.*, 2005). Also, for Germany as an export-oriented country, Poland's economic upswing (it was the only EU-member state to show GDP growth during the financial crisis) is welcome as an investment opportunity and sales market (see Chapter IV of this thesis).

The co-operation treaty of June 1991 consists of 38 Articles addressing normative issues such as human rights (Article 1(2); Art. 8(1); Art. 20(1)), the rule of law (Art. 8(1)), and the condemnation of discrimination on grounds of political and religious beliefs or ethnic origin (Art. 20-22). Issues range from enhanced economic co-operation (Art. 9), financial investment (Art. 10), co-operation in science and technology (Art. 15) to areas where both societies contribute to reconciliation such as regional co-operation and city twinning, especially in the border region (Art. 12), cultural co-operation (Art. 23) youth exchange programmes (Art. 26 and 30), and a pledge by both governments to support collaboration between societies, parties, trade unions, churches, sports clubs, foundations, the Polish-German forum and similar organisations (Art. 29). This is a far-reaching step since collaboration between similar organisations on each side of the border can have an impact on policy-making by the central governments. For example, co-operation by regional trade unions in the border region interfered with the central government's and the Confederation of German Trade Unions' (DGB) plans to restrict the free movement of labour on Poland's EU-

⁹¹ See <http://www.fwpm.org.pl/?module=articles&category=31>, accessed 5 March 2012. The aims and projects that are funded are listed at: <http://www.fwpm.org.pl/?module=articles&category=12>, accessed 5 March 2012.

⁹² See <http://www.ahk.pl>, accessed 5 March 2012.

⁹³ This does not mean that Polish business is more active. On the contrary, many Polish firms are subsidiary companies of German firms, founded in Poland and operating under Polish law e.g. Bayer Sp. z o.o.; BASF Polska Sp. z o.o. Entity 1096; Deutsche Bank Polska S.A. etc.

accession. As will be seen in Chapter VI, German regional trade unions operating in the new *Länder* did not share the government's fears that unemployment rates would rise after Poland's accession unless free movement restrictions were applied.

The co-operation treaty introduces an institutional element as well. Not only do both partners promise to establish cultural institutions (Art. 24) and support the mutual parliamentary groups which have existed since 1987 (Art. 4). With Article 8, as Bingen (1998: 294) correctly evaluates, for Poland the most important provision, Germany effectively became Poland's advocate for her EU ambitions.⁹⁴

Despite the landmark provisions in the treaty, a number of points were seen as contentious by the Polish side. First, the question of compensation resulting from the losses of WWII was not addressed; an issue that would resurface over and over again in the future (see above and Chapter VII). Second, because Article 20 refers to the acknowledgment of a German minority in Poland, some sections of Polish society feared that the document established a new presence of Germans in the East, dangerously reminding Poles of the Third Reich's dream of a *Mitteleuropa* (Cordell and Wolff, 2005: 54-55). One needs to bear in mind that these fears have mostly vanished, especially in the regions where the presence of Germans is strongest such as in the voivodeships of Opole, Lower Silesia and Silesia – the regions that are most attractive for investors (Nowicki, 2009).⁹⁵ Since Poles living in these regions profit from German investment and the jobs it creates, they are less receptive to the anti-German polemics often propagated by the PiS. However, Janusz Reiter, the former ambassador to Germany, warns that emotions also play an important role during elections and the issue of the Centre Against Expulsions (see Chapter VII) can reignite these fears (Reiter, 2011 Interview). Third, and related to the second point, Poles living in Germany are not referred to as a minority but as German citizens of Polish descent. This issue resurfaced later with the rise of Law and Justice, which demanded that Poles living in Germany should get the status of an official minority; a point that the Polish government addressed to its German partners for the 20th anniversary celebration in 2011 (Miszczak, 2011 Interview). Although Article 20 grants Poles and people of Polish descent living in Germany the right to safeguard their ethnic, cultural, linguistic and religious identity, and Article 21 pledges that this

⁹⁴ In 1991, prior to the Maastricht Treaty, the EU was of course still the EC.

⁹⁵ See: Atrakcyjność inwestycyjna województw i podregionów Polski 2009. Available at: www.ibngr.edu.pl/index.php/pl/content/.../2670/.../Atrakcyjnosc_2009.pdf, accessed 5 January 2011.

identity should be protected and cultivated through necessary conditions such as education in the mother tongue, such provisions have not been established by the German authorities so far. Given that Poland provides its German minority, predominantly living in the Opole voivodeship, with the necessary means for receiving instructions in the German language, this could be seen as a violation of the treaty (Smolar, 2010 Interview; Mischczak, 2011 Interview). This has often been cited by PiS to demonstrate German ill intent, especially if it is taken into account that the German minority is exempt from the five-percent threshold for entering the *Sejm*.⁹⁶ In this context some rare cases have been reported in which, following the end of bi-national marriages, the Polish parent often lost custody of any children and the German youth welfare office (*Jugendamt*) allowed only supervised contact in the German language.⁹⁷ Wilhelm Höynck (2010 Interview), the German chief negotiator of the co-operation treaty, confirms that the minority question was one of the major obstacles during the six-rounds of negotiations. The Polish side demanded that Poles and people of Polish descent living in Germany should gain the status of a minority. Poles living in Poland's western areas fuelled this position since they feared the return of Germans to their homelands, thus possibly displacing them, and causing a repeat of the loss of home and the bitter experience of the *kresy* Poles' move from east to west in 1945. Opposition to Polish demands came from the German interior ministry, responsible for minorities. The response was to ask "where is the Polish minority?" a question which the Polish side was unable to answer satisfactorily. The German interior ministry argued that no Pole had approached the ministry about this or any similar matter in the past. Even though the number of Poles and people of Polish descent was estimated at about one million, most were Poles exiled for political reasons during the Cold War, who had no interest whatsoever in maintaining contact with Poland. The difference in the two cases was seen in the fact that Germans living in Poland were autochthonous Germans who had lived in Silesia for centuries, whereas Poles in Germany were politically motivated exiles or descendants of those who had migrated for work, scattered across the whole of Germany (Höynck, 2010 Interview).

⁹⁶ Since 1991, the German minority has always had at least one MP in the *Sejm*.

⁹⁷ "Deutsch nach Vorschrift", *Zeit-online*: <http://www.zeit.de/2004/43/Ehestreit?page=1>, accessed 5 March 2012; "Deutsch-Polnische Irritationen – Angst vor Germanisierung", *Süddeutsche.de*, 23.11.2008: <http://www.sueddeutsche.de/politik/deutsch-polnische-irritationen-angst-vor-germanisierung-1.360607>, accessed 5 March 2012; "Sądowa germanizacja", *Wprost*, 48/2004.

During negotiations for the co-operation treaty, opposition also arose from the *Landsmannschaften*. Chancellor Kohl, as well as foreign minister Genscher, sought to incorporate them into the process in a “productive future-oriented manner”, but at that point they had probably still not dealt with the shock of the border treaty and their collaboration could not be counted on (Höyneck, 2010 Interview). This explains why Wolfgang Bötsch, on behalf of the CSU and the *Landsmannschaften*, complained that the CSU was not informed about the content of the treaty and demanded amendments in regards to the right of domicile, or rather the return of the expellees to the former *Ostgebiete* shortly before the treaty was signed in June (Bingen, 1998: 290).

The Co-operation Treaty was taken as the legal basis for future agreements such as the “Agreement between the Government of the Federal Republic of Germany and the government of the Republic of Poland establishing German-Polish Youth Co-operation” (*Jugendwerk; Współpraca Młodzieży*) signed on 17 June 1991, and the Cultural Co-operation Agreement of 14 July 1997. In fact, Article 30 of the co-operation treaty obliged the signatories to establish the *Jugendwerk*. The German-French *Jugendwerk* – set up by the Élysée Treaty in 1963,⁹⁸ and which has proved to be fruitful in educating a new generation free from prejudices and crucial in tackling reconciliation (e.g. Baumann, 2005) at its roots (the young generation) – was taken as a positive precedent. Already in December 1970, the Brandt administration tried to imitate the French-German example during the framing of the Warsaw Treaty. The Polish partner did not react to the German suggestion, and it is unclear whether the Gomułka administration did not want a German-Polish *Jugendwerk*, or if they were not allowed to discuss it due to Soviet pressures. However, Prime Minister Józef Cyrankiewicz invited Egon Bahr to a talk at his holiday home in Masuria (former East Prussia) between Christmas and New Year’s Eve 1970 to discuss such a proposal. Following the Polish protests in 1970, which occurred only days after the Warsaw Treaty was signed and ended with a number of fatalities, Gomułka and Cyrankiewicz lost their positions and the promised letter of invitation never reached Bahr (Bahr, 2010 Interview).

Today, Germany’s foreign policy envisages cultural and educational policy as one of the three pillars of foreign policy (along with political and economic relations),

⁹⁸ The Co-operation Treaty in its importance for Polish-German relations can certainly be compared to the Élysée Treaty. The former goes far beyond the latter though as it includes economic and cultural co-operation. For an excellent overview and analysis of the Élysée Treaty see the anthology by Defrance and Pfeil (2005).

and in 2007 almost €1.2 billion was spent on this, amounting to 0.46 percent of the federal budget.⁹⁹ Intercultural dialogue is thereby especially accentuated and youth exchanges comprise an important strategy for achieving this (Kloock, 2008: 132-33). In the period 1993-2008 the *Jugendwerk* funded 48,490 projects involving more than 1.9 million young people¹⁰⁰ in school exchange programmes, internships, stipends, teacher training and similar programmes. Eugeniusz Smolar (2010 Interview) attests that “the PiS-administration tried hard to destroy Polish-German relations, wanting to withdraw some funds from the *Jugendwerk*. But the pressure was so great that they could not do it in the end.” (Smolar, 2010 Interview) This is only one example of how a bilateral treaty can foster reconciliation on the inter-societal level, create new domestic actors and thereby change the domestic structure of foreign policy-making.

Article 38(3) of the co-operation treaty stipulates that the treaty should be valid for ten years and that it is automatically prolonged by a further five years if no party terminates the treaty one year before that date. The Polish Sejm passed a resolution on 22 June 2001, on the date of the tenth anniversary of the treaty.¹⁰¹ Point three of this resolution describes in what areas the treaty had enabled co-operation between Poland and Germany. In the final sentences of point three, Poland underlines that she protects the rights of minorities according to international standards and that she is convinced that the Polish community living in Germany will increasingly use its rights and privileges as well. This already hinted towards Poland’s dissatisfaction with the official status of Poles living in Germany, as outlined above. In a report conducted by the MSZ in 2009,¹⁰² the Polish government, basing its data on German statistical research, estimated that about two million people who had migrated from Poland were living in Germany. The MSZ included in its estimation the so-called *Spätaussiedler* who have German citizenship, but have not renounced their Polish nationality (MSZ, 2009: 177). The report stresses that, above all, the younger

⁹⁹ “12. Bericht der Bundesregierung zur Auswärtigen Kulturpolitik” available at:

<http://www.auswaertiges-amt.de/diplo/de/Aussenpolitik/KulturDialog/ZieleUndPartner/ZielePartner.html>, accessed 10 November 2010.

¹⁰⁰ Geschäftsbericht für 2008 available at: http://dpjw.org/c28,13,informationen_zum_dpjw.html, accessed 5 March 2012.

¹⁰¹ Uchwała Sejmu Rzeczypospolitej Polskiej z dnia 22 czerwca 2001 r. z okazji 10-lecia podpisania Traktatu o dobrym sąsiedztwie i przyjaznej współpracy między Rzeczpospolitą Polską a Republiką Federalną Niemiec. Monitor Polski 2001 nr. 21 poz. 329 available at: <http://isip.sejm.gov.pl/VolumeServlet?type=wmp&rok=2001&numer=021>, accessed 5 March 2012.

¹⁰² Raport o sytuacji Polonii i Polaków za granicą 2009. Available at: www.msz.gov.pl/files/docs/polonian/Raport_PPG.pdf, accessed 5 March 2012.

generation is not interested in the activities of the so-called Polonia. Furthermore, the Polonia is not well organised. Although numerous Polonia organisations exist, no umbrella organisation has been founded, and applications to the German and Polish authorities for funding are often not well prepared (about €400,000 Euros p.a. are spent by the German authorities for the activities of the Polonia) (MSZ, 2009: 179-80). Only about 2,300 children learn Polish as their mother tongue at German state schools, and often parents are required to organize themselves to obtain this basic need for their children, despite the co-operation treaty which is supposed to take care of this (MSZ, 2009: 180). In Chapter II it was shown how the centralized structure of the Polish political system makes it difficult for the *Länder* to sign an agreement with the respective voivodeships for co-operation over medical services in the border regions. In Germany, since education is entirely in the hands of the *Länder*, they would be responsible for fulfillment of the 1991 Co-operation Treaty, although it was signed by the federal government. As the MSZ report laments, some *Länder*, such as North Rhine-Westphalia, Bremen, Berlin and Lower Saxony, are more constructive, while Hesse and Bavaria are the most obstructive to providing any facilities for Poles (MSZ, 2009: 180). This shows once more how differing domestic structures can lead to complications when co-operation between two countries is at stake.

III. Conclusion

This chapter has introduced Risse-Kappen's (1995) second variable, the degree of institutionalisation. It analysed the two most important bilateral treaties marking the end of the Cold War, which lifted Polish-German relations to a new level: the 1990 Border Treaty and the 1991 Co-operation Treaty. Although the border treaty merely recognizes the border delineated by the two rivers and does not mention both states' societies, it has had an enormous influence upon the *Landmannschaften* and its umbrella organisation, the BdV. That is because for over four decades the expellees had been fighting for a return of the German *Ostgebiete* to Germany, and with the re-affirmation of the border, the last hopes of making this happen were destroyed. Kohl's skilful manoeuvring has irreversibly locked the expellees within the norm parameters of *Ostpolitik* (Tewes, 2001: 59). Nevertheless, as demonstrated, at the time of the formulation of the treaty, the expellees' influence was significant since the CDU/CSU

relied on their votes. Importantly, the treaty does not contain the contentious issue around compensation for the expellees' property losses, and compensation to Polish victims of the Nazi regime. Whereas the latter was later resolved with the establishment by Germany of a fund, the former would resurface again in the new millennium with the Prussian Claims Society's court case. Although dismissed by European Court of Human Rights, this issue, which affected Polish-German relations might have been precluded by clearer legal codification.

Nevertheless, the border treaty was a prerequisite for the co-operation treaty that followed, since through the guarantee of the Oder-Neisse line certain topics which had been on the German agenda for over a decade, such the recognition of the German minority and bi-lingual place names in the Opole voivodeship, were suddenly made possible (Höynck, 2010 Interview). The co-operation treaty has introduced a completely different multi-layered dimension into Polish-German relations. For the next few years, Germany became Poland's prime advocate at the inter-governmental level for her ambitions to enter the EU. On the inter-societal level, relations have been institutionalised and contribute enormously to the daily practice of contacts between Poles and Germans solidifying non-governmental Polish-German relations. This proved helpful immediately after Poland's EU accession when Law and Justice tried to instrumentalise fears of Germany for political ends. The analysis of the *Sejm* elections in 2005 and 2007 show that in the former German *Ostgebiete*, support for PiS was much lower than in the rest of Poland. Again, as in the case of the border treaty, the issue of property loss was not addressed, an issue which is important also in Chapter VII of this thesis.

I have now engaged with both of Risse-Kappen's (1995) variables, *domestic structures* in Chapter II and *institutionalisation of relations* in Chapter III, as *a priori* determinants of non-state actors' influence on foreign policy-making. The following chapter will scrutinize joint EU membership another aspect of Polish-German institutionalisation important for non-state actors activities and thereby prepare the first two case studies that deal with non-state actors role in Poland's EU accession negotiations. Chapters V and VI analyse their influence over the free movement of capital and the free movement of workers respectively. Chapter VII examines the process that led to the decision to erect a permanent exhibition in Berlin depicting the flight and expulsion of millions of Germans following WWII.

4. The Process of EU Eastern Enlargement

This chapter forms a background for the two first case studies, analysing the achieved transitional periods for the free movement of capital and the free movement of labour during Poland's EU accession negotiations. As outlined in chapter I, process tracing is employed in all three case studies to, inter alia, establish causality between the non-state actors preference voicing and the taken policy-decisions. Therefore, it is necessary to show briefly the start of the accession process. This chapter demonstrates again the importance of Risse-Kappen's second variable, the institutionalization of state-relations as a determinant of non-state actors' access to policy-makers. Joint EU membership provides the legal and institutional framework, and creates new motivations for these actors to voice their preferences.

The chapter first looks at the Eastern Enlargement, before going to analyse Germany's and Poland's interests in Polish EU membership, along with an analysis of non-state actors interests in this institution. Then, it examines how the decision-making structure during accession negotiations differed to the usual set-up in foreign-policy making.

1. Process of EU Accession until 1998

The process of the 2004 enlargement effectively started in 1989 and lasted for fifteen years, generating a large literature (e.g. Schimmelfennig 2003; O'Brennan, 2006b). Here, I focus on the main events.

The first reaction of the European Community to developments in Poland after the first partially free elections to the Sejm in June 1989 was a financial assistance programme. The European Council adopted PHARE (Poland and Hungary Assistance for Economic Restructuring), on 18 December 1989¹⁰³ and allocated ECU 300 million to the two countries.¹⁰⁴ Between 1990 and 1996 Poland received roughly ECU 200 million annually (Mayhew, 1998: 140). PHARE was proposed by the EC Commission

¹⁰³ Council Regulation (EEC) no. 3906/89

¹⁰⁴ PHARE was later applied to the remaining CEECs in transition and today constitutes an important tool of EU enlargement.

after it was asked at the G-7 Summit in Paris on 14-16 July 1989 to take the necessary initiatives in agreement with all member states and other interested countries. Chancellor Kohl insisted on this decision (Reinicke in Papadimitriou, 2002: 25), and this marks the beginning of Germany's role as "Poland's advocate" in the EC/EU.

Already then, Commission President Delors and Polish Prime Minister Mazowiecki discussed the possibility of an Association Agreement, and Frans Andriessen, Commissioner for foreign relations, outlined the content of such an agreement (Mayhew, 1998: 21). This was realised on 13 December 1991¹⁰⁵ with the signing of the 'Europe Agreements', when the EC signed Association Agreements with the Visegrád countries.¹⁰⁶ The agreement was asymmetric, since Poland was given faster access to the Community markets whilst retaining its protectionist measures to facilitate the transition to a liberal market economy. Poland's strategy was comprehensive market liberalisation so that membership would not be possible in a distant future, but ultimately inevitable (Torreblanca, 2001: 144-45) – an adaptation of German *Ostpolitik's* strategy *Wandel durch Handel* (change through trade). However, according to Mayhew (1998: 22), the negotiations "rapidly became hard-nosed trade bargaining", since many member states refused to open their markets in areas including agriculture, iron, steel, textiles (sectors where Poland could have exported the most). Negotiations for the Europe Agreements broke down twice and even the coup attempt in Moscow in August 1991 did not facilitate their conclusion. Moreover, the Community refused to incorporate the promise of possible future membership. Thus, the Europe Agreement must be seen as an end of the romantic period when euphoria over the changes in CEE dominated in the "West" with unconditional support for the region, and the beginning of a period when interest-based negotiations would dominate. This must have been a valuable lesson and a taste of future accession negotiations beginning in March 1998 (Mayhew, 1998: 22-23).¹⁰⁷

The next landmark was the 1993 European Council, which elaborated the Copenhagen Criteria (European Council, 1993). A Commission Report of June 1992

¹⁰⁵ Important to note here that the Europe Agreement came into force only in February 1994 (!) after the twelve member states obtained all required ratifications from their parliaments. In trade areas, where the EC already had exclusive competence, Poland had only to wait until 1 March 1992.

¹⁰⁶ Following the peaceful break-up of Czechoslovakia in 1993 the EU signed separate Europe Agreements with the Czech Republic and Slovakia.

¹⁰⁷ For more on the Europe Agreements from the perspective of an ongoing process leading to the opening of accession negotiations see Mayhew (1998: 41-131); for an excellent account of the political environment surrounding the making of the Europe Agreements see Torreblanca (2001) or Papadimitriou (2002).

stated that three “conditions” should be met by candidate states: European identity, democracy and respect for human rights along with full application of the entire *acquis communautaire*. (European Commission, 1992: 9).

Additionally, a small trade package was passed: a token of goodwill after the laborious negotiations for the Europe Agreements, with agreement that up to 15% of the PHARE programme could be used for infrastructure development. As Mayhew (1998: 164) assesses, with Copenhagen, “enlargement obtained a sort of inevitability without a timetable,” whilst a yardstick was introduced to measure whether EU applicants were ready for membership (e.g. Gower, 1999: 13).

The German presidency ensured that a major initiative would result from the IGC at Essen in December 1994 (Gower, 1999: 8), and indeed all Germany’s negotiating skills were required to convince the numerous reluctant member states about the resulting initiative (Sedelmeier and Wallace, 1996: 380). Essen marks the launch of the pre-accession strategy¹⁰⁸ aiming to progressively prepare the associated countries for integration into the EU internal market (European Council, 1994).

Poland applied for EU membership on 5 April 1994. The Commission published a White Paper on 3 May 1995 (European Commission, 1995) listing the internal market *acquis* and suggesting a sequencing of the approximation of laws (as first-order and second-order measures), since immediate adoption of the entire *acquis* could be inimical to the economic transformation process (Mayhew, 1998: 208; 223-25). However, the entire adaptation of the *acquis in full* before accession was an important classic method of enlargement (Preston, 1995: 452-53). Poland had by then already prepared a White Paper and the Office of the Committee for European Integration (UKIE) had checked subsequent national legislation proposals for conformity with EU law (Mayhew, 1998: 209). The then Under-secretary of state, in the function of a plenipotentiary for European integration attached to the Prime Minister’s office, Jacek Saryusz-Wolski, handled all domestic aspects of EU integration before the Committee on European Integration was established in December 1996 (Rupp, 1999: 99). According to Saryusz-Wolski, the White Paper weakened Poland’s enthusiasm for EU integration by not showing a more flexible approach (in Trzeciak, 2010: 82). Nevertheless, as Maresceau (2003: 21-22) comments, this “approximation of laws” constituted in reality a stringent takeover of

¹⁰⁸ The term “pre-accession strategy” was used for the first time in Annex IV to the Conclusions of the 1994 Essen European Council.

community law that was neither “pleasant” nor “stimulating” but a valuable “learning process”, and crucial for the actual accession negotiations since deadlocks in the negotiations can be detected in areas where approximation has hardly taken place, like the free movement of capital and workers.

In April 1996, the European Commission sent Poland a questionnaire regarding the state of the economy and political and societal life; it was completed by June 1996. The opinion on membership was published on 15 July 1997, with a full “thumbs up” on Poland’s fulfilment of political requirements. The economic requirements were also fulfilled, but the Commission identified large state-owned companies as a problem, “where management failures in the face of foreign competition could have serious consequences.” Also problematic were agriculture and some then-recent trade policies. On the free movement of capital, the Commission had already warned that “the application of the *acquis* regarding the ownership of land and related assets by foreign nationals may present a significant problem in the medium term.”¹⁰⁹ The administrative infrastructure needed in order to adopt the Union’s legislative body was deemed “well-established” and “functioning normally”. Hence, the Commission recommended the opening of negotiations with Poland (European Commission, 1997). Even though the Commission’s Opinions on enlargement are not binding, in the case of the CEECs they were likely to be influential because some member states were either undecided or probably against enlargement (Mayhew, 1998: 175).¹¹⁰ The accession negotiations with Poland commenced on 31 March 1998.

I will now examine Germany’s reasons for accepting Poland into the EU, and Poland’s reasons for joining. This will be done together with an analysis of the short-term objectives of the two states and domestic pressure groups’ interests in this process, in order to identify some expected positions for the two case studies.

¹⁰⁹ The free movement of persons was not part of the White Paper measures apart from the linked issue of the right of establishment and recognition of qualifications, where the mutual recognition of diplomas was judged as partly achieved.

¹¹⁰ Whereas the so-called Southern Enlargement with Greece in 1981 and Portugal and Spain in 1986 was undertaken in a hostile international environment (the Cold War), this external pressure had gone by the 1990s. Only the 1999 NATO air strikes against Yugoslavia became again a motivating factor for enlargement and the remaining seven candidates from CEE were invited to negotiate accession. This was acknowledged by the European Council at Helsinki in 1999 with the words “in the light of recent developments” (European Council, 1999: para. 10).

II. Germany's reasons for supporting Poland's membership aspirations

As discussed in Chapter III, on the institutionalisation of Polish-German relations, with the 17 June 1991 Treaty of Good Neighbourly Relations and Friendly Co-operation, Germany effectively became Poland's prime EU "advocate". This is reflected in the process of Eastern Enlargement until 1998 described above, and must be seen in conjunction with the 1991 Treaty. Three major reasons underpinned Germany's "advocate role" in becoming the driving-motor for Eastern Enlargement, and in particular with respect to Poland: a moral dimension, economic interests, and security reasons (Lippert et al., 2001: 14-20; Paterson, 2003: 220).

The Moral dimension

The moral dimension involves the continuation of *Ostpolitik* in order to overcome the divisions resulting from WWII and to achieve reconciliation with Poland. Dieter Kastrup, Germany's chief negotiator for the 2+4 Treaty and Schröder's foreign policy advisor 2001-2002, stated that the moral dimension - reconciliation with Poland - was the principal reason for Germany's support of Poland's EU aspirations, "only then followed the other reasons" (Kastrup, 2010 Interview with author). Nazi Germany led a WWII campaign in the East following an ideology that treated Slavs as 'inferiors'. This cost Poland some seven million civilian lives, including three million Polish Jews (Davies, 1997: 1328). Furthermore, Warsaw was flattened following the Warsaw Uprising of 1944. Moreover, Poland remained involuntarily on the "wrong side of the Iron Curtain", but it was the 1980 Solidarity movement that helped bring this division to an end and ultimately helping German re-unification – a point acknowledged by Kohl in his memoirs (Kohl, 2007: 436). *Ostpolitik*, which began symbolically with Brandt's *Kniefall* and factually with the signing of the Warsaw Treaty in December 1970 (see Chapter III), was the starting point of the policy of reconciliation that found its heyday in the 1990s (see literature review in Chapter I), but would remain incomplete, with Poland remaining outside the EU. Poland should therefore become "Germany's France in the East" (Pflüger, 1996: 183).

Economic opportunities

As an export-dependent economy it was in Germany's interest to expand its market eastwards. Whilst this would be possible without enlargement, as Mayhew comments, only within the Union can all agents be sure "that there will be no backsliding in terms of trade opening" (Mayhew, 1998: 189). At the beginning of the 1990s, Poland was a *potential* market for German goods and direct investments rather than reality.

Table 4.1 Key variables in Polish-German economic relations 1989-2008

Year	German value* of exports to Poland in million €	German value** of imports from Poland in million €	German primary FDI*** in million €	Polish primary FDI† in million €	Jobs created in Poland through German primary or secondary FDI (in thousands)††
1989	2,946	1,747	5	115	2
1990	3,425	2,204	13	110	6
1991	4,611	3,570	44	128	9
1992	4,299	4,075	149	143	18
1993	5,048	4,268	320	135	29
1994	5,406	5,005	592	120	47
1995	6,615	6,096	1,015	128	66
1996	8,575	6,032	1,759	127	84
1997	10,816	7,083	2,875	118	116
1998	12,536	8,118	4,101	117	149
1999	12,506	8,892	5,310	124	166
2000	14,678	11,519	7,278	126	194
2001	15,266	12,917	8,547	104	214
2002	16,272	13,671	8,075	61	202
2003	16,405	15,335	7,603	62	195
2004	18,778	15,532	9,559	217	197
2005	22,321	17,003	11,563	152	230
2006	28,990	21,359	14,186	200	242
2007	36,405	24,406	17,392	198	269
2008	40,854	26,124	17,311	267	286

* Time series EE1030: Merchandise Trade with Poland; external trade including supplementary items, exports (fob)

** Time series EE1318: Merchandise Trade with Poland; external trade including supplementary items, imports (fob)

*** Time series RJ1895: German primary direct foreign investments to Poland

† Time series RJ7360: Polish primary direct foreign investments to Germany

†† Time series RJ2310: Polish employees in companies with German primary and/or secondary FDI

Source: based on statistical data from Deutsche Bundesbank: <http://www.bundesbank.de>

As seen in *Table 4.1*, in the early 1990s the trade relationship was marginal, as the total value of German-Polish trade demonstrates. Since Poland's EU accession in 2004, the German economy has profited immensely from Poland's rapid economic development and the total value of exports has more than doubled, from €18.8 billion in 2004 to €40.9 billion in 2008, making Poland Germany's 10th biggest export market with 3.2% of total exports.¹¹¹ The increase of more than €22 billion within four years of Poland joining the EU offsets the entire increase in German exports to Poland in the period 1989-2004. The exporters with most benefit are mechanical engineering (25% of exports to Poland), exporters of industrial metals (16%), car and ship manufacturers (14%), plastic and rubber manufacturers (12%) as well as component suppliers of car parts.¹¹²

Another economic motive for supporting Poland is to take advantage of lower labour costs and the possibility of investing in more competitive production sites (Lippert *et al.*, 2001: 19; Paterson, 2003: 220). Whilst labour intensive businesses should be expected to be in favour of EU Eastern Enlargement since production sites can be shifted to Poland and additional competition from the east should keep wages in Germany low, it is also clear that trade unions would voice their concerns. In reality German business predominantly invests in Polish urban centres with a historical focus on industry, so the premise that German business is exclusively interested in lower wage costs must be modified, despite German press coverage focusing on that topic (Bluhm, 2007: 133), especially during enlargement. If German businesses were exclusively interested in the lowest possible wages, investments would flow into regions with the lowest income level such as the Subcarpathian Voivodeship. Although wage costs did play a role in founding Polish subsidiary companies:

they are not stuck at the bottom of a one-dimensional hierarchy of added value but rather take over more and more competences for whole products or product segments. This increasingly happens for products or complex components with mid-range prices that are distributed Europe- and worldwide and to which additional mandates are attached. These companies invest in order to stay. (Bluhm, 2007: 126)¹¹³

¹¹¹ Polish Ministry of Economics:
<http://www.mg.gov.pl/Wspolpraca+z+zagranica/Wspolpraca+gospodarcza+Polski+z+krajami+UE+i+EFTA/niemcy.htm>, accessed 22 February 2011.

¹¹² *Ibid.*

¹¹³ The translation is the author's own.

With this strategy, the cost was merged with quality maintain the German “paradigm of quality competition”. Thus the price intensive quality and high-tech sector can be maintained in Germany whilst Poland takes over the “ripe” but nevertheless capital intensive products or components that require qualifications in the standard sector (Bluhm, 2007: 126-27).¹¹⁴ Therefore, Poland must not be seen as a competitor to German labour but rather a complement that helps to secure German labour at the high-end of the price scale in a globalised world.

As the third column of Table 4.1 shows, German business has indeed increased its FDI from a low €5 million in 1989 to €17.3 billion in 2008, making it the second largest investor in Poland after the Netherlands.¹¹⁵ Three phases can be detected: in phase one (1989-1994) the total amount of German FDI increased slightly. From 1995 onwards investments rose steadily, by roughly one billion Euros annually, before they consolidated between 2001 and 2003. In phase three, from 2004 onwards, FDI more than doubled once German investors knew that Polish EU membership was a certainty. German businesses were initially hesitant to the new opportunities, partly as a result of German re-unification, which absorbed a vast amount of energy from economic actors (Mayhew, 1998: 19; 191). Only once the former GDR was economically incorporated and wages in the new *Bundesländer* rose rapidly did FDI to CEEC, and Poland in particular, start to increase. After re-unification, the unemployment rate in East Germany rose steadily and the region became the eastern periphery of the EU (Figure 4.1).

¹¹⁴ Bluhm (2007) refers to the CEEC region as a whole of which Poland is a part.

¹¹⁵ *Ibid.*

Figure 4.1 *Regional Unemployment in Germany in 2008*



Source: Destatis (2009) *Deutschland und Leute 2009*. Wiesbaden: Statistisches Bundesamt:

<http://www.destatis.de/jetspeed/portal/cms/Sites/destatis/Internet/DE/Content/Publikationen/Broschueren/LandUndLeute2009.psm1>, accessed 23 February 2011.

It was hoped that with Eastern Enlargement, Germany would be “moved” to the centre of the EU and that the new *Bundesländer* would benefit from a prospering Poland and from Germany’s geographic centrality within the EU (Lippert et al., 2001: 20). However, Polish FDI to Germany is very low, as seen in Table 4.1. The biggest investors are PKN Orlen S.A. which bought over 500 BP petrol stations, mostly in the northern part of Germany;¹¹⁶ the Ciech Group, which bought a sodium carbonate plant in Lower Saxony for €75 million; and Azoty Tarnów, which bought a polymer manufacturer in Guben, Brandenburg.¹¹⁷ Also, 94% of German companies investing in Poland are based in West Germany, with Berlin¹¹⁸ and the surrounding Brandenburg region being the only major investor from the east, bypassing the new *Bundesländer* (Krätke, 2002: 657 Krätke and Borst, 2007: 627), as Figure 4.2 shows.

¹¹⁶ PKN Orlen:

<http://www.orklen.pl/PL/CentrumPrasowe/Strony/NowestacjewsieciORLENDEUT.aspx>; last accessed: 23. February 2011.

¹¹⁷ Polish Ministry of Economics:

<http://www.mg.gov.pl/Wspolpraca+z+zagranica/Wspolpraca+gospodarcza+Polski+z+krajami+UE+i+EFTA/niemcy.htm>; last accessed 23. February 2011.

¹¹⁸ Berlin can of course be hardly seen as a new *Bundesland* since West Berlin was part of the FRG during the Cold War.

Figure 4.2 *Location of German companies with branch plants and subsidiary firms in Poland in 2003*



Source: Krätke and Borst (2007: 626)

In order for the East German region to profit from West German companies investing in Poland, it would be beneficial if these investments were undertaken in the border region. The majority of German FDI is directed into Polish metropolitan and

urban areas, predominantly Warsaw, Poznań, Wrocław, the Upper Silesian industrial basin, Cracow and Łódź (Krätke and Borst, 2007: 627-28), not mimicking the *maquiladora* scenario along the US-Mexican border. Since the strategy of German business is to ensure “quality competitiveness”, *maquiladora* type investments have not been made and the eastern regions of Germany are bypassed.

Another economic benefit for German business resulting from Polish accession, with the *full* adaptation of the *aquis*, would be Polish migrants seeking work in Germany and offering cheaper labour while simultaneously exercising pressure on wages in general. German trade unions would voice concerns when facing this scenario, and this topic, as the second case study, is discussed in Chapter VI.

Stability and Security

Security was the last major reason for supporting Poland’s membership. With Poland joining the EU, Germany would not be caught between Western Europe and Russia, thus escaping the *Mittellage* (Tewes, 1998: 21; Hyde-Price, 2000: 2-4).¹¹⁹ Whilst NATO membership is more important tool for military co-operation, the EU was meant to stabilise Poland economically and reduce tensions between a wealthy Germany and its neighbours. Hence, the “grey zone” between Russia and Germany would disappear (Lippert et al., 2001: 18). Also, the EU would consolidate democracy, help with political stability and guarantee peace and security. Moreover, the old Communist industries which polluted the environment would be regulated and “defused” (Hill, 2002: 106; O’Brennan, 2006b: 149). Unsurprisingly, the Pact on Stability in Europe was developed during the German Presidency and signed at Essen (European Council, 1994). Franco-German relations after WWII were the cognitive model to be mimicked, so that Polish-German relations “previously characterised by tensions over territory, ethnic minorities, or disputed historical narratives” would be transformed and the early patterns of peace-building that started with the ECSC and the Treaty of Rome would be repeated in the east (O’Brennan, 2006a: 160-61).¹²⁰

¹¹⁹ For the development of the concept of *Mittellage* in German geopolitics since the 19th c. see Schulz (1989).

¹²⁰ This follows the logic that the EU represents a common western international community organisation with joint norms and rules and a common identity (see Schimmelfennig, 2003: 77-111).

Long-term goal and short-term practise

Germany had to proceed cautiously. As Tewes argues (1998; 2001), Germany found itself in a “role conflict”. It was a traditional integration deepener, but had suddenly assumed the role of an integration widener risking its long-standing good relations with France. After re-unification, Germany had to prove that it would not give up its traditional role and attempt to become a “regional hegemon”. Reunification was bought with EMU at Mitterrand’s insistence, and the Maastricht Treaty anchored the “new” Germany into the European construct (Torreblanca, 2001: 150-51). Lippert *et al.* (2001: 14) see this “role-conflict” as one of the major reasons why Germany’s position in negotiations with CEE was “businesslike”, since Germany would not accept a watered-down *acquis* or paralysis of the EU. These “businesslike” negotiations came through as early as the negotiations for the Europe Agreements.

All the major German political, economic and social forces – all political parties, every government and opposition party in the sixteen *Länder*, unions of entrepreneurs, trade unions, churches and social groups, academic experts and other opinion leaders – claim[ed] that enlargement is a “political necessity and historic chance for Europe”, (Lippert et al., 2001: 14)

However, this did not prevent single actors from successfully voicing their preferences during negotiations on the Association Agreements. For example, Germany obtained a postponement until 1995 for the beginning of the tariff dismantlement process for coal imports, because of the possibility of Polish coal flooding Germany’s market and undermining the vertical agreements with Germany’s coal and steel industry (Torreblanca, 2001: 109). As seen in Chapter II, trade unions matter in corporatist Germany and are an important political player that cannot be ignored by the political elite. The concentration of the coal industry in certain regions (Rhineland, Saarland) means that the relevant *Bundesländer* would object to potential external threats to their industries. The other sectors where Germany voiced objections were agriculture (Torreblanca, 2001: 183), steel and transit. Germany, being a heavyweight in the negotiations, helped the other member states to secure their restriction demands (Torreblanca, 2001: 124, 191). Germany’s semi-sovereign, consensus-driven and highly inclusive domestic structure, discussed in Chapter II, allows many actors to participate in preference formation. The negotiations for the Association Agreements only exemplify the inevitable: whilst a broad consensus on

Enlargement existed in society, as argued by Lippert et al. (2001: 14), when it comes to negotiations on specific issues, individual actors will seek for short term gains to be enabled by the domestic political set-up. Scholars argue that negotiators are able to capitalise on this apparent weakness of the Chancellery and relevant ministries at the EU-level by presenting their position as more or less final, since domestic re-negotiation would be taxing and time-consuming (e.g.: Bulmer and Paterson, 1996; Collins, 2002).

III. Poland's reasons for wanting to join the EU

Poland's reasons for wanting to join the EU fit into three main categories: a historical-cultural, based on ideas of shared identity and common values, practised in the political discourse of the "return to Europe"; economic, with the conviction that membership would lead to Poland's prosperity; and security, influenced by the end of the Cold War, when Poland had its own "*Mittellage*" as a frontier state between western institutions and Russia.

"The return to Europe"

Poland's political elite in the 1990s was largely composed of the former opposition to the Cold-War Communists. Former members of the Catholic Intelligentsia Clubs and émigrés had started to turn their ideas into practice, such as that reconciliation with Germany and Russia was indispensable, as argued by the Mieroszewski/Giedroyc tandem of the Kultura circle (Prizel, 1995). Poland and CEE were seen as wrongfully captured the USSR, as argued by e.g. Milan Kundera (1984) and Czesław Miłosz (Ash, 2000). Therefore, it was a logical step to "correct" the circumstances after Yalta and Potsdam and "return to Europe" – a western community in which Poland saw itself deeply embedded. Throughout the 1990s, the "returning to Europe" debate was focused on EU accession, whilst actual implications were largely ignored until 1998 (Grabbe and Hughes, 1999: 191, 193). As early as April 1990, when the EC was about to propose the Association Agreement, Mazowiecki demanded a customs union, the free movement of capital, services and persons, the harmonisation of agricultural, monetary, social transport and energy policies, and co-operation in a

number of policy-areas (measures that would cement the path towards EC accession) (Torreblanca, 2001: 69). Importantly, “the return to Europe” was a deep-rooted conviction, as well as an accession negotiation strategy. Schimmelfennig (2003: 90-91; 260-72) shows that most CEECs used this rhetoric to bridge the technocratic economic conditionality of the EC/EU that these states could not fulfil by stressing their common rules, values and identity. As Schimmelfennig argues (2003: 268-78), the EU was “entrapped” in its own rhetoric which was exploited internally by the Commission and the pro-enlargement member states and by the CEECs. This is exemplified by a warning from Jacek Saryusz-Wolski, that Europe was forging another “economic Yalta” or a “new economic Iron Curtain”, following the disappointing results of the Association Agreements (Saryusz-Wolski in Schimmelfennig, 2003: 268). Hence, the first strategic goal of Poland’s National Strategy for European Integration incorporates the “return to Europe” rhetoric, stating that “Poland has belonged to Europe in the geo-political, cultural and economic sense and shares its basic values that she has co-founded and defended for over thousand years” (UKIE, 1997: 7).

Economic reasons

The second reason for Poland joining the EU was economic. One aspect was that the EU would help Poland to “become rich”. The obvious precedent cases were the three Mediterranean countries and Ireland. The billions of Euros in structural and cohesion would allow Poland to tread the path of these precedent cases. The Polish public opinion was highest in its expectations towards EU membership where economy was concerned. A July 1999 CBOS survey, found that 51% felt that EU integration would have a positive impact on Polish economy. Only 28% opined that it would be negative. Similarly, 48% expected a positive impact on the functioning of Polish private firms whilst only 21% held a negative view (CBOS, July 1999).

The economic dimension goes further than a “get-rich-quick assumption”. Since Poland had to undertake monumental economic modernisation, EU-membership as the carrot would serve as an external legitimising factor for domestic reforms and hence prevent the transformation losers from blocking these reforms

(Cecchini et al. 2001: 157). In that sense, the EU is an “external anchor” that solidifies and legitimises transformation (Bieler, 2002: 588-91; Kok, 2003: 9).

Security

Although NATO guarantees Poland’s security, joining the EU also entails a security element. As Grabbe and Hughes demonstrate (1998: 6), the CEECs’ enthusiasm for joining international organisations can generally be explained by a desire to “re-integrate into the world economy” and to “depart from the Soviet sphere of influence”. Schimmelfennig (2005: 77-92) explores both NATO and the EU as organisations of the Western international community, showing that various theories, such as the democratic peace paradigm, argue that liberal democratic states do not wage war against each other.¹²¹ Since the EU facilitates reforms and structures which consolidate democracy, it interlocks future member states with old ones and contributes to their overall security. When Polish Foreign Minister Geremek opened negotiations on 31 March 1998 in Brussels he acknowledged this:

Poland is starting the negotiations with a conviction that membership of the European Union is the best choice from the point of view of the security of the state, the stability of the democratic order, the consolidation of the foundations of rapid and sustainable economic development and the construction of a modern civic society. (Geremek quoted in Friis and Jarosz: 2000: 37)

Whilst Poland wanted to join the EU as soon as possible, the short-term goal for negotiations would be to join on the most beneficial terms, i.e. to gain access to the EU’s internal market without transitional periods (TPs) for the old member states, whilst negotiating TPs for its own market in areas where a fast application of the *acquis* would have been too costly or unattainable without postponing accession far into the future. The Committee for European Integration, established in January 1997, wrote in its National Strategy for Integration (NSI) that it would be important “to avoid attempts to negotiate protection periods for too many sectors of the Polish economy as this may lead to inadequate preparation of the Polish economy for accession to the EU, and consequently to a weakening of Poland’s negotiating position.” (quoted in Preston, 1998: 162) This shows that the early negotiating team

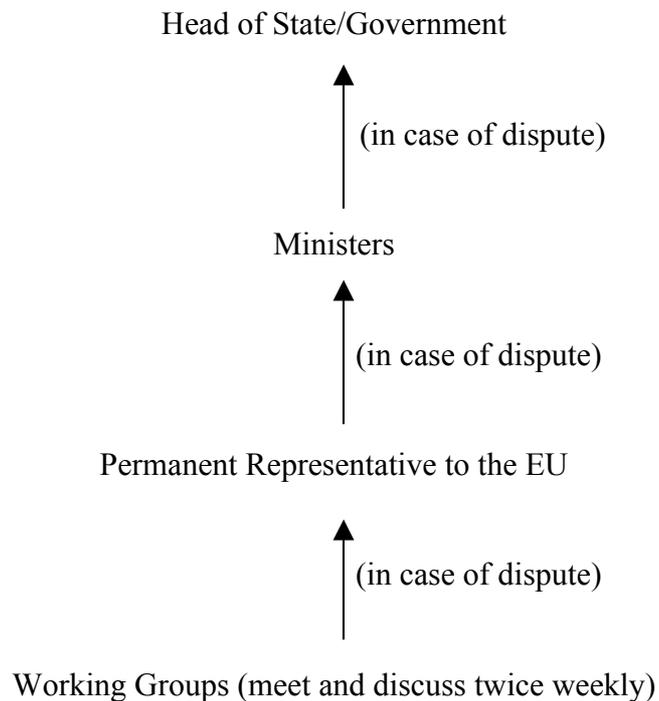
¹²¹ See also O’Brennan (2006b: 154-56)

was well-aware that demanding TPs in one area would lead to possible *quid pro quo* demands from the old member states. The two case studies will demonstrate that this happened. Finally, another of Poland's objectives was to negotiate the highest possible level of monetary transfers in regard to policies such as the CAP, and to secure the highest possible share of cohesion and structural funds.

IV. The process of accession negotiations

Poland was admitted to the negotiation table on 31 March 1998. Derogations to the *acquis*, either permanent or temporary in form of TPs should ideally be exceptional although the first precedents were set with the 1973 enlargement (see below). Initially the candidates are engaged in "screening" (the legal review of national law against community law) of each of the 31 *acquis* chapters. The Union decided to start screening for the chapters where it was assumed that full adaptation would not pose many problems (e.g. education, telecommunication, culture). This allowed the candidates to find a position on each individual chapter that represented their respective negotiation positions. These position papers were passed on to the Commission. The Commission was asked by the Council to propose a common EU position. Timing and constant contact of the Council members with the Commission was crucial in order to influence the formulation of positions. Also, the Council's role was decisive because it was responsible for approving, and bore the final responsibility for, the EU position. Member states established so-called enlargement groups which would meet twice a week. This lowest tier of negotiations was the quickest and least controversial when it dealt with already existing rules of the *acquis* and not when new regulations had to be found. If a common position could not be found at this level, the dispute would be passed in a hierarchical structure to the Permanent Representatives, from there to the Ministers and from there to the Heads of State and Governments (see Heidenreich, 2003: 10-11; 2006: 43-44). Figure 4.4 shows the four tiers of negotiations involved in the finding of a common EU position.

Figure 4.3 *Hierarchy of the decision-making structure during the negotiations for a common EU position on the chapters of the *acquis communautaire**



Source: own adaptation of Heidenreich (2006: 43-44)

As will be seen further below, especially the top two tiers of the negotiation hierarchy provide ample room for non-state actors to voice their policy preferences.

Once the actual negotiations come to a close, the Union consults with the applicant on all chapters of the common *acquis* and the accession treaty is composed jointly; ratification procedure follows. Here, the European Parliament requires an absolute majority and the EU Council must make a unanimous decision. The member states also ratify the accession treaty according to their national law and the applicant countries pass the accession treaty in parliament and usually opt for a referendum. Once the ratification certificates are deposited, accession commences (e.g. Schneider, 2009: 16-17).

The accession negotiations for the Eastern Enlargement provided for a special decision-making set-up in Germany and Poland. In order to identify possible access points for non-state actors to influence decision-making, the official decision-making structures need to be analysed.

Germany and Poland during the negotiations

During the negotiations, 31 March 1998 until 5 February 2003, both Germany and Poland underwent a change of government, and since the accession negotiations established a distinct policy-making network it is necessary to analyse the respective significance of the set up and changes. I will only focus on the negotiation structures of Poland and Germany, rather than the Commission although the Commission's position in the negotiations was crucial, especially given its role as the proposition initiator of the common EU stances which were often accepted by the Council, since all final Council adaptations required unanimity. Also, by publishing roadmaps with clear timelines¹²² the Commission could increase the pressure to reach consensus (Heidenreich, 2003: 13-14). The Commission had the advantage of dictating Chapters' negotiation order (see Heidenreich, 2006: 44-45). By leaving until last negotiations pertaining to the free movement of labour and capital, which were expected to be difficult, the pressure to reach consensus would be greater, since failure at that stage would have become politically costly (Orzechowski and Verheugen, 2009: 113).

A significant change in the German political landscape was the victory of the SPD in the 1998 federal elections. After sixteen years of CDU/CSU-FDP under Kohl, a new SPD-Green coalition government took over. For Poland, it was crucial whether Gerhard Schröder would maintain Germany's role as "Poland's advocate" in the EU. It was Kohl who, during his 1995 visit to Poland, promised accession by the year 2000 and Jan Kułakowski, Poland's chief negotiator from 1998 to 2001 always referred to this promise during the negotiations. Verheugen, who was also part of the German negotiation team before he became Commissioner for Enlargement, retrospectively evaluates Kohl's promise as a mistake, since it slowed down Polish politicians' efforts to apply the *acquis* (Orzechowski and Verheugen, 2009: 142).

As discussed, Germany's "semi-sovereign" structure allows only incremental change in foreign policy, so a stance which repudiated enlargement was unlikely. Nevertheless, the Red-Green tandem introduced a variety of foreign policy changes

¹²² The Commission Enlargement Strategy Paper containing a roadmap was published on 8 November 2000. It would later be endorsed by the Nice European Council and defined the main goal to be enlargement before the European election in June 2004 (Smith, 2001: 118).

during its tenure, which could allow the conclusion that German foreign policy became more assertive. Two cases illustrate this: Germany's participation in the 1999 Kosovo War without a UN mandate; and Germany's refusal to participate in the Iraq campaign in 2003 (Leithner, 2009). Some observers also comment that the Schröder government showed less enthusiasm for enlargement and therefore favoured a slower pace, although this has been denied (in Lippert *et al.* 2001: 16). Analysing the Coalition Agreement of 20 October 1998 reveals that the Red-Green tandem committed itself to enlargement in point XI/2 (SPD and Greens, 1998). However, Schröder made it clear that in future, Germany would pay more attention to national interests and pursue a more assertive foreign policy on the European stage as well, including enlargement (Bulmer et al., 2000: 109)

Also, Markus Meckel (SPD), the then leader of the German-Polish parliamentary group, revealed that whilst in an aircraft with Schröder on the way to his first official visit to Poland, he advised the new Chancellor that he would need to continue supporting Poland efforts to join the EU. The Chancellor responded "*aber ich will ja gar nicht*" (but actually I do not want to) (Meckel, Interview 2010). Thus, the new government was willing to negotiate accession conditions in a way that would achieve the most beneficial terms for Germany. However, Schröder was *officially* in favour of enlargement, since this would be beneficial for "German business and political interests", and therefore favoured the EU's eastern expansion "as soon as possible" (Schröder in Jeřábek, 2011: 123), but under a new slogan of "new realism" where German concerns about labour mobility would manifest themselves in demands for restrictions (Lippert, 2002: 247). Since Schröder officially supported enlargement, contrary to his personal preferences, but in line with the interests of business, this can be seen as a sign of how close the link between the Chancellor and German business interests was, something which must be taken into consideration further below.

Despite the "new assertiveness", the SPD-Green coalition continued to act as "Poland's advocate", perhaps even more so than their CDU-FDP predecessors. There was some resistance to Eastern Enlargement in "conservative circles", and the SPD-government's position during accession negotiations was always in Poland's favour. For example, Germany had to break down resistance by some member states which were not in favour of Poland's membership at that time, such as Sweden, reveals Frank Elbe, the former German ambassador to Warsaw (2011 Interview).

The first friction with the EU on enlargement connected to the safeguarding of German interests was Agenda 2000, intended to restructure the EU budget for 2000-06 with enlargement in mind. The high costs of German re-unification and high unemployment against which the new government wanted to be assessed (see Siefken, 2006), put severe strains on the German budget. The new government included the objective of lowering Germany's net contributions to the EU in its coalition agreement (see Müller-Brandeck-Bocquet, 2010: 181). This domestic *Nettozahlerdebatte* (net contributor debate),¹²³ together with rocketing unemployment rates (see Figures 4.1), paired with a more assertive Social-Democrat-led government, augured that Germany would not easily step back from possible demands for TPs (see Bulmer et al., 2000: 108-12; Lippert et al., 2001: 28-29) in areas that would constrain the financial situation, possibly lead to higher unemployment, or more wage pressure in the low-skilled sector. Some *Länder*, such as Bavaria, linked the issue of enlargement finance, arguing to keep costs as low as possible (Jeffery and Collins, 1998: 96). As seen in Chapter II, Article 23 of the Basic Law allows the *Länder* to influence European policy. However, whilst the Bavarian position might have come handy for backing the negotiating position in Brussels, blocking or slowing down the momentum of enlargement would have required a consistent definition of a clear position that would support *collective* action by the *Länder* (Jeffery and Collins, 1998: 99).

Lastly, the change from the Conservative-Liberal tandem to the Social Democrat-Green coalition meant that certain interest groups, such as the German Farmer's Union (Deutscher Bauernverband – DBV), would lose some possibility of influencing agricultural policy, since most farmers vote conservative and the Ministry for Agriculture traditionally belonged to the CDU when in power. Germany's resistance to a general curtailment of CAP subsidies cannot be explained by pressure from the DBV but rather by fears pertaining to the financial situation of large farms in East Germany and, as Germany is a major net-contributor to the EU budget, by the desire to receive as much money back as possible (Rieger, 2007: 305). Relations with the Red-Green government worsened even further in 2001, when Renate Künast (Green Party) became Agricultural Minister and her aggressive course away from

¹²³ It is worth noting that the *Nettozahlerdebatte* or the *Zahlmeister Deutschland* (paymaster Germany) debate had already started before 1998 (see Müller-Brandeck-Bocquet, 2010: 181; Jeřábek, 2011: 175-76).

organised towards ecological agriculture led to a classic concept of the enemy, explained Willi Kampmann from the DBV (Interview, 2011). Her ideas met considerable opposition in Brussels and were not realised in the end, but throughout her incumbency, until 2005, sentiment amongst farmers was against her.

It might have been expected that the SPD would offer an opportunity for labour unions to voice their preferences, especially on topics including social policy and workers' concerns, due to the SPD's traditional link with the unions, and the unionists' tendency to vote SPD. However, this link had already been weakened when the unions left the *Konzertierte Aktion* in 1977¹²⁴ and was eroded further by Schröder's labour market policy in 2003 with Agenda 2010 (Schiller, 2007: 447). Nevertheless, in its 1998 electoral program, the SPD invoked a renewal of the social market economy and a union for labour (*Bündnis für Arbeit*) (SPD, 1998). Therefore the relationship between the unions and the SPD was much closer at the time of the accession negotiations than it is today.

Germany's negotiating structure

Reflecting the net contributor debate, the Schröder administration made some changes to the structure of EU policy decision-making that would affect the accession negotiations. The EU policy co-ordination responsibilities of the Economics Ministry were transferred to the Finance Ministry (Bulmer *et al.*, 2000: 110), whilst the Foreign Ministry would gain competences, particularly for the accession negotiations. Prior to the Maastricht Treaty, the Economics Ministry had shared European policy co-ordination with the Foreign Office, given the almost purely economic nature of the then EC. It was now the Finance Ministry that assumed these tasks: to distribute EU policy documentation to the relevant ministries and the legislative branches and communicate with COREPER (Bulmer *et al.*, 2000: 24). The 1998 changes are a result of two major causes. First, the reforms were needed after Maastricht. The launch of the EMU project encroached more on the Finance Ministry, whilst the Foreign Office became the only ministry to which all three pillars were relevant (especially CFSP), and it made sense to strengthen the role of the Foreign Office in

¹²⁴ The labour unions left due to a quarrel with the government over the Codetermination Act of 1976. See Fehmel (2010), especially pp.: 129-42.

the co-ordination process. Second, the Finance Ministry was also “upgraded” to reflect the Schröder/Lafontaine power-tandem. Due to Lafontaine’s early resignation as Finance Minister, as well as the leadership skills of Foreign Minister Fischer (Bulmer et. al, 2000: 25), the Foreign Office became the more important co-ordinator of EU-policy. The Foreign Office’s role would be enhanced again with the Schröder administration’s 2002 re-election, with a marginal victory over the CDU/CSU-FDP opposition, due to the Green party’s contribution to thwarting Schröder’s plans to dictate European policy from the Chancellery (Ostheim, 2003; 373). Foreign Office also had the advantage of embassies, which would function as seismographs in candidate countries’ capitals. The German ambassador to Warsaw during the accession negotiations, Frank Elbe, participated in the internal debates in Poland and actively tried to defuse some polemic discussions such as that Poland EU membership would be exploited by Germany to achieve a new capitalist *Drang nach Osten*, buying up Polish land (Elbe, Interview 2011). For the actual accession negotiations, the Finance Ministry would co-ordinate the technical financial issues, whilst the Foreign Office co-ordinated the instructions to the Permanent Representatives (Jeřábek, 2011: 142). Mostly, the Foreign Office would issue the instructions, but the domestic decision-making procedure would allow the Chancellery to issue instructions, as in labour mobility (Schönfelder, Interview 2011). Given the diverse nature of the 31 *acquis* chapters, the relevant specialised ministries were also involved in the negotiations cycle. The Permanent Representatives would receive instructions from the Foreign Office, but during the actual negotiations the COREPER officials would have to be flexible to achieve consensus among the fifteen member states. Afterwards, the document would go back to the specialised ministries again for comments. Here, it becomes clear why the Foreign Office had an important role as co-ordinator and mediator between all specialised ministries and the common EU position that would emerge in Brussels (Schönfelder, Interview 2011).

As discussed in Chapter II, the Chancellery’s division 5 is responsible for streamlining EU policies; the Chancellor’s *Richtlinienkompetez* would always allow him to interfere in the actual negotiations, especially when a topic was “top priority”. Moreover, the regular IGCs of the European Council would allow the Chancellor to set and prepare the general guidelines for the more technical work at COREPER level in Brussels. The Chancellor’s other advantage is his ability to negotiate directly with his foreign counterparts – in this case the Polish Prime Minister. Figure 4.5 maps

Germany's *a priori* decision-making structure for Eastern Enlargement, with governmental actors in blue. Visually it is clear that the Chancellor and the Foreign Office play a central role. The EU level of negotiations is in green, whilst the Polish actors are in red. This diagram is by no means complete. For example, the German and Polish Foreign Ministers in contact constantly, and regular meetings took place as during the negotiations (Schönfelder, Interview 2011). It is important to highlight here the possible access points for non-state actors in influencing the decision-making apparatus; they are represented in yellow. As analysed in Chapter II, the GGO grants interest groups the right to voice their preferences to the relevant ministries. The two most important interest groups to mention are the two peak organisations representing workers' and employers' concerns: the DGB and the BDA. The Chancellor is constrained by party politics (coalition politics, pressure from the ruling SPD and opposition parties) and by public opinion. Since the Chancellor is located in the centre of media attention, he is exposed to strong pressure from public opinion, through opinion polls for example. He cannot ignore public opinion, as he wants to be re-elected. This argument is also valid for other political posts such as foreign minister, but perhaps less so since the individual ministers are not "in charge" of government.

Schröder was also very close to German business interests. This explains why he was officially strongly in favour of enlargement despite perhaps contrary personal preferences. During his incumbency, the car industry especially¹²⁵ seems to have enjoyed a preferential treatment and Schröder, serving on the Volkswagen board, intervened on multiple occasions on behalf of the German manufacturers or suppliers;¹²⁶ the media nicknamed him the "Car-Chancellor" (*der Auto-Kanzler*) (see e.g. Rathgeber, 2005: 10-11). Schröder was most likely aware of the German public's perception of the car industry as a guarantor of prosperity (Metzger in Rathgeber, 2005: 11), and the interventions gave him the opportunity to present himself favourably in the media – something that the Chancellor understood very well, especially during his first term, giving him another nickname: the "Media-

¹²⁵ The financial sector and business in general would also receive massive tax relief which would upset the SPD's grass roots, giving Schröder the nickname "Genosse der Bosse" (comrade of the bosses) (see Michael Naumann's article "Krise des Bürgertums: Auch die Linken haben nichts geahnt", *Frankfurter Allgemeine Zeitung*, 28.08.2011).

¹²⁶ For example: Schröder instructed the Environment Minister Jürgen Trittin to vote against an EU Directive that would have obliged the car industry to recycle old cars without any additional costs. This instruction came right after Schröder met Volkswagen CEO Ferdinand Piëch (Rosenbaum, 2002). As former Minister-President of Lower Saxony – and due to the state's large stake in Volkswagen – Schröder was on the supervisory board of VW and hence well-connected to the industry.

Chancellor” (*der Medienkanzler*) (Rosumek, 2007: 221-61). Today, German car manufacturers and suppliers are the greatest beneficiaries of Poland’s accession. The Chancellor’s closeness to German business and industry was one reason for the SPD’s rift with unions, and this special relationship must be acknowledged when analysing Germany’s negotiation structure, even though any direct links to special interests in the Chancellery are difficult to verify because it is not the industry’s official channel for raising certain preferences.

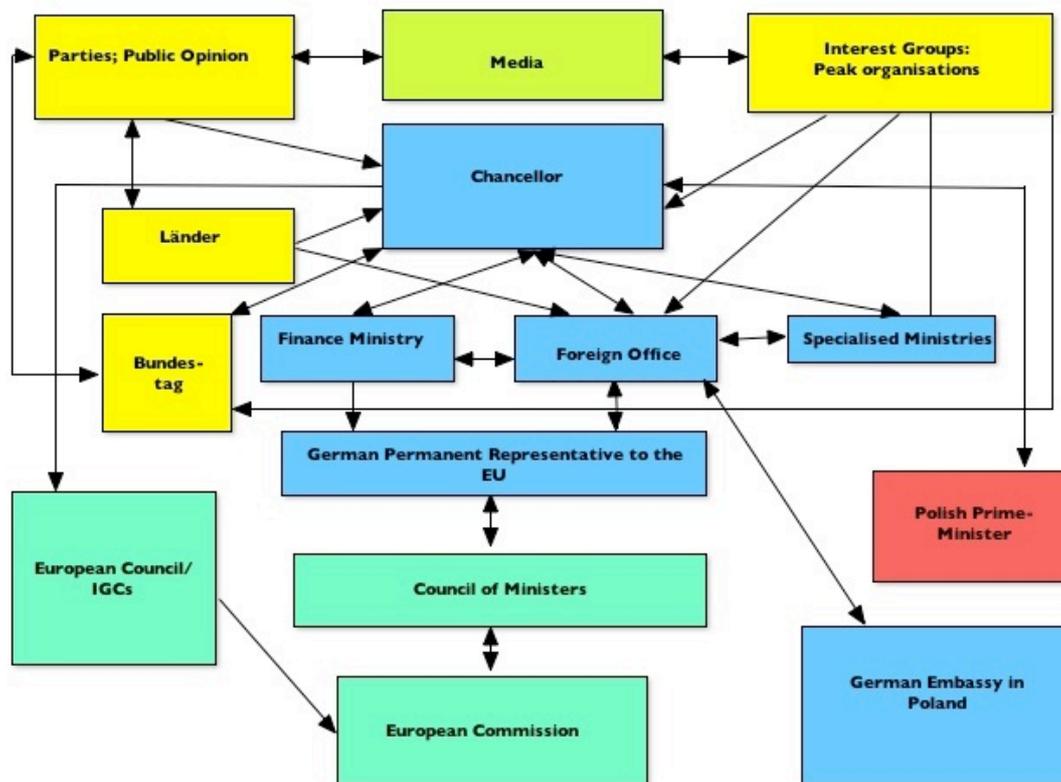
As noted, the *Länder* have, according to Article 23 of the Basic Law, the right to influence EU policy. They can also negotiate certain positions by threatening to vote against specific proposed laws in other areas which must be passed by the *Bundesrat*. The media do not directly influence the official decision-making actors since they do not have official access; but they are important since they allow an opportunity for other interest groups to attract their attention. Extensive media coverage of workers’ concerns might shape public opinion which in turn exercises pressure on parties and ultimately on the political posts of government. That way, interest groups might indirectly influence policy-makers via the media – a secondary strategy.

An important player in controlling the negotiation process and providing transparency for the public was the *Bundestag*, especially the committee for EU affairs.¹²⁷ Article 45 of the Basic Law constitutes the legal basis for this Committee and refers to Article 23 which grants the *Bundestag* an opinion-making role in European affairs. As with the *Bundesrat*, the government is must inform the *Bundestag* about negotiations with the EU “as soon as possible” (Art. 23(2) GG). All parties provided MPs for the 36-member committee between 1998 and 2002. Since the members belonged simultaneously to other committees, this led to a good balance in expertise. The committee was in regular contact with the government, the DG ENLARG, and candidate countries’ embassies and parliaments (e.g. Sejm’s EU Committee), with committee members travelling to candidate countries (Jeřábek, 2011: 149-56). Hence the *Bundestag* provided a forum for parties to voice their preferences during negotiations and individual interests from the MPs’ constituencies. Even though a cross-party consensus on the necessity for Eastern Enlargement existed

¹²⁷ The Bundestag’s Committee for European Affairs is called Ausschuss für die Angelegenheiten der Europäischen Union and was created during the 12th Bundestag in 1991, endowed with its current functions.

controversies did exist on individual questions such as the free movement of workers (see Chapter VI).

Figure 4.4 *Germany's decision-making apparatus for Eastern Enlargement and possible access points for non-state actors*



Source: own creation based on the information given above

Poland's negotiating structure

As discussed in Chapter II, the Polish post-1989 political landscape was characterised by party instability and a polarising political culture that often leads to open confrontation rather than to consensus as compared to Germany. This had also had repercussions on the enlargement negotiations. In January 1997 the Committee for European Integration (Komitet Integracji Europejskiej - KIE) was established following a Government Act of 8 August 1996 (Preston 1998: 162). In September 1996, national elections brought change. The coalition between the Communist

successor party (SLD) and the Peasant Party (PSL) was substituted by a new coalition comprised of the Solidarity Electoral Action party AWS and the Freedom Union UW. AWS was incoherent in its position: it was not a party in but an electoral coalition consisting of the Solidarity trade union bloc, liberal and patriotic conservatives, Christian Democrats and Catholic nationalists. As a result, the “party” – in the course of the next four years – disintegrated, transformed into a parliamentary club and dissolved after a defeat in the 2001 national elections. Thus, party discipline was weak and added to tensions with the liberal democratic UW, led by Leszek Balcerowicz (Blazyca and Kolkiewicz, 1999: 132-33). In addition, only the junior partner, the UW, with prominent members such as Leszek Balcerowicz and Bronisław Geremek, had experience in Polish-EU relations, having negotiated the Europe Agreements of 1991 and having pushed for EU membership as the focal point of Polish foreign policy. Especially in comparison to its major coalition partner, UW was seen as the “party of the liberal intelligentsia” with a strong pro-European profile (Neumayer, 2008: 150). AWS, in contrast, contained elements that feared the loss of sovereignty and Eurosceptics who voted against the Europe Agreements or demanded their re-negotiation – above all the patriotic wing KPN-OP and the Christian National Union (ZChN) which demanded a “Europe of Fatherlands” (Blazyca and Kolkiewicz, 1999: 134). Thus, there was always the danger of political implosion over EU accession. Whilst AWS nominated the Prime-Minister (Jerzy Buzek), the Freedom Union exploited the weakness of the loosely connected AWS by seizing the finance ministry (Balcerowicz) as well as the foreign ministry (Geremek). The Freedom Union would also have liked to control the Committee for European Integration, but AWS was reluctant to leave the entire control of European affairs to its junior partner. Surprisingly, Ryszard Czarnecki, a ZChN member, became the head of the KIE. Initially, this moderated the ZChN’s anti-EU rhetoric by giving the “Eurorealists” a say. Weakness in handling European affairs was exposed when Poland lost some PHARE funds in May 1998, followed by diverging EU perspectives, precipitating the sacking of Czarnecki as the head of the KIE, after which Prime-Minister Buzek installed himself as its chairman (Blazyca and Kolkiewicz, 1999: 135-36). This led to a split within the ZChN as the fiercest anti-EU radicals feared that the party was no longer able to protect Polish interests, so founded Polish Agreement (Porozumienie Polskie – PP) in April 1999, rejecting EU accession. This facilitated the ZChN’s participation in the government until 2001 (Neumayer, 2008: 151-52).

This gave rise to the following initial negotiating structure of the AWS-UW coalition between 1998 and 2001. Strategic decisions were undertaken in the Committee for European Integration (KIE) led by the Prime Minister, aided by the plenipotentiary of the government for Poland's accession to the EU, the foreign minister and the secretary of the KIE. These individuals constituted a "political management of negotiations" (Kułakowski and Jesień, 2007: 298). Further members of the KIE were the secretaries of state and leaders of the most important government departments, i.e. the Foreign Ministry, Interior Ministry, the Ministry of Economics as well as the Ministry of Agriculture and the Ministry of Justice. The KIE's administrative arm was the UKIE, divided into several departments, of which the departments of legal harmonisation, of political integration and of European law played the most important roles. These strategic decisions were presented to and adopted by the Polish Council of Ministers and in turn prepared by the negotiating team consisting of nineteen members and led by the above-mentioned plenipotentiary, Jan Kułakowski. Country positions could only be changed by the Council of Ministers once proposed by the negotiation team (Kułakowski and Jesień, 2007: 298). The negotiation team included two pillars: a political advisory section, to co-ordinate the work of the entire team, which included trade unions and employers' organisation representative, and the negotiating pillar, consisting of ministry representatives, which would take the actual decisions. The foreign minister would be the head of the Polish delegation at international conferences on accession. The embassies also played an important role in capturing the mood in the existing member states, reporting back to the MSZ in Warsaw. From the beginning, the legislative branch was incorporated into the negotiation process. After approval by the government, the chief negotiator would present the most important strategic positions of the Polish government (on accession and its progress), to the marshals of both chambers of parliament and leaders of the Commission for European Integration and to the Foreign Policy Commission of both parliamentary chambers (Polish Government, 2000: 26-27).

Non-governmental actors were also involved in the process. Kułakowski confronted popular feelings about Poland's accession negotiations through the "Understanding the Negotiations" campaign, issuing publications informing the public on integration issues. Kułakowski also travelled to the regional capitals for sixteen conferences in which he could listen to a range of opinions and criticism (Kułakowski and Jesień, 2007: 299). Social and professional groups participated in

the meetings, voicing their own, and regional, concerns pertaining to certain Chapters (Polish Government, 2000: 53). Since the 1997 regional reform, a Joint Commission of Government and a Territorial Self Government, consisting of fourteen representatives of central government and fourteen representatives of the territorial self-governments, was created by an Ordinance of the Council of Ministers on 22 July 1999. Within this Commission, a Committee for European Policy gave the regions an opportunity to influence negotiations in plenary session (Polish Government, 2000: 53; 102-03). As noted in Chapter II, Polish regions are weak and the influence they could have exercised on the negotiations should not be over-emphasised since this Commission was new at that time. Nevertheless, this Commission was another official forum where matters could be raised.

Modelled after EcoSoc, the EU Economic and Social Committee, Poland set up a Provisional Liaison Committee for co-operation with EcoSoc. Nine Polish third sector organisations belonging to the Liaison Committee: the Consumer Federation, the Business Centre Club, the Polish Business Council, the Polish Chamber of Commerce, the Polish Craft Association, the Federation of Trade Unions of Agricultural Employers, the National Council of Chambers of Agriculture, the "Solidarity" Trade Union and the All-Poland Alliance of Trade Unions (OPZZ), consulted the negotiation team until 6 June 1999 when the Consultation Team assumed this task (Polish Government, 2000: 55; 103). This is another example how the internationalisation of relations creates more opportunity for non-state actors to play a role in foreign policy-making. Whilst the above-mentioned social partners were officially able to voice their preferences, the reality was often different. As Władysław Mucha, the then vice-leader of Poland's second trade union OPZZ, explained to the author:

neither during the AWS-UW nor during the SLD-PSL coalition did trade unions have much influence on EU-accession topics. Very often trade unions sought their own way to European trade unions associations. Neither do I remember any of the OPZZ leaders having any direct involvement in the negotiations team nor did any of the negotiations team ask us for an opinion regarding the acquisition of real estate by foreigners or the free movement of workers. (Mucha, 2011: Interview)

This is not surprising, as the SLD-affiliated OPZZ was in open conflict with AWS at the time and in April 1999 left the Commission for Social and Economic Affairs. The Commission criticises the absence of an "autonomous social dialogue at sectoral level

[and] no progress ... at enterprise level, with social dialogue not taking place in most new enterprises” under Chapter 13 of the *acquis* (social policy and employment) (European Commission, 2000: 55). As analysed in Chapter II, the confrontational style of “anti-politics” in Poland makes dialogue between interest groups and government difficult. Therefore, official claims about the inclusion of social partners in decision-making must be evaluated critically.

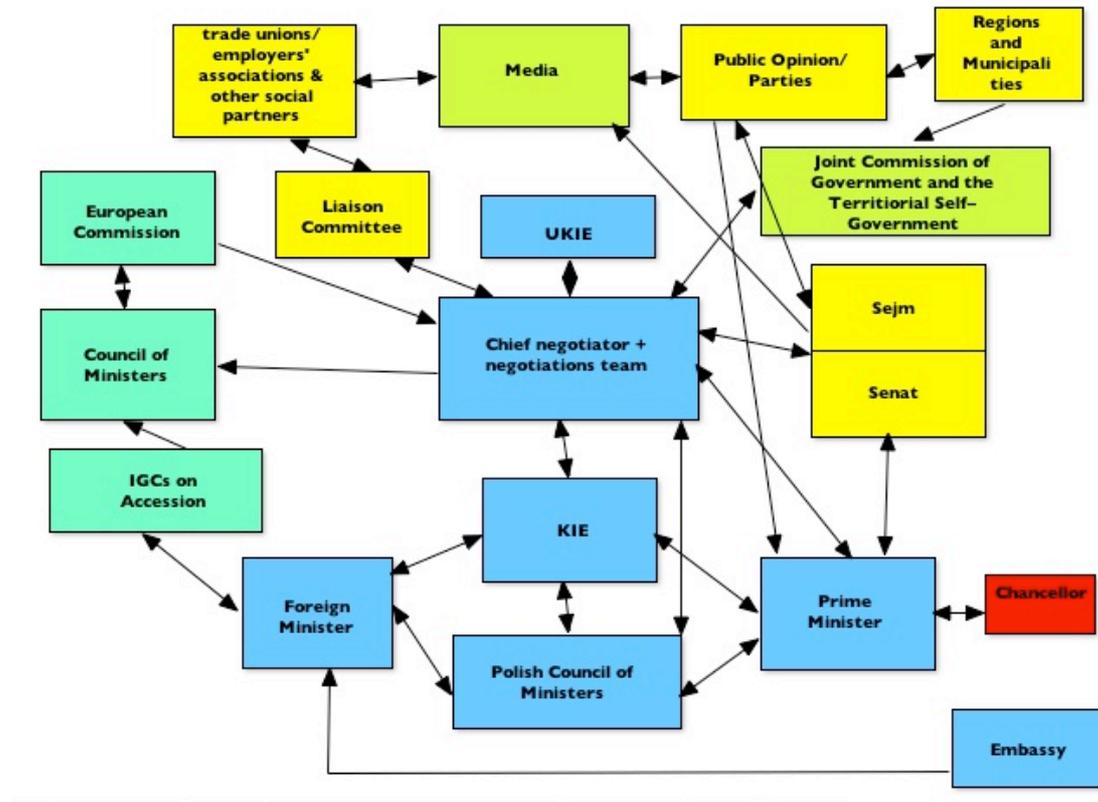
Officially, frequent ad-hoc meetings with relevant social partners, professional groups, church representatives, academia and media were held with Kułakowski or Task Sub-Groups of the Negotiation Team during the course of the accession negotiations (Polish Government, 2000: 56-60). Figure 4.5 (from official sources) shows the most important actors and the detailed decision-making structure within the government. In Figure 4.6 I visualize the web of interaction of most important actors involved and show access points for non-state actors. An important non-state actor is the Sejm. As noted in Chapter II, Polish politics are often conducted in a confrontational style with the Sejm a perfect forum to fight “political battles” openly. Debates in parliament enable parties to voice their preferences. Even members of the governing party might voice their dissatisfaction there, as the first case study discusses. If reported by the media, controversial debates can influence public opinion, which can influence party positions and exert pressure on the political posts in government.

Figure 4.5 *Preparation of Poland's Position Papers*



Source: Polish Government (2000: 18)

Figure 4.6 Polish decision-making apparatus for EU Accession and possible access points for non-governmental actors



Source: own creation based on the information given above

The Polish negotiating team underwent considerable restructuring following the governmental change of 2001. Party dynamics played a crucial role. The SLD, a pro-European party and the only one supporting a federal model of European integration (Zuba, 2009: 331), became the strongest party in the Sejm with 47% of all mandates. Second came PO with 14.1% of all mandates, the largest opposition party. The SLD's junior coalition partner, the Polish Peasant Party (PSL), gained 9.1%. Two populist parties also entered the Sejm, and would play an important role in the negotiations, as discussed below. The first was the Self-Defense (Samoobrona), led by Andrzej Lepper, appealing mainly to the rural population, as it constituted an agrarian trade union. It played the role of a major protest and anti-system party (Piskorski, 2010: 29-40) which "unfolded a vision of threats for the Polish farmer resulting from Poland's

planned accession to the EU” (Zuba, 2009: 333). The other populist party was the right-wing Catholic national League of Polish Families (Liga Polskich Rodzin, LPR) which was decidedly anti-EU on political, economic and ideological grounds until the 2003 accession referendum (Zuba, 2009: 334). Last was a new party, Law and Justice (PiS), also critical of the EU, but supporting the anchoring of Poland within west European structures, though not without pointing to the risks of accession in the economic and cultural spheres (Zuba, 2009: 333). These opposition parties are important, since parliament was indirectly involved in the accession negotiations. As noted, the chief negotiator presented the progress of the EU accession negotiations to both chambers of parliament. This represented an ideal platform for all parties to exercise pressure on the government. As will be seen, in the case of the land issue the parties exploited the topic, highly politicising negotiations over that chapter. Moreover, since the media covered parliamentary debates and the parties’ polemics, public opinion increasingly feared that Poland was “for sale” and the government was obliged to adopt a tough stance on the issue.

Between 1998 and 2001, Poland’s progress in the accession negotiations was slow. Santer introduced the Progress Reports for each candidate, but the pace sped up after Prodi made Verheugen Commissioner for Enlargement and gave him horizontal powers in his DG. As a means of putting pressure on each candidate state, Verheugen merged the Helsinki and Luxembourg Groups. However, after the first two years, Poland was the country with the fewest closed chapters (Orzechowski and Verheugen, 2009: 140-41). As a result, the new government was forced to speed up negotiations and simplified the structure. Importantly, the chief negotiator, now Jan Truszczyński, moved from the Chancellery to the Foreign Ministry (MSZ), as this body was now responsible for the negotiations. The MSZ was also given a separate department for the European Union and negotiation operations (Świeboda in Trzeciak, 2010: 95). The difference between Kułakowski’s and Truszczyński’s negotiating style also played a role in the speed of negotiations. Kułakowski, an academic with some diplomatic experience, concentrated on the basic strategic and political goals whilst paying attention to public opinion and the various pressure groups. He also preferred to bind together several issues in order to force consensus and compromises. Truszczyński, very experienced in diplomacy and administration, concentrated more on the technical aspects of negotiations, paying little attention to public opinion. He preferred to progress gradually (Trzeciak, 2010: 98).

As noted, the negotiation team was split into two pillars, of which the political advisory group was meant to listen to the concerns of employers' associations and trade unions. In Chapter II my analysis demonstrated that Polish interest groups are fragmented, which results in favouring larger and more established organisations. This was criticised in the Commission's November 2000 Progress Report on the chapter dealing with SMEs. The report notes that the Polish economy has undergone a severe transformation process. In the early 1990s large enterprises dominated, while by 2000 SMEs already prevailed, constituting the core of the Polish economy and employing almost two thirds of the total labour force, accounting for half of both GDP and total exports and 60% of all imports. Despite this, "the main focus of attention often remains [on] large-scale enterprises usually in traditional heavy industries." (European Commission, 2000: 62-63)

V. Conclusion

This chapter explored Poland's EU accession. Despite Poland obtaining an Accession Agreement early on, old member states favoured a free market with Poland as long as has no impact on their economies. Sectors including agriculture, iron, steel and textiles, remained shut. Germany was no exception. This foreshadowed the 1998 accession negotiations.

The chapter analysed possible motives for Germany's continuous support. Three reasons stand out: a moral dimension, security and economic opportunities. The last point concerns non-state actors' interests since a prosperous neighbour could provide new business opportunities. Trade unions and the eastern *Länder* should be expected to demand labour mobility restrictions since it could lead to wage pressure and arguably higher unemployment rate in this region. However, a prospering neighbour also demands more goods and services helping to secure German jobs. Poland's motivations for EU membership are connected to post-Cold War western integrations, security and economic prosperity; an expectation shared by most of Poland's population. Both states negotiation structures reveal that various access points for non-state actors' preference voicing were created, notably at the ministerial and head of government levels. Noteworthy, German Chancellor Schröder's indirect

quote that he was actually not interested in Polish EU accession underlines once more the analysis of Chapter II: the importance of Germany's polity that only allows incremental policy changes. This also shows that possible personal preferences of a Chancellor do not outweigh the interest of the entire German economy and all the interest groups attached to it since Germany continued to support Poland's accession efforts.

Poland's negotiation structure was changed and the first chief negotiator Jan Kułakowski tried to involve as many actors as possible in the negotiation decision trying to force consensus that would back the government. As revealed by my Interview with an OPZZ union representative, some non-state actors seem to have been favoured over others. Moreover, since the negotiation positions were passed to the parliament the parties had a great role in commenting these positions, bringing them to the public and forcing a debate that would most likely lead into a confrontational style of dialogue as Chapter II has revealed. The next two case studies, which are set within the EU-accession framework, will pay attention to these points.

5. The Free Movement of Capital

Following on from the previous discussions of the foreign policy structures of Germany and Poland, their degree of institutionalisation, and the 2004 EU enlargement, this chapter, uses the free movement of capital case study to test all hypotheses outlined in Chapter I. The subsequent chapters will address the same hypotheses using the case studies of free movement of workers to Germany and the Centre for Expulsions.

Although, as discussed, the EU negotiates as a community, the two first case studies demonstrate a strong link to German-Polish relations. The two following chapters demonstrate that both transitional periods (TPs) result directly from the Polish-German constellation. The long TP on free movement of capital regarding agricultural land is a direct result of Polish fears of a German land-grab, a new peaceful “capitalist *Drang nach Osten*” (discussed below). The TP regarding free movement of workers was initiated by the German government due to domestic pressures fearing a “flood” to the German labour market, with the poor and populous Poland especially singled out. Legally, the new members’ accession is agreed *unanimously*¹²⁸ thus it is important to examine the negotiations of specific inter-state dynamics.

The free movement of capital and the acquisition of land by foreigners

The freedom of EU citizens to acquire real estate in any member state belongs to “horizontal” issues, i.e. this right impacts on several community provisions depending on the purpose for which the purchased property: the free movement of workers, the freedom of establishment, the freedom to provide services and the free movement of capital. Council Regulation 1612/68 establishes that an EU citizen employed in the territory of another member state must enjoy the same rights enjoyed by workers who are citizens of the host state, including the right to own of housing.¹²⁹ Under community law, legal persons have the right of establishment, and the acquisition of land and property is part of that. A company providing services may need to acquire

¹²⁸ Former TEU Art. 49 states that accession treaties must be “ratified by all the contracting states in accordance with their constitutional requirements”.

¹²⁹ See also C-305/87 [1989] *Commission vs. Greece*.

real estate even if the services are temporary, while the real estate is acquired on a permanent basis. However, the ECJ ruled that foreign companies should not be prevented from equipping themselves with infrastructure.¹³⁰ Lastly, prohibition of the acquisition of real estate also infringes on the free movement of capital, since investments often lead to such a transfer. The ECJ even discerns a breach of free movement of capital in cases where property has been acquired and a link between the property purchase and its use for economic activity cannot be established beyond any doubt (Mik, 2002).¹³¹ During negotiations, the Polish government treated the issue under Chapter 4 of the *acquis*, dealing with the free movement of capital, and I will analyse this issue in line with the negotiations, but the horizontal character must be borne in mind.

From the beginning of accession negotiations, there was recognition candidate states would have problems fully implementing Chapter 4 of the *acquis* in cases of land and property acquisition by foreigners. The earliest precedent for derogations from community law had already been established with the 1973 enlargement. Denmark¹³² – in what is now one of the few examples of a permanent derogation from the *acquis* – secured a provision preventing foreigners from acquiring land or a second residence along the Danish coast. Such properties can only be rented,¹³³ and foreigners can buy real estate in Denmark for business and primary residence purposes. More important precedents for Poland and CEECs were the 1995 derogations of the EFTA enlargement. First, these exceptions were granted during the most recent enlargement, and more importantly after ratification of the Maastricht Treaty. Second, all three countries were wealthier than the CEECs, but they nevertheless obtained TPs of five years before the requirement to allow EU foreigners the right to acquire second homes. The TP was granted in order to appease public fears in those countries of an invasion of wealthy Germans eager to snap up holiday

¹³⁰ See C-55/94 [1995] *Gebhard vs. Consiglio dell'Ordine degli Avvocati e Procuratori di Milano*.

¹³¹ See C-302/97 [1999] *Klaus Konle vs. the Republic of Austria*; C-423/98 [2000] *Alfredo Albore*.

¹³² Denmark and the UK have even acquired the status of “pariah states” due to their permanent opt-outs from EU integration, especially after their reluctance to participate in EMU and Justice and Home Affairs (Watts and Pilkington, 2005: 35).

¹³³ Legally, Article 6(4) of Directive 88/361EEC stated that limiting the right of Community citizens to acquire real estate in another member state should be treated as inapplicable from 1 January 1994 unless a member state has secured a reservation in the Treaty itself. Denmark has secured for herself such a reservation and is still allowed to retain it (Mohamed, 1999: 117). This derogation has been put into Protocol 32 of the Lisbon Treaty.

homes (Jesień, Interview 2011).¹³⁴ The UKIE, in its Public Information Programme, specifically declared that it was drawing on the experiences of the EFTA enlargement (UKIE, 1999: 9). Consequently, it can be deduced that TPs in respect to property issues with regard to the free movement of capital are not uncommon and are accepted by existing member states. The Polish negotiation team was aware of this, and would also seek a TP.

In 1997, a first cautious Commission assessment on the prospect of the free movement of capital regarding real estate in Poland was given in point 3.1 of Agenda 2000, “Internal Market Without Frontiers”. The Commission states: “Legislation regarding the ownership of land and related assets by foreign nationals remains inadequate and will require clarification and alignment in the medium term. [...] Investments in real estate in Poland, other than foreign direct investment, will be the last item to be liberalized,” and concludes that, “The application of the *acquis* regarding the ownership of land and related assets by foreign nationals may present a significant problem in the medium term.” (European Commission, 1997: 43) Before negotiations were opened in March 1998, the UKIE published a National Strategy for Integration and declared that “the obvious goal of the government will be to maximize the benefits and to minimize the costs” of accession (UKIE, 1997: 8) and, pertaining to the free movement of capital, warned that the “full freedom of acquisition of tangible assets by foreign subjects” could become a problem during negotiations (UKIE, 1997: 21), adding, on agriculture, that “regulations regarding the acquisition of land will be passed in the interest of the Polish economy as well as instruments used in the countries of the European Union,” (UKIE, 1997: 30) thereby hinting that Poland would want a TP. It can be concluded that, from the beginning of accession negotiations, all parties acknowledged that the liberalization of real estate would be a “tricky question” and that a TP would probably be negotiated, similarly to the preceding enlargement rounds. This also means that connecting restrictions on the free movement of capital with restrictions on free movement of labour as a *quid pro quo* exchange, as requested mainly by Germany and Austria (see Chapter VI), is not entirely academically sound since the need for a TP was already acknowledged

¹³⁴ In 1997 even *The Independent* published an article reporting how Germans peacefully “invade Europe” and locals have no chance to obtain holiday homes for themselves: “Germans put towels down across Europe”, *The Independent*, 2.03.1997.

beforehand.¹³⁵ Many analyses and media reports nevertheless present this as a package deal (e.g. Mihaljek, 2005: 192-93).

Nevertheless, there were sound economic reasons in favour of a TP in this area. Alan Mayhew, Head of Relations with Central and Eastern Europe 1992-95 at the European Commission and in later years advisor to the Polish government, attested in an assessment of negotiations in 2000 that the liberalization of agricultural land and forests could be dangerous if foreigners bought large enough areas leading to possible social tensions in the candidate countries. Foreigners might buy land simply for speculative gains and swift price rises could make the restructuring of farming more complicated (Mayhew, 2000: 36-37). Others argued that trade liberalisation of farmland would actually be beneficial for three reasons: first, foreign investors would want to make money and the only way to do so would be to make agriculture more efficient. In that sense, foreigners would not only drive land prices up, but at the same time would introduce new methods of production, new technologies, and improvements in organization and management techniques. Second, foreign competition would benefit Polish farmers because rising land prices would permit them to leverage their property more easily, and so acquire more acreage and more inputs. Third, assuming that farmers behave in a rational manner, any restrictions in the form of TPs would encourage farmers to hold on to their farmland in the expectation of a significant price increase once the restrictions expired. This would obstruct land consolidation and the development of a more efficient agrarian structure, since marginal and inefficient producers would be reluctant to sell their farmland and leave the business (Dadak, 2004: 286). As seen below, the negotiation team concentrated on the possible negative effects of real estate liberalization in the justification for a long TP.

Kułakowski, was aware that price differences between Poland and more affluent EU member states (e.g. Netherlands and Germany)¹³⁶ could lead to increasing real estate turnover (Kułakowski and Jesień, 2007: 306). However, Mayhew argues that “this is a problem, like the free movement of workers, because it is considered a problem by politicians and the electorates.” (Mayhew, 2000: 36-37) The obvious

¹³⁵ The author would like to thank Leszek Jesień on this point. It needs to be added at this point that a compromise between the two topics was reached, however. See below.

¹³⁶ Before Polish accession, Dutch farmland was thirty times more expensive and West German farmland ten times more expensive than Polish farmland (Dadak, 2004: 277).

question is why Polish politicians and the electorate considered this a problem.

The main reason is historical, specifically related to the consequences of WWII. Poland was moved westwards and obtained large areas from the former German Reich's eastern territories. Poles from the *Kresy* region, today predominantly in Ukraine and Belarus, were resettled on these territories (see Figure 5.1).

Figure 5.1 *Polish and German border changes 1945 and population expulsions and resettlements 1945-1950*



Source: <http://www.geosmile.de/index.asp?affid=0&rid=60&pid=100348468>, accessed 6 March 2012.

Thus, the Polish population is sensitive about land issues and Poles living in the former German territories are especially sensitive to the prospect of Germans returning to their, or their ancestors' former property – whether through attempted legal measures (Preussische Treuhand: see Chapter VII) or by purchase. As Chapter III has demonstrated, these fears have already played an important role in discussions over the Border Treaty in 1990 and the signing of the Co-operation Treaty in 1991. As Leszek Jesień explained to the author, despite Polish media coverage focusing on the likelihood of Germans buying up agricultural land, another issue which played a role was judicial in nature. After Poland was given the former German territories at the Potsdam Conference, the state created a large number of State Agricultural Farms (*Państwowe Gospodarstwa Rolne*),¹³⁷ of which the majority were located in these

¹³⁷ These state farms were modelled after the Soviet *sovkhoz*.

territories. When Poland made the transition to a market economy, these collectivised farms were dissolved and the ownership of the land was transferred to an agency for agricultural real estate (*Agencja Wolności Roles Skarbu Państwa – AWRSP*). People could then either buy or lease the land. Given their lack of substantial financial means at that time, the majority of farmers chose to lease the land for a period of 99 years. Also, collectivisation after WWII was highly arbitrary and, while some resettled Poles were able to own farms, they received this agricultural land in the former German territories on the basis of an act of endowment, and real estate registers remained unregulated. In addition, land registers in the former German territories were outdated and the Communist government had not managed to regulate this issue properly. As a result, most farmers living in the so-called regained lands had no experience of owning private property and were understandably scared of possible investors from the West (Jesień, 2011 Interview).

Public opinion

The Polish government conducted an opinion poll which revealed that, whilst up to 70% of Poles were ready to vote in favour of Poland's accession, over 60% of those "yes" votes would become "no" if there were immediate liberalisation of real estate acquisition (in Kułakowski and Jesień, 2007: 306). Similar results were published by CBOS in June 1998. Although at that time 32% of all respondents regarded foreign investment as insufficient, 25% as satisfactory with only 13% evaluating foreign investments as too high, when it came to the question of foreigners investing in various types of real estate, the majority of respondents opined that foreigners should not be allowed to acquire this type of investment at all (Table 5.1).

Table 5.1 Polish public opinion on the possibility of foreigners acquiring various types of real estate (in percentages)

Should foreigners be allowed to buy:	Yes, without limitations	Yes, but only with special permission	No, they should not be allowed at all
woodland	3	15	74
bodies of water (lakes etc.)	3	17	71
recreation areas with beautiful landscape	4	20	68
farmland	5	26	63
construction sites in towns	5	32	55
houses	11	30	51
manufacturing plants	8	35	48
apartments	16	31	45

Source: CBOS, June 1998: Polish Public Opinion: Acceptance of the Presence of Foreign Capital in Poland

http://www.cbos.pl/PL/publikacje/public_opinion_1998.php, accessed 6 March 2012.

In an analysis of Polish press releases in the two months preceding the opening of accession negotiations in March 1998, Łubieński (1998) concluded that Poland was depicted in the Polish press as a supplicant or a student of the EU which had to comply with EU rules, whilst at the same time the EU was presented as a dominant and authoritarian institution which did not allow exceptions to these rigid rules. A headline in the then third biggest daily *Rzeczpospolita*, with roughly 1.5 million readers, stated that Poland would negotiate its EU accession “on its knees” (in Łubieński, 1998: 12). As a result, the government was under pressure from public opinion and the media to defy the gloomy picture of Poland being a weak negotiator. Further pressure arose from the public’s evaluation of the negotiation team’s abilities to negotiate for Poland’s benefit. In November 1999 the Ośrodek Badania Opinii Publicznej (OBOP) published a representative opinion poll revealing that, whilst 42% of the population overall trusted the negotiation team, another 42% did not trust it. Interestingly, farmers were the group with the highest level of mistrust of the negotiation team, with 73% (OBOP, 1999: 11). For farmers, of course, not only land, but also CAP subsidies and other related matters were important issues. Nevertheless, the possibility of foreign farmers entering the Polish agricultural market on Polish soil must undoubtedly have had an impact on this high level of mistrust.

Sejm

On 19 March 1998, when Ryszard Czarnecki, head of the KIE,¹³⁸ informed the Sejm about the upcoming accession negotiations, several MPs asked questions about land. Szczesny Zarzycki, an MP from the PSL, referred to “disturbing signals”, especially in the northern and western voivodeships. He also talked about companies leasing some 200,000 hectares of land with foreign capital and asked about the possibility of keeping Polish land in the hands of Poles, stressing that “as a Pole, a member of PSL and a farmer” his fatherland was precious to him and he would not agree to use Polish land as a token in order to reach any negotiation breakthroughs. Czarnecki responded that he was aware of the practice in other countries like Denmark and Austria where derogations from community law exist and affirmed that these precedent cases would be used in negotiations. Also, Czarnecki stated that, as an MP from “Wrocławian land”, he was aware of the emotions attached to this issue and that the government would not play with these emotions. At the same time, Czarnecki made it clear that the negotiation tactics could not be revealed at this stage. Roman Rutkowski, an MP from the governing AWS, also raised this issue as the top concern. He gave an example from the Gorzów Voivodeship¹³⁹ where Polish-German business partnerships were buying land and “even though there is no proof, but when I meet with electors from this place it is revealed that everybody knows that the owner of this bought bankrupt farm is [...] not Kowalski but some Miller or Schmidt.” (Sejm, 19.03.1998)

These two examples from MPs reveal that the Sejm was exercising pressure on the government and its negotiation team from the start. More specifically, the pressure was emanating from political parties (in these two examples AWS and the PSL) as well as indirectly from certain interest groups (here farmers represented by the PSL) and especially from certain constituencies (the former German territories).

On 21 May 1998, Marek Naglewski, under-secretary of the Interior Ministry and Administration, presented to the Sejm the legal status quo on the possibility of

¹³⁸ Ryszard Czarnecki was head of the KIE between 17 October 1997 and 27 July 1998 before Prime-Minister Buzek seized the post for himself following the loss of some EU funds (see above).

¹³⁹ The Gorzów Voivodeship bordered Germany and was one of the 49 voivodeships which existed from 1975 until the 1998 reform which gave Poland its current regional structure of 16 voivodeships. The majority of the Gorzów municipalities now belong to the Lubusz Voivodeship.

foreigners acquiring real estate in Poland and the statistics on that matter. The law regulating the acquisition of real estate by foreigners dates from 24 March 1920.¹⁴⁰ Naglewski explained that all real estate turnovers required authorisation from the Interior Ministry (MSWiA). Since 1 January 1998, however, foreigners have not required a permit for the acquisition of shares in publicly listed companies which own real estate. For all other companies, however, an authorisation is required. Naglewski cited the 1990 grant of 565 permits to foreigners wishing to acquire real estate in Poland. In 1997, 2001 authorisations were granted. Amongst natural persons, 367 Germans obtained a permit of which 18 were for apartments and 349 for plots amounting to a total of 120 ha. Individuals from the former CIS constituted the second largest group of nationals with only 57 permits, whilst the second largest group from the EU were Swedish citizens with 40 authorisations. The Polish regions mostly affected by these acquisitions were Warsaw (Warszawa), Opole, Gdańsk, Bielsko-Biała, Katowice, Szczecin, Cracow (Kraków) and Poznań (see Figure 4.9). The majority of legal persons acquiring real estate in Poland were business partnerships domiciled in Poland. In 1990, only 74 permits were issued and by 1997 the figure had risen to 1,326 amounting to the acquisition of 2,692 ha, or about 2 ha per firm. The foreign companies behind these acquisitions were from following countries (in order of size of investment, largest first): Germany, The Netherlands, The USA, France, Britain and Sweden. The investments were made in voivodeships with large cities or close to urban areas (Warsaw, Katowice, Poznań, Gdańsk, Wrocław, Ostrołęka). Moreover, the under-secretary stressed that these investments were a natural process of foreign investment, and that liberalisation of this law would be needed if Poland wanted to join the EU (Sejm, 21.05.1998).

As the above statistics suggest, it would be an exaggeration to talk about a flood of Germans eager to “buy up” the former German territories. The 120 ha acquired by German natural persons is negligible and, as Cezary Gawlas (2011 Interview) explained to the author, to date these people have mostly been Germans

¹⁴⁰ *Ustawa z dnia 24 marca 1920 r. o nabywaniu nieruchomości przez cudzoziemców*. Article 1 specifies that not only is the consent of the Interior Ministry required when a foreigner wishes to buy real estate, but also that of the Ministry of Defence, and when the land is agricultural the Ministry of Agriculture as well. The law remains in force until Poland’s transitional period ends in May 2016. The full legal text is available at: <http://isap.sejm.gov.pl/Download?id=WDU20041671758&type=3>, accessed 6 March 2012.

born in Poland who emigrated to Germany¹⁴¹ and who plan to retire close to their place of birth as they still have family and cultural ties. Also, companies buying real estate have done so in large urban areas where high population density promised a high concentration of consumers, workers and better-developed infrastructure than in rural areas. Nevertheless, the parliamentary debate on this question was emotional.

Figure 5.2 *Polish voivodeships 1975-1998*



Zarzycki, an MP from the PSL, exclaimed that as a Pole and a peasant he would not consent to liberalisation of the law imposing limitations on the possibility

¹⁴¹ The majority of these Germans buying real estate in Poland have been so-called “late emigrants” (*Spätaussiedler*) as defined by Art. 116 of the Basic Law. This explains why the Opole and Katowice voivodeships have been amongst the most affected by German purchases of real estate since these areas were inhabited by ethnic Germans or people who define themselves as Upper Silesians.

of foreigners acquiring land. He also asked about the “fate” of the 200,000 ha of agricultural land in the possession of the AWRSPs (Sejm, 21.5.1998). PSL MP Janusz Dobrosz delivered a fierce speech, saying that land is the treasure of the whole nation and must remain in the hands of Polish peasants and producers. He referred to the first National Sejmik of Polish Peasants¹⁴² which ruled that “selling precious land to foreigners is a crime against the nation and the Polish state.” He stressed that the “PSL does not think in terms of short-term gains that only benefit liberal-orthodox groups,” claimed that nobody in Poland actually knew how much land foreigners had bought and opined that the figures presented by the ministry were already “dangerous for Poland’s *raison d’être*, especially since acquisitions by foreigners, and mainly Germans, are concentrated in the regained lands”. This would be further aggravated by the fact that these lands still belong to Germany in her legal thinking, as Article 116 of the German constitution proves. He also referred to Cardinal Stefan Wyszyński’s words:

Here, on Polish soil, we are the hosts. It is up to us to decide the direction of our life and existence. Poland, in spite of the partitions, was saved only because the farmers and the villages defended every piece of land with their teeth so as not to give it to strangers. Homeland, especially in our geo-political system, is a momentous element that must be properly handled. (Sejm, 21.5.1998)¹⁴³

Zofia Krasicka-Domkam, an MP from the ruling AWS, who in 2001 obtained a mandate for the right wing LPR, reminded parliamentarians of an old saying that “as much Poland exists as Polish soil lies in Polish hands,”¹⁴⁴ obviously playing with fears of Poland’s traumatic past – the three partitions of the 18th century as well as the last partition between the USSR and the Third Reich. Furthermore, she referred to various press articles stating that Poland had lost some 28,000 ha to mainly German foreigners. She also said that agricultural land in the northern and western region would lie fallow after the dissolutions of the PGRs, that this soil would be sold to the highest bidder and that “society expects an update of the law that would serve national interests” (Sejm, 21.5.1998). Ireneusz Niewiarowski, MP from the SKL, a conservative peasant group belonging to the governing AWS, stressed that foreigners

¹⁴² *Sejmik* as a diminutive of *sejm* denotes a regional or small assembly. The Krajowy Sejmik Chłopów Polskich (National Sejmik of Polish Peasants) was founded and lead by Zdzisław Podkański from the PSL. This Assembly was fiercely against EU integration and later called for a “no” in the referendum on accession.

¹⁴³ All translations are the author’s own.

¹⁴⁴ In Polish: *tyle Polski – ile polskiej ziemi w polskich rękach*.

buying land in Poland for investment purposes create jobs in Poland and that “no foreigner will carry the land out of Poland”. However, when it comes to foreigners wishing to acquire agricultural real estate for purposes other than investment, they should be treated differently since this type of land was significantly cheaper than in Western Europe. Moreover, the MP suggested mimicking the Danish model prescribing that anyone wishing to buy agricultural land in Denmark must be a Dane or an EU citizen who does not possess this type of land abroad and who settles down in Denmark within six months of such an acquisition (Sejm, 21.5.1998).¹⁴⁵

Antoni Macierewicz,¹⁴⁶ an MP from the opposition eurosceptic Movement for the Reconstruction of Poland (Ruch Odbudowy Polski – ROP) alleged that the ministry did not know the real situation and that the figures presented would have to be “multiplied by ten or twenty” (Sejm, 21.5.1998). Another ROP member, Dariusz Grabowski, said that “ROP supports the position that first, land is our great treasure; second, history has taught us that ‘as much Poland as Polish soil in Polish hands’; and third, one has to do everything to prevent land from becoming the object of speculation.” (Sejm, 21.5.1998)

These summaries of MPs’ speeches demonstrate how emotionally the topic of land was discussed in the Sejm, especially by the peasant party PSL and the peasant and eurosceptic wings of the governing AWS. What can be detected is the reciprocal relationship between parliamentarians, the media and public opinion. Hence, parliamentarians would play an important role during negotiations, by providing transparency to the public, and would also function as a medium for interest groups (especially peasant interests and rural regions) to exercise pressure on the government to adapt a “tough” position in the negotiations. The tactics applied by MPs were to “push all the buttons” in order to stir up emotions amongst the public and create emotional press coverage by referring to Poland’s traumatic history, the German threat, Catholicism and peasant heroism. These elements are of course deeply engrained in the Polish psyche since these topics are extensively covered at school in the study of Poland’s history.

¹⁴⁵ Indeed, Alan Mayhew, an advisor to the Polish government during accession negotiations, confirmed to the author that one way for foreigners to acquire agricultural land was to marry a Pole (Mayhew, Interview 2010). However, the amount of people willing to do that was low. Marriage seems to be a high price to pay for quick financial gain given the possible legal consequences.

¹⁴⁶ Macierewicz entered the Sejm in 2001 as an MP for the right wing League of Polish Families (LPR). He was Interior Minister 1991-92 for the ZChN during the Jan Olszewski government.

Poland's first position

After the screening process described in Chapter 4, on 13 July 1999 the KIE adopted Poland's first position in the area of free movement of capital, asking for a TP lasting five years for the acquisition of real estate for investment purposes and one lasting eighteen years for agricultural and woodland real estate.¹⁴⁷ This position refers to the above-mentioned historical, social, political and economic (lower purchasing power of Poles and low real estate prices) circumstances and states, "this is the only area dominated by political arguments":

Polish public opinion is [sic] particularly sensitive to the issue of land ownership. Therefore negotiation results in the area of freedom of real estate acquisition can be a decisive factor for the approval of the future Accession Treaty by Poles. Hence full understanding of the issue lies in the interest of both Poland and the European Community as well as of its Member States. (Polish Council of Ministers, 1999: 2)

The position also makes reference to the reconciliation process which started after WWII but which started in Poland only recently, and also states that this process "must not be excessively accelerated" since the process is not only one between "power elites" but also between people. At the same time, the people's approval is necessary for the process of reconciliation to overcome "the Yalta division of Europe" (Polish Council of Ministers, 1999: 2).

An eighteen-year TP would be exceptionally long. However, domestic pressure coming from public opinion, farmers and pressure groups including the PSL, as well as pressure exerted by almost all parties including certain factions of the ruling AWS, influenced the government in applying for this long period. Despite a rapid fall of over 10% since 1989, 19.2% of Poland's total labour force was still employed in agriculture, forestry and fishing (OECD, 2000: 25). This staggering number would not allow any government to play with the wishes of farmers or their pressure groups. Coalition politics also played a role. Whilst the junior coalition partner UW would have been satisfied with a 12-year derogation, AWS had to take its various factions

¹⁴⁷ In comparison, no other candidate states applied for a transitional period on the acquisition of real estate for investment purposes, and most candidates applied for a ten-year transitional period regarding the acquisition of farmland and forests.

into account. As noted above, AWS was not a party in the traditional sense but was itself a coalition of various factions. Within AWS the eurosceptics, the right-wing and factions more inclined towards the farmers demanded a much longer derogation. The ZChN especially voiced demands for a 25 year TP or even a permanent derogation from community law (Kułakowski and Jesień, 2004: 244-45). Another important reason for the lengthy demand is tactical in nature. After all, these were accession *negotiations* with the EU, and once negotiations are closed re-negotiation is very difficult.¹⁴⁸ Therefore, it is better to ask for a long TP knowing that the other side will probably demand a shorter period. Afterwards one can always tighten the screw a bit more, but if one does not leave any room for manoeuvre the bargaining chip is lost.

Break-up of the AWS-UW coalition

At the end of May 2000, UW left the coalition. Tensions between AWS and UW had been mounting since 1999 over a number of issues. Most importantly, UW refused to support Marian Krzaklewski, the coalition partner's candidate for the presidential election in 2000; UW refused to support a number of AWS's legislation proposals; and numerous local coalitions between the two had already started to break up. The final blow for the coalition was an incident over the re-election of Warsaw's mayor Paweł Piskorski who was supported by the trio AWS, UW and the SLD. The difficulties in re-electing Piskorski in February 2000, due to the lack of one decisive vote from AWS, initiated the demise of the coalition. This left AWS as a minority government, and consequently also in a potentially weaker position for negotiations due to more political opposition and increased susceptibility to criticism from non-state actors. As a result, there was no room whatsoever to cut the call for an eighteen year TP in this policy field until possible re-election in 2001 (which by then already looked unlikely), unless AWS wanted to risk complete political suicide due to the extreme politicisation of the issue. In a January 2001 interview, *Rzeczpospolita* asked Prime Minister Buzek if a compromise between the two key issues of free movement of workers and free movement of capital was the only way to accelerate negotiations and whether Poland was willing to accept a shortened TP for the real estate question.

¹⁴⁸ Re-negotiations are of course not impossible as the British have demonstrated with the precedent of the British Budgetary Question (BBQ), but this requires a certain weight and has the consequence of a certain reputation.

Buzek replied that the eighteen-year period was based on analyses of land prices, economic growth and the restructuring of the agricultural sector, and that Poland's future lay in the hands of large farms, for which the transaction of land between Polish peasants was needed.¹⁴⁹ In May 2001, close to the September elections, the opposition PSL also repeatedly demanded that the eighteen-year period not be the subject of negotiations and that such a TP could only be shortened "for self-employed farmers who live in Poland and know the language, as in France or Denmark."¹⁵⁰ Only a governmental change would politically enable a compromise. That is one major reason why AWS failed to close Chapter IV of the *acquis*.

The EU's response to Poland's position and Germany's interests

The community as a whole

The European Union responded to Poland's demands with its expected position that the *acquis* must be applied in full, thus confirming the principle that "applicants accept the *acquis communautaire* in full" identified by Christopher Preston (1995: 452-53). This response must be seen first and foremost as tactical. The author has shown above that transition periods in this area are quite common and both sides were aware of this. By insisting on the *acquis* in full the EU would retain an important bargaining chip, however, which could later be traded in the case that any member states asked for TPs in other areas, such as the free movement of workers – a *quid pro quo* trade which indeed occurred at a later stage.

Given that the European Commission's reports on Poland's progress towards accession (1999; 2000; 2001) naturally only report on Poland's progress in applying the *acquis* and on the status of the negotiations it is hardly surprising that these documents contain only sporadic references to the free movement of capital and the acquisition of land. For example:

[the] acquisition of real estate by foreign entities is still subject to the granting of an authorisation, especially in the case of agricultural land, with the exception of some specific transactions which may be freely carried out. According to the Polish authorities, there has been a moderate increase in the amount of land purchased by

¹⁴⁹ See: "Szybko, ale bez ustępstw", *Rzeczpospolita*, 19.01.2001.

¹⁵⁰ Ryszard Smolarek, PSL MP, in "Polska-Unia: gdzie są granice kompromisu", *Rzeczpospolita*, 11.05.2001. See also "Nowa strategia negocjacji z Unią Europejską", *Rzeczpospolita*, 07.06.2001.

non-nationals. (European Commission, 1999: 31)

Many official Council documents were closed to the public until the author asked the Council for permission to view them.¹⁵¹ Nevertheless, since the Council's positions were agreed unanimously, it is difficult to trace how the Council agreed on the Common Positions, and in particular which countries had an interest in liberalising the acquisition of real estate in Poland. Moreover, the documents merely stress that Poland should apply the *acquis* in full and, wherever Poland asks for a TP, the community "invites" the applicant to provide more information on the relevant matter. An example is the Council's document 9095/00 dated 31 May 2000 revealing a draft common position stating that:

as an overall response to Poland's request for transitional periods, the EU recalls its general negotiating position that transitional measures are exceptional, limited in time and scope, and accompanied by a plan with clearly defined stages for the application of the "acquis". Furthermore, they must not involve amendments to the rules or policies of the EU, disrupt their proper functioning or lead to significant distortions of competition. (Council of the EU, 2000: 2)

Furthermore, in the draft common position the Council laments that Poland's request for a five-year TP for second homes is not sufficiently justified and that the justification for the eighteen year TP for agricultural land does not sufficiently explain why immediate liberalisation would endanger or prevent reform in that sector. Rather, foreign capital, the Council argues, would accelerate reform as proven in other areas. Also, the Council "invites" Poland to reconsider its position, including the length of the TP (Council of the EU, 2000: 5). Finally, in May 2001 the European Commission, having recognised the political sensitivity of the issue, proposed to all candidate countries a seven year TP on the acquisition of farmland by foreigners with a review clause after three years which would allow the TP to be shortened or even abolished altogether. Furthermore, in order to uphold the right of establishment as one of the fundamental freedoms (see above), the Commission proposed that self-employed farmers should have the right to buy agricultural land. Also, foreign farmers should

¹⁵¹ These Documents, useful for this research, include: document 11357/99 ENLARGEMENT - Preparation of the Accession Conferences with Cyprus, Hungary, Poland, Estonia, the Czech Republic and Slovenia at Deputy level on 30 September 1999 = Chapter 4:Free Movement of Capital; document 9412/01 ENLARGEMENT – Preparation of the next Accession Conference with Poland = Chapter 4:Free Movement of Capital; document 11067/02 Negotiated Measures: Transitional Measures Concerning Poland – Chapter 4:Free Movement of Capital

have the right to purchase land after a leasing period of three years. The purchase of real estate for investment purposes should be liberalised immediately from EU entry onwards since such restrictions would actually hamper Poland in her economic development.¹⁵² Additionally, the Commission proposed a five year TP for the acquisition of so-called second homes. At the time of the negotiations, the proposal was perceived as a trade-off for the demands of the member states which wanted a TP of five to seven years for the free movement of workers. All candidates except Poland eventually accepted this proposal (Mihaljek, 2005: 192-94; see Chapter V of this thesis).¹⁵³

Germany

Since this thesis is concerned with Polish-German relations it is not entirely relevant which member states requested the liberalisation of the real estate question. It is more apt to analyse whether Germany was interested in Poland opening this market, if so, for what reasons, and from where this interest came.

Frank Elbe, German ambassador to Poland at the time of the negotiations, explained to the author that the German side was aware of Poland's worries regarding the real estate question, worries which amounted to "irrational hysteria" at that time. The ambassador participated in many discussions and conferences in Poland whenever he was invited to talk on Polish EU accession and he took considerable "joy" in "destroying intellectually" the arguments that Germany wanted to pursue a capitalist "*Drang nach Osten*" (Elbe, 2011 Interview). Was this perhaps diplomatic appeasement on behalf of the German government or influential interest groups? None of the research conducted points to the possibility that the government or any German interest group was pressuring for a liberalisation of the real estate question. Wilhelm Schönfelder (2011 Interview), the German Permanent Representative to the

¹⁵² See "Dziurawa ochrona przed wykupieniem", *Rzeczpospolita*, 05.05.2001.

¹⁵³ The Czech Republic, Hungary, Latvia, Estonia, Lithuania and Slovakia accepted a 7 year transitional period for the acquisition of farmland, Slovenia did not derogate from the *aquis* but obtained a special arrangement instead – the possibility of resorting to a general economic safeguard clause for 7 years in real estate. Cyprus and Malta were not required to liberalise farmland and forests due to the small area of this type of land available on these islands. For second residences Cyprus, the Czech Republic and Hungary obtained a 5 year transitional period, the three Baltic states liberalised that type of real estate from their date of EU entry. Malta obtained a permanent derogation, allowing foreign EU nationals to buy a home only after a five year residency on the island (Mihaljek, 2005: 194).

EU, reassured the author that during the negotiations Germany was very careful not to insist that Poland liberalise its real estate market, knowing the fears which existed and the debates taking place in Poland at that time. Even within the Council, it was the Netherlands, with its expansive agricultural sector, rather than Germany, which had more interest in Polish soil and was pushing demands in respect to land.¹⁵⁴ When asked whether the German Farmer's Association (DBV) had perhaps pushed for a tough stance, given the opportunity for a cheap "land grab" just across the German border, Schönfelder could not recall any such activities (2011 Interview). This was confirmed independently by Willi Kampmann (2011 Interview), the director of the DBV's Brussels office.¹⁵⁵ According to him, there was no regular contact between the German delegation and the DBV in Brussels. Rather, all DBV's opinions on enlargement were based on the Commission Progress reports. The DBV's position in general was that "accession is accession" and there should not be any TPs or derogations from community law regardless of the chapter. This position, however, does not seem to stem from the DBV's desire to enable its members to invest in cheap Polish agricultural land, but reflects more the desire to cement its insistence on the free movement of workers, since for years German farmers have relied on Polish labour during the harvest season (see Chapter VI). Even though some farmers were asking about the possibility of acquiring land in Poland, generally the vast majority of investors were not interested in doing so. Besides, the DBV has not run a service to facilitate such activities and all individuals were asked to pursue such investments privately. The debate around Polish accession reminds Kampmann of German reunification, when East German farmers feared a massive aggressive expansion of West German agricultural business – a scenario that did not occur on a large scale (Interview, 2011).

As seen above, German business was investing increasingly in Poland. Analysing Poland's first negotiation position reveals that the Polish request would have prevented EU legal persons from acquiring real estate for investment purposes for a period of five years. (Polish Council of Ministers, 1999). Naturally, German business should have been alarmed by the prospect of there being no possibility of investing in the required factories and supermarkets etc. (including parking space

¹⁵⁴ The Polish daily *Rzeczpospolita* reported on 21.12.2001 that over one hundred Dutch families wished to settle in Poland, confirming Schönfelder's claims. See: "Bruksela Ruzumie Polskie Obawy", *Rzeczpospolita*, 21.12.2001. See also Miller's direct negotiations with Wim Kok (2009: 142-46).

¹⁵⁵ The DBV has maintained an office in Brussels since 1995.

which also requires land).¹⁵⁶ It is therefore not surprising that in its 1999 position paper, the BDI stresses that candidates must apply community law in full “to create legal certainty for companies and to prevent a fragmentation of the single European market. [...]“The principle of not allowing long transition periods and extensive derogations should be adhered to.” More specifically, the BDI criticises “some countries” demands for derogations concerning property that would “obstruct capital flow and free investment decisions”, and “demands that the EU not yield to these efforts” (BDI, 1999). How great the BDI’s influence was in crafting the Commission proposal of May 2001 (see below) is hard to quantify since it is very likely that other business organisations from the other member states would have had a similar view, but the sheer weight of the German economy alone renders it probable that the Commission would have listened carefully to the BDI’s opinion on this subject. The BDI, by approaching the Commission in Brussels directly, at the same time allowed the German negotiation team to refrain from raising the subject in the Council or, in the words of Schönfelder, to “proceed cautiously”. This might explain why the Commission proposal of May 2001 does not mention a TP for real estate for investment but suggests a significantly lower TP of seven years for farmland and forests.

The last possible German “interest group” having some interest in buying property on Polish soil was the group of the so-called late emigrants (*Spätaussiedler*; see above). As Cezary Gawlas, the Director of the Department for Authorisations and Concessions at the Polish Ministry of Interior and Administration, explained to the author, “these were the kind of Germans that were interested in a second home in Poland, before and after Poland’s accession to the EU. These are people with roots in Poland wishing to retire and not speculate on price fluctuations. Consequently, permissions have in general been granted to them since they could prove that they wanted to settle down in Poland.” (Gawlas, 2011 Interview) As seen above, German natural persons bought 367 plots and apartments in 1997. Given that 600,000 *Spätaussiedler* moved from Poland to Germany between 1988 and 1998 alone and a further 848,000 between 1950 and 1987 (in Bade and Oltmer, 2003: 21), that number is negligible and one can hardly speak of a coherent interest group. Besides, apart

¹⁵⁶ In fact since Poland’s accession to the EU, foreign supermarket companies have become the largest owners of Polish land in terms of area due to the parking lots required for customers’ vehicles (Chmielewska-Gill, 2011 Interview).

from the BdV, the late emigrants are not organised into an interest group that could have influenced the German government's negotiation position.

New coalition – significance for the negotiations and new position

The author has analysed how the negotiation structure changed following the Polish parliamentary elections in September 2001. Two new right-wing parties, Self-Defence (*Samoobrona*) and the League of Polish Families (*Liga Polskich Rodzin*), entered the Sejm. This would not make it easy for the government to answer the fierce attacks in parliament if new negotiation positions involved compromises. Perhaps more importantly, the strongest party, the SLD under Prime-Minister Leszek Miller, entered a coalition with the PSL, a peasant party. The return of the PSL to government meant that a party with an almost exclusive appeal to farmers and the rural population – and therefore a “quasi interest group” – would share with the pro-European Communist successor party SLD responsibility for negotiating a chapter that was of vital interest to its voters. In addition, the PSL, as a parliamentary group with connections to its grass roots, would make sure that the government was under constant pressure to negotiate a long TP for the acquisition of agricultural land by foreigners.

The PSL likes to emphasise that it is an old party, having been founded in 1895 during the Russian partition, when the peasant movement was strongly in favour of Polish independence.¹⁵⁷ By doing so, the party gives the impression of being truly patriotic and of serving Poland's interests, and it can potentially profit from this image amongst the population. It has been seen above how the PSL underlined this hypothesis in the Sejm debates by linking the issue of acquisition of land by foreigners with the peasants' battle for independence.

The PSL's other advantage is its history under Communism, a history which the party likes to avoid mentioning. The PSL was included in the 1945-1989 regime and supported it (Osa *et al.*, 2003: 5),¹⁵⁸ meaning that when the government was formed with the Communist successor party, the SLD, many members of both parties were surely familiar to each other from the past. Osa *et al.*'s (2003: 13-20) analysis of

¹⁵⁷ See <http://psl.pl/historia/>, accessed on 10 August 2011.

¹⁵⁸ The PSL narrates the story quite differently by claiming that it was “forced” to participate in the Communist government. See http://psl.pl/historia_w_latach_1949-1989/, accessed on 10 August 2011.

the Polish agricultural policy network on the eve of EU accession reveals that within an agricultural policy communication network of 78 actors comprising political parties, trade associations, non-profit organisations, public institutions and government agencies, the PSL is indeed well-connected to the core actors. Moreover, it is the only party that permits its members to use the facilities and staff of the four relevant state agencies (Ministry of Agriculture and Rural Development; Agricultural Restructuring and Modernisation Agency; Agricultural Market Agency and State Treasury Agency for Agricultural Property) (Osa *et al.*, 2003: 18). Whilst this is not surprising, both since the PSL is an agrarian party which should naturally seek to access all government bodies which deal with agriculture, and because it formed part of the government 2001-2003, it indicates that this party should have the best chance of influencing the negotiation positions.

This reaffirms the analysis in Chapter II that, in general, Polish trade associations are very fragmented, making it difficult to speak with one voice and influence policy-making. None of the public institutions was contacted either by the negotiations team or another governmental body, neither for advice nor for an objective analysis of the consequences of liberalisation or of a TP for the acquisition of farmland by foreigners (Sikorska, 2011 Interview). A team from the Foundation of Assistance Programmes for Agriculture (FAPA), established by the Ministry of Agriculture in 1992, “participated in the accession negotiations and working meetings with the European Commission, and drafted analyses for this purpose in negotiations.”¹⁵⁹ Wanda Chmielewska-Gill, researcher at FAPA, participated in the negotiation team dealing with the agricultural sector, and was also responsible for the real estate question. She assured the author, however, that she spent most of her time on the question of milk quotas and direct payments as there was an order from the top not to make any objective analyses of the real estate question. The negotiation position was set directly by the government (Chmielewska-Gill, 2011 Interview).

New position

In December 2001, not even three months after the new coalition came to power, the new negotiation team led by Jan Truszczyński presented a modified position on this

¹⁵⁹ See <http://www.fapa.com.pl/index.php?ln=en>, accessed on 18 August 2011.

chapter of the *acquis* to the Council of Ministers. The following major changes were proposed:

- Instead of eighteen years Poland proposed a twelve year transitional period for the acquisition of farmland and forests
- Counting from the date of EU entry, EU citizens who became self-employed farmers would have the right to purchase farmland after leasing it for:
 - A) seven years in the Warmian-Masurian, Pomeranian, Kuyavian-Pomeranian, West Pomeranian, Lubusz, Lower Silesian, Opole and Greater Poland voivodeships
 - B) three years in the remaining eight voivodeships
- Regarding second residences, Poland proposed a five year transitional period and citizens acquiring a residence in order to provide tourism services should not fall under that derogation
- No transitional period for the acquisition of real estate for investment purposes was requested (Polish Council of Ministers, 2001)

The first point listed here represented a cut by one third from the initial request of 18 years. The third and fourth points acknowledge that foreigners acquiring residences in order to run tourism businesses fall under the category of investors and so legally fall under the right of establishment. Also, the fourth point recognizes that investors are needed in Poland to conduct business that would be beneficial for Poland's economic growth. Therefore, the change in position is not surprising. The second point, however, represents a possibility for foreigners to acquire land after *de facto* proving that they want to buy the land to run a business. Moreover, the 7-year leasing requirement for the northern and western voivodeships represents a tough hurdle and in addition seems to be directed against Germans, since the voivodeships coincide with the former German territories and deviates from the Commission's May 2001 proposal of three years.

Ewa Synowiec (2011) comments on these changes as follows, revealing the prime motive of the TP demands:

[...] From the beginning it was clear that a transitional period for investment purposes was unattainable, and, besides, it was in the interest of Poland not to establish any barriers since in that way we would have negated the idea of the internal market.

It seems 18 years was tactical since you have to give a big ceiling to be able to give in a little. I think we reduced it significantly anyway from 18 to 12 years.

I think at the beginning there were even thoughts to introduce a permanent derogation from community law regarding the purchase of land by foreigners in the western voivodeships and Mazuria. The society does not divide the question of land into different categories such as investors, non-investors, second houses, agricultural land, forestry. There were psychological obsessions: 'the German will come and buy'. Moreover, the status of the so-called regained lands was not precisely regulated and some incidents occurred where Germans came and hired lawyers trying to regain their former property or obtain some restitution.

Interestingly she also reveals (Synowiec, 2011 Interview) the general mood that circulated among all the involved negotiation personal:

In my opinion [...] during the meetings at the civil servant or even political level mostly the position outweighed 'we will not enter the EU cheaply' i.e. give too many concessions. It was clear that the question of land purchase was politically very sensitive, and for sure SLD did not want to allow to be accused that it is selling land to Germans because such slogans were in circulation.

Figure 5.3 *Poland's administrative divisions since 1999*



Source: <http://www.masterpage.com.pl/resource/polandmaps/adminpolandlarge.jpg>, accessed on 23 August 2011.

As explained, the regulation of land ownership after 1945 resulted in state agencies leasing land in the so-called “regained” areas to Poles for 99 years, whilst in the east most farmland remained in the hands of peasants. Therefore, the proposed derogation was not necessarily directed against foreigners or Germans *per se*, but had reasons rooted in ownership transformation. The proposal itself justifies the request by quoting statistics from the State Treasury Agricultural Real Estate Reserve, which sold or leased farmland to foreigners. Over 90% of all transactions involving foreign natural, foreign legal or domestic legal persons with stakes held by foreigners had been concentrated in the eight voivodeships quoted above (Polish Council of Ministers, 2001). The crucial questions are: how did the new government arrive at the new position and what role did non-governmental actors play in its formulation?

As the above shows, the pressure on the government from parliament, the media and public opinion not to compromise on the real estate question was constantly high, especially in regard to the eighteen year TP for farmland and forests. In June 2001 the polling institute Pracownia Badań Społecznych (PBS) conducted a representative survey on behalf of the daily *Rzeczpospolita* questioning the public about Poland's EU accession. Nearly three quarters of respondents opined that the government should insist on the eighteen year TP even if it meant a delay in accession. Farmers were the group least inclined to accept a compromise.¹⁶⁰ Given the political sensitivity it is not surprising that shadow Prime-Minister Leszek Miller did not give any hints in the media that he would compromise on this issue. In August 2001, however, the German daily *Handelsblatt* published an interview with Miller stating that he would also compromise with the EU on the real estate question and would be willing to shorten the TP, for which he was immediately attacked at home (Miller, 2009: 57). Although the SLD's electoral manifesto speaks about closing negotiations with the EU, it does not pledge that the eighteen-year TP should be a priority but merely states that the party will support "upholding a TP" (SLD-UP, 2001). This, of course, leaves the back door open for compromise on the real estate question without compromising an electoral pledge. Strangely enough, the PSL does not mention a TP for the turnover of agricultural land in its electoral manifesto at all (PSL, 2001). The manifesto only declares that Polish farmers should receive the same amount of direct payments as in the rest of the EU. Also, the PSL was the only "established" party not to sign an agreement on 22 August 2001 pledging to collaborate on EU accession after the elections: (Verheugen and Orzechowski, 2009: 94).

Simultaneously, other right-wing parties with a rejectionist stance towards the EU, including the LPR and Self-Defence, entered the Sejm. Their electoral success is largely explained by their open anti-European and anti-liberal rhetoric, which appealed especially to the huge number of unemployed of that time (15.7% - 17.4% were registered as unemployed in 2001).¹⁶¹ Samoobrona's leader Lepper blamed "the dominant role of an international alliance of liberal elites and financial and political corporations, ruthless with regard to ordinary people and whole nations." (Lepper in

¹⁶⁰ See: "Do Unii bez ustępstw", *Rzeczpospolita*, 02.07.2001.

¹⁶¹ Główny Urząd Statystyczny (GUS – Central Statistical Office). See http://www.stat.gov.pl/gus/5840_677_ENG_HTML.htm, accessed 6 March 2012.

Korkut, 2002: 308) But also other anti-EU “interest groups”, such as the True Poles Association, *Christus Civitas*, the Catholic-National Movement, the Real Politics Union and *Alternatywa* mushroomed and thrived on criticism of the EU (Korkut, 2002: 308; Verheugen and Orzechowski, 2009: 95). This means that there was pressure on the government to negotiate accession conditions which were acceptable for the public, in order to secure a “yes” in the referendum on accession and keep the radical parties at a distance in future elections. Similarly, the EU had to be aware that insisting on a 7-year TP for agriculture and forests – an area that very few member states and their interest groups actually cared about – would have risked possible Polish non-accession. It would have been disastrous for the EU if the biggest and most important CEE state had not joined.

In his memoir on EU accession, Miller emphasises the EU’s pressure to successfully conclude the remaining chapters as soon as possible if Poland wanted to join with the other candidates. In October 2001, Belgium’s Prime Minister Guy Verhofstadt¹⁶² visited Poland and urged Miller that other important issues had to be resolved. Miller was sure that he was talking about the chapters relating to free movement of capital and workers (Miller, 2009: 40-41). The next day Miller flew to Berlin and met Chancellor Schröder. Schröder explained to Miller that only about a third of Germans supported Eastern Enlargement, that a general fear of cheap Polish labour persisted that would drive German unemployment rates still higher, that the introduction of the Euro had already been decided over the heads of the population, and that the population would punish the SPD if no TP for the free movement of workers were negotiated one year before the federal elections, since this was the official position of the opposition CDU/CSU. At the same time, Schröder pledged not to object if a compromise could be found between the Ministers of Labour on the EU level and that he could raise the contingents for Poles wanting to work in Germany (see Chapter VI). Miller explained to Schröder that many Poles feared that Germans would buy up Polish land and that he could not ignore this issue either (Miller, 2009: 47-48). This meeting is important since a compromise was agreed at the highest level on the two most contentious chapters for both Poland and Germany, the two most important countries involved in the negotiations. From Miller’s account one can also see how

¹⁶² From July through December 2001, Belgium held the EU-Presidency.

both politicians had to pay attention to domestic affairs and various pressure groups in their decisions.

During a KIE strategy meeting it was SLD Foreign-Minister Cimoszewicz who proposed the lifting of demands over the acquisition of land for investment purposes and the shortening of the TP for farmland and forests to 12 years, while allowing foreigners who leased farmland for at least 3 years the opportunity to buy it. Cimoszewicz also said that, since he came from one, he knew that the fear of Germans was strong in villages and that this should be taken into account. Also, a 2-year TP for the free movement of workers should be acceptable (Miller, 2009: 61-63).

On 14 November 2001 the KIE adopted this new strategy for the EU accession negotiations and it was presented to the public.¹⁶³

Reactions to the new position

Interest groups reacted very critically to the government's acceleration of the accession negotiations and the compromise on the real estate question, but they could not alter the government's proposition. A new debate on the government's new position took place in the Sejm on 29 November 2001 in which critical voices were heard. Foreign Minister Cimoszewicz presented the new position and was asked how much land had been sold to foreigners to date, to which he answered that about 50,000 ha had been sold, representing 0.016% of Poland's territory (Sejm, 29.11.2001). Critical voices came even from the PSL, the junior coalition partner. PSL MP Stanisław Kalemba criticised the government's information policy (Sejm, 29.11.2001). Lech Kaczyński (PiS) criticised the possibility of foreigners acquiring land once it had been leased for at least three years. He referred to the fact that land was much cheaper in Poland and that this compromise would allow land to "fall into foreign hands very fast". Furthermore, this compromise would endanger the referendum on EU accession (Sejm, 29.11.2001). A day before, on 28 November 2001, Cimoszewicz acknowledged that he had made a "technical and organisational mistake" by presenting Poland's new position to the EU first and only then to the Polish public (in Trzeciak, 2010: 183). When the European Commission asked UKIE chief Danuta Hübner why this happened she responded sloppily "because nobody

¹⁶³ See: "Będziemy inaczej rozmawiać z Unią", *Rzeczpospolita*, 15.11.2001.

asked for it” (in Miller, 2009: 81). This gave the opposition the possibility of applying for a vote of no confidence against Foreign Minister Cimoszewicz (Sejm, 14.12.2001), once more confirming the author’s analysis in Chapter II that politics in Poland is conducted in a confrontational manner. Gabriel Janowski, an MP from the LPR, delivered a highly emotional speech. He played with the emotions of parliamentarians and the public by saying that the 90% of the press in the north-western voivodeships was in the hands of German capital and therefore would not write about these issues and would not print his statements warning of the colonisation and partition of Poland. He accused Cimoszewicz of treating the leasing issue as marginal, whilst over 500,000 ha land was already in the hands of foreigners. Furthermore he cites a letter written by ordinary voter Marian Turek from the Świętokrzyskie Voivodeship to the President:

I am convinced that within a few years, maybe 40 or 50 Germans will buy our land in the west and north of Poland. And in the life of a nation that is a very short span. Nothing has changed except that the current *Drang nach Osten* will be conducted with the aid of capital. (Sejm, 14.12.2001)

Although the motion was defeated¹⁶⁴ on 14 December 2001, the opposition used all rhetorical means to attack Cimoszewicz and the government.

In the meantime, in January 2002, the Director-General of DG-Enlargement accepted the twelve year TP for agricultural land and forests and the possibility of acquiring agricultural land after a leasing period of three or seven years depending on the territory,¹⁶⁵ but asked Poland allow the these leasing years to be counted from before the date of accession, in order to allow foreigners already living in Poland to acquire land faster. He stressed that Poland should accept this offer if she wanted to count on the Commission’s support in the EU.¹⁶⁶ This last issue became a litmus test for the coalition. Verheugen paid a visit to Poland on 28 February 2002. He spoke directly to Kalinowski, the PSL’s leader, about the compromise and felt that Kalinowski wanted to break up the coalition, perhaps sympathising with the more radical Samoobrona (Verheugen and Orzechowski, 2009: 298-306). Verheugen told Kalinowski that he might be able to do something about “the partition of Poland”

¹⁶⁴ 130 parliamentarians voted in favour, 236 against, 44 abstained.

¹⁶⁵ See: “UE przyzna częściowe dopłaty bezpośrednie dla polskich rolników” <http://www.bankier.pl/wiadomosc/UE-przyzna-czesciowe-doplaty-bezposrednie-dla-polskich-rolnikow-242160.html>, accessed 6 March 2012.

¹⁶⁶ See: “Bruksela czeka na informacje”, *Rzeczpospolita*, 07.02.2002.

when it comes to the leasing length, but he would not accept the other demands presented by Kalinowski who wished that only individual farmers, not foreign companies, should be able to purchase land (Miller, 2009: 147-48). Therefore, he threatened to abandon the negotiations and return to Brussels and recommend that the EU not welcome Poland as a member (Verheugen and Orzechowski, 2009: 298-306). Miller confirms in his memoirs that the land issue was sensitive for Kalinowski and the PSL. On 26 February Kalinowski asked Miller not to make any decision on this matter before 12 March when he would present the compromise to the PSL. The peasant party was under enormous pressure to protect the interests of its voters. The PSL affiliated National Council of Agriculture Chambers (Krajowa Rada Izb Rolniczych) published its position on 2 January 2002 stating that it did not accept the government's proposed shortened transition period of 12 years, criticising the lack of consultation with the farmers' association on such an important issue.¹⁶⁷ Nevertheless, Kalinowski and Miller both agreed to accept the compromise and send a communiqué to all agrarian interest groups explaining that this was a good deal which protected Polish interests (in Trzeciak, 2009: 189). This shows that, even though the government initiated the new proposal single-handed, it was nonetheless careful to include the relevant interest groups retrospectively. This was more important, in this case, for Kalinowski, the Minister for Agriculture and Vice Prime-Minister, and his faction, as they needed to appease their electorate. Eventually, the coalition split in February 2003 over an SLD-initiated project to introduce a road tax vignette, but this was only the final straw. For the SLD, its junior partner had become unreliable.¹⁶⁸

In March 2002 the Commission accepted the counting of leasing time from the beginning of EU accession and recommended the closing of the chapter. The member states accepted this on 19 March 2002 and the chapter was provisionally closed together with the free movement of labour chapter. Poland thus obtained the longest TP of the eight CEEC candidates. In return, the member states could keep their labour markets closed for up to seven years, a TP that was particularly important for the Austrian and German governments (see Chapter VI).

¹⁶⁷ Krajowa Rada Izb Rolniczych on 2 January 2002. See: http://www.ppr.pl/arttykul-ppr-2303.php?_resourcePK=2303, accessed 30 September 2011.

¹⁶⁸ The coalition was ended by the SLD due to constant internal conflict. Without any doubt the land issue contributed to this decision. See <http://www.bankier.pl/wiadomosc/Koalicja-SLD-UP-PSL-rozpadla-sie-pozostaje-rzad-mniejszosciowy-SLD-UP-653169.html>, accessed 30 September 2011.

The opposition, however, did not leave it at that, and the League of Polish Families applied for a referendum on the question of land sales to foreigners. Zygmunt Wrzodak gave a fierce speech saying that Polish land in the west was twenty times cheaper than in some German *Länder*, referring in the same breath to the “eastern expansion” of the European Union under German dominance and the concept of a “European Empire inspired by new leftism and liberalism” which had commenced with the Maastricht Treaty. Furthermore, he quoted Chancellor Schröder, who had said at the annual meeting of the BdV that the return of the expellees was only a question of time. Wrzodak also referred to Erika Steinbach who urged all member states, the European Commission and the European parliament to accept Polish accession only if the Czech Republic outlawed the so-called Beneš Decrees and Poland the decrees of 28 February and 6 May 1945 as well as 3 March and 8 March 1946 which effectively dispossessed Germans in the eastern territories and guaranteed Poles their then newly acquired property (see Chapter VI). He thus questioned the willingness of Germany to accept the final borders of 1990, and to cement his doubt Wrzodak mentioned Article 116 of the Basic Law, which still refers to the borders of 1937 (see Chapter III) (Sejm, 15.03.2002). On 20 March the Sejm voted against the referendum sought by the LPR with 263 votes against and 140 votes in favour, including the entire PiS and Samoobrona factions. Of the 41 MPs from the peasant party, eight did not vote, three abstained and seven were in favour, whilst 23 were against the referendum. The opposition was not crestfallen and continued with its confrontational politics, and in November 2002 applied to combine the question of land sales with the general referendum on EU accession. Once more the Sejm voted against the proposition, but this time 33 MPs from the PSL faction voted in favour of the proposition whilst the entire PO faction voted against it.

Even though the land issue did not play a role at the December 2002 summit of the Council of the European Union in Copenhagen (the main issue of contention was direct payments to farmers), the last hurdles were overcome in the Danish capital, the same city in which the process of enlargement had commenced in 1993 (see above). The date for accession was fixed for 1 May 2004, and the Accession Treaty was signed in April 2003. Polish voters accepted the Accession Treaty in a referendum conducted in July 2003, with 77.5% in favour. The low turnout of only 58.8% was not unusual in comparison to other parliamentary elections, but surpassed the 50% threshold required to make it effective. In the end the land issue proved not

to be important enough to reject such a historic opportunity: the prospect of membership, and all the advantages associated with it. Interestingly, people in the northern and western voivodeships were most enthusiastic about EU membership with a “yes” vote of 85% and more.¹⁶⁹ The economic inter-linkage with Germany and positive experiences with foreign companies as huge investors in those regions as outlined above played a more important role than the fears of farmers, ultimately a minority of the population.

To summarise: the Accession Treaty of 16 April 2003 grants Poland in point four of annex XII the right to:

- maintain in force for five years from the date of accession a transitional period regarding the acquisition of second residences. Nationals of the EEA that legally reside in Poland for at least four years shall be treated like Polish citizens.
- maintain in force for twelve years from the date of accession a transitional period regarding the acquisition of agricultural land and forests.
- Nationals of another Member State or of a State which is a party to the European Economic Area Agreement who want to establish themselves as self-employed farmers and who have been legally resident and leasing land in Poland as a natural or legal person for at least three years continuously, shall not be subject to the provisions of the preceding subparagraph or to any procedures other than those to which nationals of Poland are subject as regards the purchase of agricultural land and forests from the date of accession. In the Warmińsko-Mazurskie, Pomorskie, Kujawsko-Pomorskie, Zachodniopomorskie, Lubuskie, Dolnośląskie, Opolskie and Wielkopolskie voivodships, the residence and leasing period indicated in the preceding sentence shall extend to seven years. (Treaty of Accession: annex XII)

Although the opposition treated this as a defeat and as negotiating on the knees, these

¹⁶⁹ For the official results broken down by voivodeship see:
<http://referendum2003.pkw.gov.pl/sww/kraj/indexA.html>, accessed 30.09.2011

provisions represent the longest TPs negotiated by any candidate.

VI. Conclusion

This chapter has analysed the TPs for the free movement of capital negotiated by Poland for EU accession, focusing on the role of non-state actors. The chapter cannot falsify *H2* since the EU is an institution that both countries aspired to share.

During the negotiations for this common goal a plethora of non-state actors had the chance to influence their respective governments to maintain certain negotiation positions – in this case regarding the free movement of capital, or Chapter 4 of the *aquis communautaire*. In Germany this was already common practice as discussed in Chapter II. The Commission urged Poland to establish dialogue with social partners. The first period of negotiations, during the AWS-UW coalition, dialogue was indeed intensive, and chief negotiator Jan Kułakowski or the Task Sub-Groups of the Negotiation Team held frequent ad-hoc meetings with relevant social partners, professional groups, church representatives, academia and the media during the course of the accession negotiations (Polish Government, 2000: 56-60). Kułakowski even visited all sixteen new administrative divisions.

That Poland distinguished between former German territories (north and west of the country) and the other voivodeships (south and east) regarding the lease-time of agricultural land prior to foreigners' purchase, may be a case of regions having a say in foreign policy-making. This would contradict the analysis in Chapter II shows that regions are unimportant in Polish foreign policy-making. However, this is a unique case that has not established a precedent in the strictest sense. Moreover, it must also be concluded that certain social partners, for instance NSZZ Solidarność, were disfavoured in links to government.

During final phase of negotiations under the SLD-PSL coalition, the new government position was presented without consideration of non-state actors, leading to dissatisfaction from the opposition, the farmers' associations and bewilderment of the Commission. The inclusion of other non-state actors in a new compromise position would most likely have led to rigid and confrontational stances as the opposition has continuously demonstrated, once more confirming the analysis in

Chapter II, and the argument that civil society in Poland often pursues “anti-politics” tactics.

The pressure on the government over the real estate question was immensely high throughout the entire period of negotiations, coming from parties in parliament, the media, public opinion and, above all, farmers and certain farmers’ associations. The latter group was able to exercise pressure on the PSL, which was in government from September 2001 until February 2003, since these associations and their members are the core of the PSL’s electorate.

Comparing this issue with Germany is difficult since most German interest groups were disengaged from the topic, including the DBV, the organisation representing the German farmers who were supposed to “buy up” Poland. The BDI, representing German industry, was the only concerned actor, contesting Poland’s application for a TP on acquisition of real estate for investment purposes. This would have collided with the industry’s interests in investing in Poland. Poland dropped this demand, realising that such a practice would have significantly harmed Polish economic interests. Therefore, in Germany’s case the facts point towards not falsifying H3, but it cannot be quantified with certainty how influential the BDI was in pursuing the German government to defend German economic interests within EU structures, leading to the EU refusing this Polish demand. This is because the EU negotiates candidacies collectively and decisions are taken unanimously.

6. The free movement of workers

This chapter analyses the free movement of workers in the context of the Polish EU-accession negotiations in order to determine the degree of influence that non-state actors have on foreign policy-making in Poland and Germany. As in the previous chapter, this case study is directly related to Polish-German relations based on German fears of a Polish “flood” of the labour market.

Moreover, the EU’s rule that each member state can decide individually as to whether to open its labour markets immediately or after two, three or another two years (2+3+2 scheme), meant that Germany and Austria were the last of the EU-15 to liberalise their labour markets, in May 2011. This further justifies the appropriateness of this case study for the overall argument of the thesis. It invites an analysis of the 2006 and 2009 decisions to “leave the door shut”, examined throughout the chapter.

Section I of this chapter discusses the legal aspects of the free movement of workers in the context of EU law and examines previous experiences of TPs. Section II analyses the domestic situation in Poland and Germany on the eve of accession by examining their respective labour markets and attitudes towards labour mobility. Section III analyses the negotiations, German government’s proposal for a TP and pressure from non-state actors. The same analysis is then applied for Poland. Section IV will scrutinize Germany’s 2006 and 2009 decision to prolong the TP, non-state actors’ involvement and Poland’s response.

1. Legal issues, economic and political aspects and previous EU experience

Legal issues

The free movement of workers is one of the fundamental rights in EU community law, as defined in Articles 39-42 of Title III of the EC Treaty¹⁷⁰ and Regulation (EEC) No 1612/68 (European Commission, 2002b: 3). The term “worker” must not

¹⁷⁰ The provisions regarding the free movement of workers are still to be found in Title III of the Lisbon Treaty but moved to Title IV of the Treaty on the Functioning of the EU. In the following I will refer to the EC Treaty since the accession negotiations took place under this Treaty.

be interpreted in a restrictive way¹⁷¹ and migrants must be treated as such when they undertake genuine and effective work,¹⁷² are under the direction and supervision of another person, and receive remuneration for this activity.¹⁷³ This includes trainees, apprentices¹⁷⁴ and part-time workers, with a ten hour working week being sufficient to qualify as a worker.¹⁷⁵ Even working below the minimum subsistence level set by the host country¹⁷⁶ or voluntarily leaving work in order to undertake full time studies (related to the work)¹⁷⁷ does not disqualify the migrant from the status of “worker”. Thus, the ECJ has filled the legal void resulting from the absence of a clear definition of what constitutes a “worker” in Article 39 EC in the EU citizen’s favour, making it relatively easy to obtain this status. This is important since migrant workers enjoy considerable rights: the right of residence and in the recipient member state and the right to remain there (Art.39(3)(d) EC); access to employment and equal treatment in employment resulting from the prohibition of discrimination on the basis of nationality; and the same tax and social advantages as the recipient country’s nationals. In addition, family members are entitled to accompany workers, enjoying the same rights as host country nationals (European Commission, 2002: 6-8).

Economic vs. Political Aspects

The “worker” status rights and the associated costs for the host state might explain why existing member states are wary of new EU member states, especially when considerable incentives exist that could motivate the citizens of new member states to emigrate in large numbers. The most significant incentives are economic and include higher wages and better jobs, although other incentives also play a role.¹⁷⁸ Assuming that workers are rational actors, they will weigh the benefits of migration against the

¹⁷¹ See C-53/81, *Levin* ECR [1982] 01035.

¹⁷² Work is real and effective if the labour service rendered forms part of the normal labour market. Hence, there must be demand and supply for such services. See C-456/02, *Trojani* ECR [2004] I-7573, para. 24.

¹⁷³ For an exhaustive discussion of this issue see, for example, Condinanzi et al. (2008: 78-103)

¹⁷⁴ See C-66/85, *Lawrie-Blum* ECR [1986] 2121, paras. 17-20; C-3/90 *Bernini* ECR [1990] I-1071; C-313/01 *Morgenbesser* ECR [2003] I-13467.

¹⁷⁵ See C-71/88, *Rinner-Kuhn* ECR [1989] 2743.

¹⁷⁶ See C-139/85, *Kempf* ECR [1986] 1741.

¹⁷⁷ See C-39/86, *Lair* ECR [1986] 3161, para. 37; C-3/90 *Bernini* ECR [1992] I-1071, paras. 18-21.

¹⁷⁸ Other incentives might include the desire to learn a new language, a better climate in the host state, the desire to experience something new and so on. Economists distinguish between “push” and “pull” factors influencing the decision to migrate. For an overview see, for example, Belke and Hebler (2002: 128).

costs¹⁷⁹ and decide on that basis whether to stay or emigrate (Sinn and Werding, 2001: 41).

There are arguments both for and against the free movement of workers. The Commission argues that this is “an important element in achieving efficient labour markets and a high level of employment” (European Commission, 2002b: 3). Clearly, the Commission favours labour migration given its role as a European integrationist.

Competing economic theories speak in favour or against labour mobility, depending on the affected group’s perspective.¹⁸⁰ On the global scale, when low and semi-skilled workers migrate from a developing country to a developed country, unemployment in the developing country can be reduced, wages there may rise and the country can benefit from foreign currency remittances. But, these migrants can exercise wage pressure on the population of the developed host country. High-skilled workers and the economy of the developed country as a whole, in contrast, will benefit from the lower prices of services rendered and goods produced by these migrants (IOM, 2008: 43). Hence, it is prudent to distinguish between different groups affected by labour mobility. Simultaneously, provided that free movement of capital is in place, restrictions on the free movement of labour only lead instead to the “migration of capital” to the workers (Sinn, 2004: 463). Therefore, a restriction on the free movement of workers, as often demanded by trade unions, could turn into a Pyrrhic victory if employers decide to shift entire production facilities to the country with cheap labour.

Most economic theories were developed from the experience of the Anglo-Saxon countries which have a long tradition of internal labour mobility and immigration. The EU experience is significantly different. Socio-cultural and linguistic differences between EU states undermine assumptions about the interchangeable worker presented by economic theories, so labour mobility is significantly lower (Nickel, 1997) and migrants return relatively quickly. This is the least used of the EU’s freedoms. In 1998, when accession negotiations commenced, the EU foreign population of Germany constituted a mere 2.3 % of the total population and 25.1 % of foreign population (in Moreno-Fontes Chammartin and Cantú-Bazaldúa, 2005: 9-10). Moreover, the German experience of a migration cohort has shown that after ten years

¹⁷⁹ The costs of migration are the expense of moving to the new country, the cost of visiting family in the country of origin, and also the material and immaterial costs of adaptation to the new environment.

¹⁸⁰ For an excellent overview of the distributional consequences of labour mobility see: Borjas, George (1995) The Economic Benefits from Immigration. *Journal of Economic Perspectives*, Vol. 9(2): 3-22.

only about 40% remain, and after 25 years only 30%, whilst the remainder move back (in Sinn and Werding, 2001: 40).

Politicians treat the free movement of labour differently to the free movement of goods and capital. Bilateral and multilateral agreements erect more barriers and imposed more restrictions (Jain and Mukand, 2009): a reason for which can be found in the domestic dynamics of potential (im)migration¹⁸¹ target countries. Pritchett (2006) argues that what limits migration is the idea that it threatens national culture. Hence, the rhetoric surrounding the (im)migration debate is a possible motor driving voting behaviour.

The German government had to proceed cautiously on this since the median voter is to be found amidst the unskilled and low-qualified employees who amount to 70% of the economically active population (Belke and Hebler, 2002: 166), the population with the most reason to ‘fear’ migration from the east. Of the EU-15 states, Germany had some of the lowest support for Eastern Enlargement, with 36% support in spring 1998 and 34% in 1999.¹⁸² Eurobarometer polls at the end of 1997 also revealed the correlation that the German public made with unemployment, with 47% thinking that Eastern Enlargement would lead to higher unemployment (European Commission, 1998: 51; Wood, 2004: 156).¹⁸³ “Taking the population on board” by reducing fears, whether justified or not, therefore became important for the government (Brinkmann, 2010 Interview; Schönfelder, 2011 Interview).

II. The situation in Germany and Poland ahead of accession negotiations

Analysing the Polish and German situation before labour mobility became an issue during negotiations is important to assess whether the justifications for a TP provided by specific interest groups were objective or exaggerated. This constitutes the grounds

¹⁸¹ In this context, the term immigrant describes the a person coming into the EU from outside, whereas a migrant describes a person moving from one EU member state to another.

¹⁸² See http://www.europarl.europa.eu/enlargement/briefings/41a3_en.htm. Accessed 20 November 2011.

¹⁸³ Only Austria had a greater proportion linking enlargement to rising unemployment, with 51 %. This reveals that geographic proximity is an important factor for the public.

on which the decision was based, and can be divided into *economic* and *cultural* factors.

Chapter IV demonstrated that Germany's unemployment rate was high on the eve of the accession negotiations, especially in the new *Länder* (see Figure 4.1). In the old *Länder*, the average unemployment rate was 9.4% in 1998, falling to 8.8% in 1999 and 7.8 % in 2000, due to the economic boom. In the new *Länder*, the average unemployment rate for those years was 18.2, 17.6 and 17.4% respectively (Bundesanstalt für Arbeit (BfA), 2001: 16-17) showing that the east did not profit from the boom to the same extent. The Federal Labour Office (BfA) identified structural differences as the major reason for this gap. Whilst the west profited from a greater share of industry and the B2B service sector driven by exports, the east still suffered from another setback to the construction industry and cuts in the public sector (BfA, 2001: 23-24). As will be discussed, the construction sector was one of the major protagonists in pressurising the government to push for TPs in the area of free movement of labour and services. Foreigners were identified by the BfA as one of the "problem groups" with the unemployment rate of 17.3% (due to unskilled labour in this group) in comparison to 10.7% amongst natives in 2000 (BfA: 2001: 19). Whilst *qualified* foreigners are not grouped with asylum seekers and former *Gastarbeiter* working in the blue collar sector, the "*Problemgruppe* foreigner" features prominently in the media and public perception, especially when linked to the notion of welfare state abuse. Public opinion does not automatically distinguish between various groups of foreigners. In that context it would not matter whether a Polish migrant was competing against the German unemployed or complementing the German labour market if the public already had a negative opinion.

The Polish labour market was particularly sluggish at the time. Poland was the candidate state with the highest unemployment rate. The 1998 figure of 10.4% rose to 13.1% in 1999 and 15.1% in 2000. The peak came in 2002-2003 with 20%, approximately 3.2 million registered unemployed.¹⁸⁴ There were three reasons for this.. First, GDP growth slowed down and fell below 5% in 1998. Second, another baby-boom generation entered the labour market. Third, external demand fell significantly as a consequence of Russia's economic crisis (Szczapa, 2007: 4). Furthermore, Poland's GDP per capita was only a little above 40% of the EU-15

¹⁸⁴ Główny Urząd Statystyczny (Central Statistics Office): http://www.stat.gov.pl/gus/5840_677_ENG_HTML.htm, accessed 25 October 2011.

average in 2003, whilst Germany's was close to 100%. In terms of wages, a Polish worker would earn €510 per month in comparison to an average of €2,350 earned in Germany, whilst in industry, hourly labour costs amounted to €4.32 in Poland in comparison to €27.15 in West Germany and €19.49 in East Germany (Sinn, 2004: 462).¹⁸⁵ These figures, paired with Poland's geographic proximity making commuting by Polish workers to big cities like Berlin and Frankfurt/Oder easy, suggest that ahead of Poland's EU accession considerable economic incentives existed for a large proportion of the Polish population to emigrate. Due to *Tarifautonomie* and the lack of a nation-wide minimum wage in Germany, possible fears of Poles "flooding" the German labour market are therefore understandable since Poles would be able to undercut national wages.

Cultural factors also played a role in motivating non-state actors and the government to restrict labour movement on the German side. There is little doubt that historical circumstances shaped a "migration culture" in Poland. During the 1970s and 1980s, Polish contract workers in the construction sector in Germany often stayed beyond the end of their contracts. Similarly, the so-called *wakacjusze* (vacationers) found work as clandestine worker-tourists in the USA during the Communist era.¹⁸⁶ This "migration culture" derives partly from the Communist regime which fostered a:

popular entrepreneurial culture of the opportunistic-debrouillard (rather than modern rational) kind by forcing citizens to use "unofficial" (extralegal) means and "crony" support networks to make everyday life possible. (Morawska, 2001: 59)

As a result, the system gave rise to a "*homo sovieticus*" (Zinoviev, 1985) who employs various survival tactics to make ends meet, instead of relying on the state. One of those tactics, for those who could obtain a passport, was to seek employment abroad. More than 1.1 million Poles emigrated - 55% to West Germany¹⁸⁷ (Okólski, 1999: 19). This persisted after Communism fell, aided by the mass unemployment caused by shock therapy. By the mid-1990s an estimated "600,000-800,000 Polish

¹⁸⁵ Figures are exchange-rate-adjusted. For a concise overview of the most important figures see also: <http://www.polish-online.com/polen/wirtschaft/loehne-lohnkosten.php>, accessed 25 October 2011.

¹⁸⁶ Amongst the vacationers were Lech Wałęsa's parents who went to the US in 1973 having been invited by family members to earn illicit money. Wałęsa justified this by saying: "Their decision to go was dictated by common sense and tradition: in our family there had always been someone on the other side of the ocean. It was in our blood: one or the other went over there so that the rest of the family could count on some security and a chance of financial help." (quoted in Morawska, 2001: 59)

¹⁸⁷ It must be acknowledged that the vast majority of these "Poles" were ethnic Germans claiming German citizenship under Article 116 of the Basic Law.

tourist-workers were engaged in undocumented informal-sector employment in Western economies” and even more were active in illicit cross-border trade (Morawska, 2001: 61). These “tourist stays” lasted 2.5-3.5 months on average and about 75% of these Poles worked in Austria and Germany (Morawska, 2001: 51).¹⁸⁸

Official bilateral agreements intended to regulate the flow of the Polish labour force between Poland and Germany also existed. In 1992, 51,000 Polish contract workers were employed in Germany. The quota was later reduced to 20,520, of which 10,000 places were reserved for construction workers (limited to five years), amounting to four % of all employees in the German construction industry (Menz, 2001: 255-56). Menz (2001: 255-56) writes that the quota was designed to fill skilled labour shortages caused by the initial boom after re-unification, regulate the inflow of migrants, promote economic development in Poland know-how transfer, curtail illegal immigration, continue some of the bi-lateral agreements conducted between the GDR and Poland and initiate a new *Ostpolitik*. The effect on the German construction sector, however, was quite disturbing. Many German employers simply retained their previous illegally employed Polish workers, only between 8 and 16% of the contract workers fulfilled the legal requirements, and German employers exploited the possibility of subcontracts with relatively cheap Polish companies (Menz, 259-61). Although the 1996 Law on Posted Workers (*Arbeitnehmer-Entsendegesetz*) stipulated that the payment of the minimum lowest wage bracket on German construction sites was mandatory, the heavily guarded *Tarifautonomie* prevented the BDA from agreeing to universal application (*Allgemeinverbindlichkeit*) of such wage brackets (Menz, 2001: 262). Thus, it is not surprising that the public, trade unions and some small and medium sized enterprises demanded restrictions on Polish labour mobility.

More important are the Polish seasonal workers who found their way to Germany. Since 1991, Art. 4 of the *Anwerbestoppausnahmereverordnung* (ASAV) made it possible at peak times for foreigners to be employed for up to three months in the agricultural, forestry and hospitality sector. Of the 200,000 seasonal workers *per annum* between 1996 and 1999 (90% in agriculture), over 90% were Poles. The figure rose to 237,000 in 2000 (BMI, 2001: 54-56). This is important because many Germans made contact with the Polish *Erntehelfer* who left an impression as hard-

¹⁸⁸ As early as 1890-1914, Germany was so popular amongst Poles for seasonal work that the saying *jezdzic na saksy* (going to Saxony) became synonymous with “network-supported travels abroad to earn additional income for the family” in general (Morawska, 2001: 61).

working individuals. Additionally, many Poles gained first-hand experience of earning hard currency and seeing the higher living standards.

In general, Germany's attitude towards migration has been ambivalent. Despite the immigration of millions of *Gastarbeiter*¹⁸⁹ and their families (*Familiennachzug*) in the 1950s, 1960s and 1970s,¹⁹⁰ the political consensus position was that Germany was "not a country of immigration". Throughout the Kohl era this stance was limited to the CDU/CSU, preventing a departure from this notion since the party was dominant at the federal level until 1998 (Green, 2004: 26-109). With the advent of the SPD-Green coalition in 1998, a new debate emerged on the agenda driven by the need for high-skilled labour and integration issues (Green, 2004: 111). At the Cebit Computer Fair in his hometown of Hanover in February 2000, Chancellor Schröder announced a Green Card programme which would address the lack of IT specialists. This short-term measure was limited to 20,000 places,¹⁹¹ and granted a maximum five year work permit for non-EU nationals earning over DM 100,000 annually. During the dot-com bubble the US was eyed with envy and highly skilled Indians were targeted with this measure. This was immediately torpedoed by Jürgen Rüttgers, the CDU candidate in North Rhine-Westphalia, with the populist slogan "Children instead of Indians" (*Kinder statt Inder*), which was picked up by the right wing *Republikaner* for its electoral campaign (Goel, 2009). A number of studies circulated publicly which predicted a drastic fall in the support ratio (economically active to inactive) from over 4.4:1 in 1995 to 2.1:1 by 2050 due to Germany's low fertility rate and increased life expectancy (in Green, 2004: 114). This added to pressure for a new immigration policy (*Ausländerpolitik*), which culminated in the *Zuwanderungsgesetz*¹⁹² coming into force in 2005. The making of the law was

¹⁸⁹ The term *Gastarbeiter* (guest worker) indicates that the immigrants would eventually leave. In reality many *Gastarbeiter* stayed and brought their families over. The *Anwerbestopp* in 1973 made the decision especially hard for the guest workers as anyone who decided to leave would almost certainly leave for ever (Green, 2004: 36-37). The absence of an adequate integration policy and a complicated *Ausländergesetz* paired with the politicians' denial that Germany was *de facto* a country of immigration (*Einwanderungsland*) would later lead to delayed integration debates linking immigration to exploitation of the German social system and what Germany's dominant culture (*Leitkultur*) should be (Green, 2004: 119-20). The Swiss intellectual Max Frisch captured the complexity of this issue with a witty comment which still echoes: *Wir riefen Arbeitskräfte, und es kamen Menschen* (we called for a labour force, but people came instead) (quoted in Razum *et al.*, 2011: 555; translation is my own).

¹⁹⁰ The first *Gastarbeiter* was welcomed from Italy in 1955. Numerous other bi-lateral agreements with Turkey, Spain, Portugal and Yugoslavia followed, until the *Anwerbestopp* in 1973.

¹⁹¹ By March 2002 less than 11,500 Green Cards had been awarded, evidence for the limited success of the initiative (Beauftragte der Bundesregierung in Green, 2004: 128).

¹⁹² Note that the word *Zuwanderungsgesetz* avoids the word immigration (*Einwanderung*) and uses the word *Zuwanderung*, introduced by the Christian-Democrats in the 1990s and preferred by

accompanied by a debate over whether Germany's culture would be undermined by immigration and what the *Leitkultur* (dominant culture) should be (Green, 2004: 119-29).¹⁹³ Whilst the migration of EU nationals as a consequence of Eastern Enlargement is entirely different to the aforementioned, these issues entered the agenda simultaneously. This shows, at least, the German reservationist tradition towards (im)migrants as a whole; at most, it explains in part the demand for a TP in this area even though the long-term demographic trend would actually demand a softening of immigration policy in general. EU enlargement would represent an opportunity to make use of workers who did not require Green Cards and who came from the same Judeo-Christian cultural background. Therefore, the reasons for Germany's cautious approach to labour liberalization must be uncovered.

III. Accession negotiations and labour mobility

Weiden 2000

In December 2000, Chancellor Schröder put the TP for the free movement of workers on the government's agenda for the first time¹⁹⁴ with a speech at a regional SPD conference in Weiden, thereby deciding for himself when the topic would enter the political discourse (Rudolph in Jeřábek, 2011: 229). In his speech he made assurances that he was aware of fears of an influx of competitively priced workers and commuters and a race to the bottom for wages, social security and environmental standards: "If the free movement of labour were introduced with enlargement, we would also be confronted with a greater influx to Germany. That would not be supportable for parts of our labour market, especially where unemployment is high." (Schröder, 2000: 7) The literature (e.g.: Jeřábek, 2011: 227-28; Nissen, 2009: 185-86;

restrictionists who merely tolerate immigration for moral-political and constitutional reasons rather than actively seeking it (Joppke, 1999: 97-98).

¹⁹³ The topics *Zuwanderung* and *Leitkultur* still lead to controversies and heated debates, as exemplified by the summer 2010 public discussion following Sarrazin's publication of *Deutschland schafft sich ab* (2010).

¹⁹⁴ In a *Spiegel* Interview in November 1998, Foreign Minister Joschka Fischer, from the Greens, stated that together with enlargement there should be a brief TP for the free movement of labour. At the same time, Fischer referred to the Southern Enlargement and argued that this enlargement had lowered migration pressures. He predicted that fears of a massive influx of workers would be proved wrong and refers to France (Fischer in *der Spiegel* 48/1998: "Wir wollen keinen Soli tanzen").

Schneider, 2006: 79) supports the hypothesis that the demand for a TP in this area came directly from “the top”, a fact independently confirmed in various interviews with me (e.g. Brinkmann, 2010; Högl, 2010; Meckel, 2010; Schönfelder, 2011). As noted in Chapter IV, Schröder had been an unusually business-friendly for an SPD-politician. Hence, what were Schröder’s motives and which actors might have influenced his decision to demand a TP for the free movement of labour?

Eva Högl, SPD MP since 2009, previously working for the Federal Ministry of Labour and Social Affairs, asserts that whilst the initiative came from the left, political discussion led in the end to a “consensus across all parties on the issue” (Högl, 2010 Interview). It is necessary therefore to analyse the positions of the six big parties represented in the *Bundestag* (SPD, Greens, CDU, CSU, FDP and PDS)¹⁹⁵ which might have pressured Schröder to adopt such a stance.

The partners in government, SPD and the Greens, had already agreed in October 1998 in chapter XI/2 of their coalition agreement that, “in order to prevent accession-related economic and social cleavages, appropriate transitional periods are necessary, for example in the free movement of labour.” (SPD and Greens, 1998)¹⁹⁶ By mentioning it so early the government had restricted its room for manoeuvre considerably. The voters elected the SPD because of Kohl’s failure to reduce the unemployment rate and the lack of “blooming landscapes”¹⁹⁷ in the East, but also because the SPD promised to tackle unemployment, and Schröder announced early on that he wanted to be judged by his performance in reducing it (see Siefken, 2006). In 1998, 95% of voters regarded this as the top priority (in Lees, 2000: 100). The new government began trying to fulfil the electorate’s hopes by reducing unemployment with the Alliance for Jobs (see Lees, 2000: 112-16; Timmins, 2000). Migration accompanied with labour liberalisation does not lead automatically to a higher unemployment rate. However, the unemployment rate at that time was particularly

¹⁹⁵ The SED successor party PDS merged in 2007 with Labour and Social Justice – The Electoral Alternative (WASG), forming today’s Die Linke.

¹⁹⁶ Translation is my own. Neither the SPD nor the Green party manifestos for the 1998 Federal election mention the necessity of negotiating a TP preventing the immediate free movement of labour in the EU accession negotiations (SPD, 1998; Greens, 1998).

¹⁹⁷ Kohl’s famous promise of “blooming landscapes” (*blühende Landschaften*) for the new *Bundesländer* has become a common phrase of mockery of the Chancellor’s underestimation of the challenges of re-unification. See, for example, the cover article of *Der Spiegel* 39/2004 “Jammertal Ost”.

high in the unskilled and low-wage sector (BfA, 2001: 144; Högl, 2010 Interview).¹⁹⁸ With the opening of borders to candidate states and all the uncertainty about how many Poles would actually come, Schröder would have risked giving the opposition opportunities to attack him and leaving his voters disillusioned if these migrants had caused the unemployment increase further. The accusation would have been that he did not do all he could have done to prevent unemployment from rising (Brinkmann, 2010 Interview).

This argument has even more weight if the CDU/CSU position on the topic is considered. Although the CDU and CSU's joint party manifesto for the 1998 federal elections does not refer to the free movement of workers *per se*, the document states that "sufficiently long transitional periods are necessary after accession due to the huge differences in economic development and are of interest to the candidates and the EU alike" (CDU/CSU, 1998). Perhaps a more specific reference to workers was avoided due to the conservative camp's close relationship to employers who as a rule have an interest in market liberalisation.¹⁹⁹ Also, this would facilitate coalition talks with the FDP – which did not mention any demands at all for TPs (FDP, 1998). In any case, the CDU/CSU's *Wahlplattform* (electoral alliance) was the only manifesto which mentioned the word "transitional period" at this early stage, as the PDS's programme failed to do so (PDS, 1998). Moreover, the CSU demanded the closure of borders to CEEC nationals three years before Schröder's Weiden speech: "the CSU has definitely demanded not to open the German labour market for the East European candidates before 2015." (in Belke and Hebler, 2002: 170) Bavaria's geographic proximity to the CEEC countries was one line of reasoning in that case and would later be picked up by the other proximate federal states (Schönfelder, 2011 Interview).

The eastern *Bundesländer* did not discuss the topic of free movement of labour in the context of Eastern Enlargement in their respective parliaments, and only started to do so after Schröder put the topic on the political agenda. This does not mean that individual Minister-Presidents did not influence the Chancellor's position on the issue. According to Germany's chief negotiator Wilhelm Schönfelder (2011 Interview), the eastern states were very much interested in a TP because they feared

¹⁹⁸ Of course at that time nobody knew where in the host states Polish migrants would work. Drinkwater *et al.*'s (2009) analysis shows that most Polish migrants in Britain have been medium to highly skilled young males, self-employed or indeed working in the low-skilled sector.

¹⁹⁹ In general, business favours market liberalisation in areas such as labour to drive or keep wages down. Occasionally, however, business might favour market regulation when it wants to avoid competition from outside.

further rising unemployment.

If Schröder had not put the topic on the agenda, the opposition would have used this in the 2002 electoral campaign (Meckel, 2010 Interview). Although the first Red-Green term was rather union friendly compared with its second term (Schmidt, 2007: 295-12), the Alliance for Jobs also required the unions to discuss the taboo of collective bargaining in return for 10,000 apprenticeships promised by employers (Geyer *et al.*, 2005: 109-10). Finance Minister Eichel's DM 30 billion savings plan for the 2000 budget, presented in May 1999, led to further confrontation with the unions. To actualise the ambitious cuts it was suggested that the *Sozialhilfe* be abolished or halved, the coal compromise terminated²⁰⁰ and widows' pensions cut: "Of all things the party that began its term intending to re-instate 'social balance' (Schröder), now has to cut back social expenditure and trim vested rights." (Geyer *et al.*, 2005: 103-04) Given all of this, it would be difficult to sell open borders to an electorate fearing incoming wage pressure whilst the government was starting to demand many sacrifices from the low wage sector and the unemployed.

Eckhard Lübke (2010 Interview) argues that the Weiden advance and the subsequent negotiation position must be seen in light of the harsh Hartz Reforms (severe cuts in social benefits, see below). In that respect, the TP for the free movement of labour would be a pill to sweeten painful reforms still to come; a theory that was rejected in other interviews (e.g. Schönfelder, 2011). Given that the accession negotiations were advancing rapidly (Chapter 2 of the *acquis*, the free movement of labour, was opened on 26 May 2000), Germany had to present her position at some point, and when the Austrian government came forward with a demand for a seven year TP in early 2000 (in Schneider, 2006: 77-78), it provided a good opportunity for Schröder to do so. It was handy for the Chancellor that the move killed several birds with one stone, and he presented a five point programme in his government policy statement following the Nice Summit in January 2001 in which he stated that Germany needed a seven year TP; proposed a flexible model that would make the shortening of the TP possible after five years; said that this could, for individual countries on application, be further shortened; that in case of a general shortage of skilled labour one could grant controlled access to the German labour

²⁰⁰ The coal compromise (*Kohlekompromiss*) was agreed between the federal government, the state governments, the Ruhrkohle AG and the unions in 1997. It stipulated that state subsidies would be capped at €2.7 billion, production at 22 million tons and employee numbers at 36,000 until 2005.

market; and that at the same time a TP for the free movement of services was needed in individual sectors such as in the construction and craft sectors (Schröder, 2001).

The government also considered studies by independent experts. This demonstrates the answer given to the opposition on 7 February in the *Bundestag*. The government stated that it was aware that “Central and Eastern European migrants are – in comparison to migrants from the Southern Enlargement – higher qualified, more flexible and are prepared to accept jobs below their qualifications [...] which would affect native employees in jobs of low or simple qualification levels.” (Bundestag, 2001: 45) It quoted a DIW and ZEW study assuming that during the first decade after accession an annual inflow of 220,000 migrants would occur, of which 35-40% would be employees.

Other independent studies (used by governments and the Commission) predicted, however, different scenarios with estimations of the migration potential ranging from 2 to 4% of the candidates’ total population (e.g.: Bauer and Zimmermann, 1999; Boeri and Brücker, 2001). The highest estimation of 7-8% was provided by the well-respected president of the ifo-institute, Hans-Werner Sinn, a frequent interviewee in the German quality print and TV media on topics of economic concern. Affected interest groups could choose the study which best supported their demands.

The Commission’s suggestion

According to Brinkmann (2010 Interview) the German negotiation team applied for a 5+2 model, just as Schröder had indicated in his government policy statement. On 11 April 2001, the Commission finally proposed a mechanism that strongly mirrored the German and Austrian wishes (the other existing member states were initially quiet on this issue). Four points would characterise the TP:

- The general transition period lasts for 5 years. During this time, Member States continue to operate their own national measures on accepting workers from the new Member States. [...]
- An automatic review is held after no more than 2 years. This review is based on a factual report from the Commission to the Council. [...] the Council, acting by unanimity [...], decides whether to shorten or lift the transition period. This could

lead to the full application of the *acquis communautaire*, [...] Member States that so wish would be able to continue with national measures.

- One further optional additional review per country may be held at the request of a Member State [...] with a view to further relaxation of controls. [...]
- The general transition period ends after 5 years. In the case of serious disturbances in its labour market, which will be examined by the Commission, any Member State may maintain its national provisions for a further maximum period of 2 years (European Commission, 2001).²⁰¹

The German social partners

In our interview, Gisbert Brinkmann assured me that the realisation of the Chancellor's TP plans would have been difficult in the case of resistance by both social partners, the DGB and the BDA/BDI. This is also valid for the subsequent reviews in 2006 and 2009 which would either lead to the maintenance of the TP or its abolition (Brinkmann, 2010 Interview). In its positions of 9 July 2001 and 15 May 2002, the DGB welcomes the Commission's proposal and demands that the decision on whether the TP would remain in place for seven years or be shortened should be in the hands of the member states. The DGB stated that the free movement of workers and the free movement of services should be directly combined "to prevent false self-employment (*Scheinselbstständigkeit*) and the illegal practice of companies sending workers abroad (*Entsendefirmen*) [...] and to protect sensitive service industries from wage cutting competition." (DGB, 2001, 2002) The free movement of services in the labour context is often forgotten (e.g. Trzeciak, 2010), but is equally important. Since the EC Treaty grants the right of establishment in Articles 43-48 and the right to provide services in Articles 44-55, a TP for the free movement of workers could have been circumvented by CEEC nationals if they became self-employed or registered with a firm which would collect a few workers and then enter the labour market and engage in wage and contract competition. This is especially relevant in labour-intensive sectors such as the construction industry. As a result, it was not only in the interest of the DGB to protect the labour market, but also of specific sectors of the industry represented by the BDI. Thus, the BDA and BDI had a hard time finding a

²⁰¹ <http://europa.eu/rapid/pressReleasesAction.do?reference=IP/01/561&format>. Accessed 20 November 2011.

joint position (Schneider-Bodien, 2010 Interview). In their joint position of February 2001, the two big employers' associations praised the flexible model for the free movement of workers suggested in Schröder's Weiden speech, which "picks up the demands of the German economy" but they lament that seven years would be too long as it would harm chances of economic development in the new and old member states alike. The position acknowledges that in certain sectors and in border regions, "special developments" in labour migration could occur, but the dynamic of economic development in the candidates would imply migration pressure overall. The organisations requested a flexible model with clear objective criteria that would enable the shortening of the TP after five years and differentiation for specific sectors. In branches of the economy with a skills shortage (*Fachkräftemangel*) or a lack of apprentices it should be made possible to open borders for citizens of the new member states. Also, the position calls for preferential treatment for skilled workers from the new member states in the "Zuwanderung debate" and calls for expansion and maintenance of seasonal and similar work programmes (BDA & BDI, 2001). Section II of the position, dealing with the free movement of services, is much shorter and less straightforward. The vague phrasing of the very first sentence, "for the free movement of services no TPs should, *in principle*, be applied,"²⁰² mirrors the conflicting interests of the different sectors, especially the construction sector, which was strongly in favour of a long TP (Schneider-Bodien, 2010 Interview). This is congruent with Jeřábek's (2011: 234-35) research and can also be found in official statements made at that time. Thomas Bauer, a member of the BDA and HDB²⁰³ steering committee, facing the possibility of immediate liberalization accompanying Eastern Enlargement remarked: "I accept that in future a part of the German construction sector won't exist, but a complete loss of the entire German construction sector cannot be in the interest of politics," and he suggested a synchronised TP for ten years for the free movement of workers, services and the right of establishment.²⁰⁴ In general, the BDA focused more on social issues whilst the BDI stressed the lack of skilled labour, but the discussions between the BDA and BDI were very intensive and controversial and some companies even feared an exodus of skilled workers from Poland because some

²⁰² Highlighting added.

²⁰³ The HDB (Hauptverband der Deutschen Bauindustrie), Federation of the German Construction Industry is organised in the BDI and BDA.

²⁰⁴ See: "'big bang' durch die EU-Osterweiterung? – Bayerische Bauindustrie fordert Harmonisierung der Wettbewerbsbedingungen durch Übergangsregelung", *Baulinks*, 21.06.2001, <http://www.baulinks.de/webplugin/2001/0274.php4>, accessed 25 November 2011.

companies had invested in Polish companies or were planning to do so and wanted to prevent a “brain drain” effect (Wehnert, 2010 Interview).

When comparing the two social partners it becomes apparent that the DGB’s position was much more coherent and decisive throughout. German business was in favour of liberalisation, but some sectors demanded a TP for the free movement of services and individual companies saw benefits in having completely closed borders. This made it much easier for the DGB to come out on top and also explains why all parties were in the end effectively in favour of the suggested TPs.

Poland’s position

From the start of accession negotiations, obtaining freedom of movement for workers was one of the top priorities identified by UKIE in its 1997 National Strategy for European Integration. The document states in points 2.67-2.69 that the most important task, alongside the recognition of Polish qualifications, was to obtain access to the EU labour market and to eliminate TPs for Polish workers as quickly as possible (UKIE, 1997). Given the high and rising unemployment rate and an additional labour market opening in Poland’s neighbourhood, providing an opportunity to bring the rate down, this strategy by Polish officials is not surprising. For a vast section of the Polish population, open borders across Europe would be opportunity to find a job. Pure economic factors, however, were not the only reason why any Polish government could not afford to accept TPs easily in that area. As explained in Chapter IV, following forty years of Communism and closed borders with the West, EU membership would signify an end to the “division of Europe”. Polish EU entry without population mobility would mean a prolongation of this division. Following the Commission’s communication of the suggestion, one Polish diplomat in Brussels responded that “we do not want to be treated as second-class citizens of the EU. We have enough problems with rising anti-EU sentiment in the country.”²⁰⁵ If any government had given in easily on this issue, the confrontational style of Polish politics (see Chapter II) and media pressure (discussed in Chapter 4), would have meant immediate opposition attacks on the government and the negotiation team.

²⁰⁵ See: “Europe Sets Out Migration Options”, *Financial Times*, 09.03.2001. See also: Szczerbiak, Aleks (2001) Polish Public Opinion: Explaining Declining Support for EU Membership. *Journal of Common Market Studies*, Vol. 39(1): 105-22.

As expected, Polish public opinion regarded the TP proposed by the Commission as unnecessary. In July 2011 CBOS poll, only 6% answered that the seven year TP was the correct length; another 6% opined that it was a bit longer than necessary; 15% said that it was significantly longer than necessary; 16% answered that it was difficult to judge; whilst 57% regarded the TP as unnecessary. Moreover, 73% of Poles opined that the Polish government should not accept the seven year TP on the free movement of workers, while only 11% were in favour of accepting it (CBOS, July 2001: 8-9). In a UKIE poll conducted between December 2001 and January 2002, Germany was the prime target country for those seeking work in the EU-15, with 38% wanting to migrate there. The UK came second with 12% and France was third with 9% (in Trzeciak, 2010: 227-28). Thus geographical proximity and the previous experience of seasonal work played a role for potential Polish migrants. It also shows that German fears that their country would be the prime target for CEEC nationals were correct.

Polish labour unions expressed a negative view on the possibility of a TP for the free movement of workers. In its position KK 190/99, *NSZZ Solidarność* connected the free movement of workers with the free movement of capital and stated that a TP in these areas would be economically unsound and socially harmful as it would lead to “social dumping through the inflow of investment with the goal exploiting the cheap labour force”. It would also lead to a “growing grey sector and possibly growing unemployment in the West due to the influx of persons from new member states to the old member states without the possibility of legally employing those migrants,” thus blocking the process of wage approximation between west and east.²⁰⁶ This position was reaffirmed in the union’s position KK 23/2001 in which *NSZZ* rejects the German Chancellor’s and the *DGB*’s demands for a TP in this area. The union reminds that this would be a regress of the joint declaration of 18 March 1999 between Marian Krzaklewski and Dieter Schulte, the leaders of *NSZZ* and the *DGB* respectively, who stated that they would oppose a liberalised market of services, capital and goods without an open market for labour.²⁰⁷ The labour union *OPZZ* judged the progress in the negotiations similarly to *NSZZ*. Whilst complaining that the government did not provide information about the strategy used during the

²⁰⁶ See: <http://www.solidarnosc.org.pl/pl/dokumenty-w-sprawach-ue/stanowisko-kk-nr-190/99.html>, accessed 20 November 2011. The translations are my own.

²⁰⁷ See: <http://www.solidarnosc.org.pl/pl/dokumenty-w-sprawach-ue/stanowisko-kk-nr-23/2001.html>, accessed 20 November 2011.

negotiations on the free movement of workers and the resulting potential benefits and costs of full liberalisation, the OPZZ laments that the TP suggested by the Commission would lead to discrimination against Polish workers and an asymmetric relationship between German and Polish companies. Also, the OPZZ questioned European solidarity since German fears seemed more important. The union asked the government whether Poland would become a member of a “second degree” (OPZZ, 2001). The OPZZ’s comparatively harsh tone towards the government can be explained by the fact that it was affiliated with the opposition SLD (Duszczuk, 2002: 154-56), but both unions were clearly decisively against a TP in line with the government. According to Ryszard Czarnecki, German labour unions were more active than Polish unions, which can be explained by the formers’ defence of their labour market in the interests of their members, whilst the latter did not benefit from an immediate liberalisation (in Trzeciak, 2010: 212).

Polish employer’s organisations also rejected a TP for the free movement of workers only differing from the labour unions in their reasoning by applying more economic rather than social arguments (Duszczuk, 2002: 117-19). This appears counter-intuitive. It should be in the interest of employers to keep wages low and the high unemployment rate in Poland ensured wage pressure kept it so. Labour mobility could endanger that. The most obvious explanation for their position must be found in the underestimation of Polish workers’ willingness to seek employment abroad. The employer’s organisations argued that German fears were unjustified (in Duszczuk, 2002: 117-19). It is doubtful that employer’s organisations would argue this way had they known the massive exodus of labour force that occurred from May 2004 onwards. This is underlined by some organised sectors’ appeal to the Polish government to request a prolongation of the TP from the German government in 2009 (Soszka-Ogrodnik, 2011 Interview; official at German Embassy in Warsaw, 2011 Interview). Given that by 2010 the monthly wage of a worker on the construction site for the Warsaw stadium hosting the 2012 European football Championships had risen to over PLN 7,000 (Sozka-Ogrodnik, 2011 Interview)²⁰⁸ this is not surprising. Officially, however, the Tusk government always demanded a free labour market, perhaps to appease its electorate, although aware that such requests would be futile.

²⁰⁸ In 2010, the exchange €/PLN exchange rate was relatively stable at around 1:4. PLN 7,000 would amount to about €1,750.

Achieving a solution

The outcome achieved must always be contemplated in the general context of the dynamics between member states at that time. In May 2001, Spain tried to block negotiations between the EU and Poland by trying to link the issue of free movement of workers with the structural funds which Spain feared it would lose once the CEEC countries joined. The Spaniards tried to obtain a guarantee that the amount of structural funds received would remain stable. They promised to support Germany's position if Germany would back Spain in turn over the structural funds issue (Schneider, 2009: 28-29). This helped the Austrian and German government to gather support among the EU-15 and they rejected the Spanish demands, arguing that the two issues should be kept separate. Spain gave in and supported Germany's demand for a seven year TP (Trzeciak, 2010: 218-19). At the same time, the Polish government tried to form an "alliance of the candidates" to enhance their weight in negotiations (Trzeciak, 2010: 220-22). If all the candidates could have presented their positions jointly it would have been more difficult for the EU-15 to ignore their wishes, since a failure of negotiations would have been more embarrassing for the EU than for the candidates. The alliance did not last long. Poland maintained its demand for an eighteen year TP for the acquisition of real estate by foreigners (see Chapter IV of this thesis), which was criticized by the other candidates, and Hungary accepted the suggestion of a seven year TP for the free movement of workers relatively quickly (Trzeciak, 2010: 221). The governments were themselves under pressure to conclude the negotiations as quickly and present this achievement to their electorates. Verheugen's tactic of negotiating with 10 candidates simultaneously to create competition between them over who would become the *Musterknabe* (star student) worked to the EU's advantage.

An amicable compromise between the two countries was agreed at the top-level by Schröder and Miller on 24 October 2001 in Berlin. As discussed in Chapter IV, the two leaders struck a deal in a *quid pro quo* fashion. The German Chancellor convinced the Polish statesman to accept a TP for the free movement of workers, arguing that only a third of the population supported Eastern Enlargement, and that the SPD would not forgive him if he did not insist on the TP one year ahead of the federal elections, since this was the official position of the CDU/CSU. Miller explained that the real estate question was important for Poland since the general

population feared that Germans would start to buy up Polish land (Miller, 2009: 47-48).

When the chapter was opened, only Austria and Germany showed any signs that they would eventually apply for a TP in this area. One by one more member states joined in, demanding such a solution. This can be explained twofold. First, the member states must have expected that the majority of CEEC nationals would target Germany and Austria as a work destination. Once this option was eliminated, the focus would shift to the remaining thirteen. A “race to the bottom” was opened once a state communicated the willingness to apply for a TP. Second, any state not applying for a TP would become the focus of attention in the CEEC media, which would show the work opportunities there, potentially diverting migration pressures towards that state. That partially explains why in the end Great Britain, Ireland and Sweden were the “last states standing” and the only ones not to apply for a TP.

Brussels took all the opinions of the EU-15 and found a solution in the flexible 2+3+2 model, allowing each member state to decide whether it wished to open its labour market from the date of enlargement or to restrict it for two years. After the first two years the Council would review the functioning of the TP on the basis of a report from the Commission. Each individual Member State would notify the Commission whether it would continue applying the TP or open its borders. Each state could also shorten the TP from the third year onwards. After these three years, a member state would have the chance to prolong its protectionist measures by another two years, but only “in case of *serious disturbances* of its labour market or threat thereof and after notifying the Commission” (Accession Treaty, 2003: Annex XII).²⁰⁹ It is important to note that if a state wishes to use the last two years of the TP it must convince the Commission based on objective, rational facts rather than on any fears from the electorate or individual pressure groups. However, as discussed below, Austria and Germany got away with spongy argumentation in achieving the last two-year prolongation to the TP, something that went widely unnoticed by the public. Once again non-state actors and party politics played a significant role in this.

Austria and Germany were granted the right to restrict access to some sensitive service sectors which could lead to serious general or regional disturbances of the labour market. For Germany this applied to the construction sector and related

²⁰⁹ Emphasis added.

branches, industrial cleaning and interior decorators.

IV. The decisions of 2006 and 2009

Chancellor Schröder was re-elected in 2002 by a narrow margin and the coalition retained its majority thanks to an improved result for the Greens. What saved Schröder was his categorical rejection of the Iraq war in the electoral campaign and the flood of the river Elbe in the east where the CDU/CSU-candidate Stoiber failed to make an appearance. Without these two external events the SPD would probably have lost to a CDU/CSU campaign exploiting Schröder's failure to keep his promise to lower unemployment (see Güllner *et al.*, 2002). It was clear that the re-elected government had to do something to bring unemployment down if it wanted to stand a chance of another re-election. Two measures taken by the re-elected government are particularly relevant here. The first was the creation of the so-called "Super Ministry" (*Superministerium*), and second were the social reforms following the Hartz Commission's recommendations.

In 2002 the Economics Ministry and the labour sections of the Ministry of Labour and Social Affairs were merged into a new Federal Ministry for Economics and Labour led by the new *Superminister* Wolfgang Clement. As discussed, Schröder was close to German business and liked to present himself in the media as the *Autokanzler*. This creation of the new ministry reflects his stance as it allowed a Ministry which traditionally favoured German business to "hijack" the Labour Ministry, which had better relations with the unions. What seemed like a good idea at that time, as an attempt to "overcome traditional departmental thinking" (SPD and Greens, 2002) ended in disaster and the Ministry was redivided at the beginning of the Grand Coalition in 2005. The different cultures which had developed over the decades made collaboration very difficult and one section of the ministry accused the other of favouring certain interests, explained Brinkmann (2010 Interview). Fabian Wehnert, at the time, employed by the BDI, confirmed that debate was not possible when the two Ministries were merged (2010 Interview). Debates and dialogue were, however, necessary in deciding whether to prolong the TP in 2006, as was listening to the positions of the unions and employers' associations. The coalition agreement of 2002

does not mention the free movement of labour, and the 2006 decision on prolongation would have been made by the Red-Green coalition had the federal elections not been called ahead of schedule in 2005, following the SPD's defeat that year in North Rhine-Westphalia.

The second important measure was the reforms implementing the suggestions made by the Hartz Commission in summer 2002. The 21 member commission, named after Peter Hartz, a personnel director at Volkswagen, included no more than two representatives from the labour unions and suggested reforms which would alienate the left wing of the SPD and the unions from the SPD leadership.²¹⁰ The commission suggested thirteen measures, of which the most important were the integration of *Arbeitslosenhilfe* (unemployment assistance) with *Sozialhilfe* (social assistance) and the placement of unemployed persons with private firms to perform temporary work after six months of joblessness (Streeck and Trampusch, 2005: 184). Most of the suggestions were turned into legislation, and “Agenda 2010”, intended to make the German economy more flexible and competitive, followed in March 2003. It was made easier for firms to opt out of sector-wide industrial agreements and major cuts were also made to the unemployment and sickness benefits, and small companies were able to hire and fire more easily. The unions called the measures “unfair”, “one-sided” and the “dismantling of the welfare state”, opposing the measures in public (Streeck and Trampusch, 2005: 185). Even though only an SPD-led government could have pushed through reforms so painful for the working class and the unions (Lübckemeier, 2010 Interview), it meant that a shortening of the TPs would not have made sense to the public. The state had started to demand more from the low-wage sector and the unemployed, whilst it would be opening its borders to more competition from new member states. However, it was no longer up to the Red-Green coalition to decide on this matter, as Chancellor Schröder asked President Köhler to dissolve the *Bundestag* immediately after the SPD suffered defeat in the North Rhine-Westphalia elections in 2005.

²¹⁰ The reforms described below led to a massive exodus of SPD members, causing the CDU/CSU to become the German party with the strongest membership for the first time ever in 2008. Also, disappointed SPD members founded the WASG (*Wahlalternative Arbeit und Soziale Gerechtigkeit* - Labour and Social Justice – The Electoral Alternative), which later merged with the PDS and formed Die Linke, which took 8.7 and 11.9 % of the vote respectively in the federal elections of 2005 and 2009, thus establishing itself as a strong party to the left of the SPD.

The 2006 decision

The Grand Coalition, Germany's second after 1966-69, agreed a remarkable position on the free movement of workers in its 2005 coalition agreement: "After the first two-year transitional period in 2006 we will use the possibility of prolongation for a further three years and will then, after consulting the Commission, campaign for a further prolongation of two years." (CDU/CSU and SPD, 2005) As discussed, the Accession Treaty allows the use of the last two years in cases of *serious disturbances* of the labour market or the threat thereof. How could the parties predict the 2009 situation four years beforehand? Obviously from the start this was a political issue rather than a case of observing EU agreements. For the SPD, the TP was one of the last issues where the interest of the unions could be heard, and an opportunity to safeguard its credibility as a social-democratic party. Merkel, on the other hand, could use this, among other initiatives, to "move the CDU leftwards" stealing votes from the centre-left and moving towards the Greens, thus opening options in a now solid five party system that would otherwise always favour the SPD in finding a junior coalition partner. The first decision had to be made, though, in 2006.

The DGB stated in its 4 April 2006 position paper that it saw no room for abandoning the TP for free movement of labour and underlined that "especially the cross-border free movement of services cannot be used to undermine labour rights in the work place" (DGB, 2006). The BDA also supported this position, but it pressed for a more relaxed approach to highly qualified workers (qualified workers could obtain permanent residency – *unbefristete Niederlassungserlaubnis* – only if they could prove an income of €86,400). When the BDI evaluated the 2005 coalition agreement, it assessed the premature agreement to prolong the TP by three years, under section 17 "Europe", as "rather negative", stating that "with hindsight about the lack of qualified workers and Germany's demographic development this has to be assessed critically, and [f]lexible mechanisms should allow a cautious opening of the German labour market for qualified applicants as soon as possible." (BDI, 2005) This is again an indecisive stance and mirrors different needs across different sectors, the interest in qualified workers alone and indifference when it comes to the low wage sector. The mostly overlapping positions of the unions and employers' associations was confirmed in an interview with Gisbert Brinkmann (2010) from the Federal Ministry of Labour and Social Affairs, whose division collected all the position

papers and was responsible for the co-ordination of the decision-making procedure for the two prolongations of the TP. According to this official, all the *Bundesländer* were in favour of the prolongation. In addition, the Berlin *Land* started to demand a general minimum wage (*Mindestlohn*). Berlin was targeted as a destination for workers from CEEC countries, especially Poland. Close to the German-Polish border, and a hub with over three million citizens, the city-state offered ample opportunities for workers from the CEEC countries in the area of craftsmanship and health care. They used a loophole in the legislation by registering companies and offering their services as one-person companies or in small groups. According to Eugeniusz Smolar (2010 Interview), by 2010 some 100,000 Poles were living in Berlin, and about 40,000 Polish companies were registered there offering services as floor tillers, plumbers, nurses and so on. A minimum wage would prevent cutthroat competitive wages, but calls for this remained unanswered for the next five years.²¹¹

The 2009 decision

Much more controversial was the 2009 decision to prolong the TP for a further two years. Officially, this could only be done in cases of *serious disturbances* of the labour market or the threat thereof. From the start of the Grand Coalition, the Agenda 2010 reforms were fruitful, and the official unemployment rate fell from its 2005 peak by 1.593 million or 33% of the 2008 figure (Bundesagentur für Arbeit, 2009: 39). Unemployment dropped in East Germany too, profiting from the economic boom, but also due to mobility from East Germany to West Germany (427,000 people migrated from East to West Germany in 2008) and a shrinking labour force which might more than halve the economically active population by 2050 from ten million to 4.5 million (BfA, 2009: 45). Given this development, the government should have had a hard time justifying another two year extension to the TP.

As early as September 2007, the BDA was arguing that every fifth vacancy was “difficult to fill”, especially in growing sectors, and despite €27 billion and €28 billion investments in training the domestic workforce and young people there was a

²¹¹ In 2010 the IHK Berlin counted only 5,970 Polish companies registered in Berlin. Poles were the largest group, ahead of Turks (5,671) Vietnamese (1,647). See: http://www.ihk-berlin.de/servicemarken/presse/Zeitschrift_Berliner_Wirtschaft/BERLINER_WIRTSCHAFT_Archiv/Berliner_Wirtschaft_2010/BERLINER_WIRTSCHAFT_November_2010/1040260/Berliner_Wirtschaft_im_Zeichen_der_Internationalisierung.html, accessed 8 March 2012.

shortage of skilled labour (*Fachkräfteengpässe*). The association demanded (i) the facilitation of access to the labour market for the new EU members; (ii) that the TP not be prolonged in general and all-embracingly; (iii) that the minimum wage not be made a precondition for the free movement of labour (BDA, 2007). This was reiterated in 2008 and amended with the argument that Great Britain and Ireland had experienced a more dynamic economy, a positive effect on the age distribution, and that Germany was losing out to these states as a migration magnet for qualified workers (BDA, 2008). Again, the BDA stressed the need for qualified workers, but the vague formulation that the TP not be prolonged “in general and all-embracingly” reflects the difficulty of finding a common position across all sectors. Once more, the construction sector wished to prolong the TP whilst other sectors could not wait for liberalisation (Schneider-Bodien, 2010 Interview).

The IG BAU union of construction workers drafted an early statement and was against liberalisation in 2009, but the DGB was in a difficult situation because the eight stakeholders had differing opinions. The sectors and regional unions especially were “rather in favour of opening the borders, leading to a progressive dialogue, but did not draft a common position themselves in the end” (Kramer, 2010 Interview). This is surprising, since the eastern *Bundesländer* were among the fiercest supporters of a TP in 2004. Markus Schlimbach from DGB-Saxony explained in an interview for this thesis that the regional DGBs in the eastern *Länder* had had positive experiences with their Polish and Czech partners and that the border regions was only seen as transit land for potential migrants targeting West Germany (Schlimbach, 2010 Interview). A DGB Saxony position paper does not explicitly call for prolongation of the TP in 2009, but stresses that it is important to keep young qualified workers in the region and not give them incentives to migrate to far away UK or Ireland. The paper also sympathises with the Polish and Czech positions and calls for enhanced border co-operation (DGB-Sachsen, 2007).

This might explain why Brandenburg’s Minister-President, Matthias Platzeck, (SPD) and Saxony’s Stanislaw Tillich (CDU) were against the last prolongation according to Brinkmann (2010 Interview). However, the states did not make this demand official. One reason might be because they did not want to stab their parties in the back at federal level. According to Schlimbach (2010 Interview), the committee for labour and social policy (*Ausschuss für Arbeit und Sozialpolitik*) and the committee for economic policy (*Wirtschaftsausschuss*) of the *Bundesrat* both

discussed the issue, with the former being in favour of another prolongation and the latter against it. This shows a similar pattern to the situation when the Labour and Social Affairs Ministry and the Economics Ministry were united between 2002 and 2005, with both ministries “serving” different interests. In addition, the Foreign Ministry was against a further prolongation of the TP, keeping in mind what a prolongation would mean for relations with the CEEC countries, but could not prevail over the Interior Ministry’s position (official at German embassy in Warsaw, 2011 Interview). Krzysztof Mischczak (2011 Interview) commented the German Interior Ministry’s position with the following quote showing frustration with the Interior Ministry and at the same time understanding why all the talks with the German Foreign Ministry and its embassy in Warsaw bore no fruits:

The German Interior Ministry is so damn conservative on every level, you cannot imagine. Those civil servants sit there since x years with their empty heads. They always think: some minister will arrive and say this and that but we will do our thing anyway. And those civil servants prepare all those *Vorlagen*, those instructions.

Although Polish-German relations were good overall due to the multi-layered approach (see Chapter III of this thesis), the Centre Against Expulsions issue initiated by the BdV was a major strain on Polish-German relations at the top (see Chapter VI of this thesis). The opening of borders for Polish workers could have sent a positive signal. In the end, Germany applied for the last two year TP, arguing that there were serious disturbances in the labour market for the long-term unemployed and the low qualified sector (Bundesanzeiger, 2009), hoping that the Commission would wave this through, though fearing that it would not (official at German embassy in Warsaw, 2011 Interview). The Commission did not object to Germany’s reasoning and it would be interesting to examine why it allowed Austria and Germany to keep their respective TPs: a topic for further research.

Surely Angela Merkel as Chancellor, with her *Richtlinienkompetenz*, could have spoken a *Machtwort* and resolved any conflict between the ministries and the different wings of her own party. After all, the CDU is supposed to be close to German business. As seen, several reasons would have justified an end to the TPs in 2009: the social partners were not as decisively in favour of a prolongation as in 2006, and in addition, all the remaining EU-15 states except Austria were indicating that they would end the TPs. Even though the coalition agreement of 2005 stated that the

two *Volksparteien* wanted a prolongation in 2009, this could have been reversed. This cannot be explained by unlikely disproportionately strong influence from the German construction and craftsmanship sector, but must also be sought in party politics. Another federal election was scheduled for September 2009 and Merkel probably did not want to risk confrontation with the SPD, giving the opponent ammunition for a perceived social topic. After the SPD's social reforms had alienated the left wing of the party, the CDU could profile itself as the better option in that sphere. This did not pass unnoticed by liberals who criticised Merkel's path as "social-democratisation of the CDU" (especially Brüderle from the FDP). The SPD, with Frank-Walter Steinmeier and Franz Müntefering at the top, started to shift the party leftwards again²¹² in April 2009 while Brussels was awaiting a decision regarding the TP. For the electoral campaign the SPD demanded a general minimum wage of approximately €7.50 (SPD, 2009), in line with the demands of the DGB which had been campaigning for a minimum wage for a while (Kramer, 2010 Interview). By agreeing on this seemingly social topic, the CDU avoided any confrontational issues which had potential to be used for populism and electoral mobilization. The campaign remained boring, and the lowest ever turnout in a German federal election hurt the SPD the most (see Saalfeld, 2011: 1).

The government's decision was also criticised by independent experts for being harmful. Despite the TPs, many migrants came anyway through unofficial channels, often with lower qualifications than those coming to the other EU-15 member states. It would also prevent skilled labour from coming to Germany, contradicting the general strategy of closing the borders on the one hand and attracting workers with higher education on the other. For an export-oriented country especially this was harmful for its image (Zimmermann, 2009: 423). From 1 January 2009, the *Arbeitsmigrationssteuerungsgesetz*²¹³ came into force, answering the calls from the BDA/BDI position papers for more skilled labour. This stipulated that:

- 1) the labour market was open to workers from the new member states with higher qualifications, and the usual check of whether the job could have

²¹² See: "SPD-Wahlprogramm: Mit Steinmeier und Müntefering nach links", *Die Zeit-online*, 16.04.2009, <http://www.zeit.de/online/2009/17/spd-bundestagswahl-programm>, accessed 26 November 2011.

²¹³ *Gesetz zur arbeitsmarktadäquaten Steuerung der Zuwanderung Hochqualifizierter und zur Änderung weiterer aufenthaltsrechtlicher Regelungen (Arbeitsmigrationssteuerungsgesetz)*, Bundesgesetzblatt 2846: 2008, Teil I, No. 63. Bonn, 24 December 2008.

been filled by a native became obsolete.

- 2) for higher qualified workers (*Hochqualifizierte*), the labour market was open if they earned over €63,600 of the social security contribution ceiling. This was lowered significantly from the previous €86,400.

The law counters any argument that Germany may have prolonged their TPs to prevent Poland from losing more qualified workers. In fact, it adds to the so-called “brain drain” (or “brain waste” – when qualified workers start working below their qualifications), by trying to attract skilled labour alone, but keeping unqualified workers and labour from the low-wage sector at bay. It also shows that the government treated the TPs as an “adjustment tool” for migration and the unemployment rate.

Polish reaction/ inaction

The official statement of the Polish government was always that Germany should open its border to all Polish workers (Miszczak, 2011 Interview). Several interview partners among unions, employers’ associations and government officials in Germany and Poland stated that after 2006 Poland complained about the lack of skilled labour as many Poles had migrated to the EU-15 states in pursuit of well-paid work. Ewa Synowiec (2011 Interview) summarised the situation:

Unfortunately the year 2008 was the worst in terms of emigration in Poland. By then many people emigrated to Ireland and Great Britain and there were such fears [of a mass exodus of specialised workers], depending on the sector, especially in the construction sector and medical professions. It was also the case with nurses, but there was the issue that their qualifications were not acknowledged. In the public health care system it was feared that dentists and anaesthetists would leave.

Programmes launched by Polish local politicians to counter the exodus support this. In Opole, the programmes “*Opolskie – tutaj zostaję*” (Opole - here I stay) and “*Opolskie – tutaj powracam*” (Opole – here I return)²¹⁴ were launched in an attempt to convince young Poles to remain loyal to their region, along with incentives to open a business there rather than seeking an *El Dorado* abroad. Several city mayors and

²¹⁴ See: “Młodzi wyjadą do Niemiec i już nie wrócą”, *gazeta wyborcza-online*: http://wyborcza.biz/biznes/1,101562,9027350,Mlodzi_wyjada_do_Niemiec_i_juz_nie_wroca.html, accessed 25 November 2011.

businessmen also went to the UK and Ireland and tried to convince Poles to return to Poland.²¹⁵ In that context Poland should be glad that Germany prolonged its TPs in 2006 and 2009 respectively. However, what annoyed Polish officials was the *Arbeitsmigrationssteuerungsgesetz* described above, which lured away highly qualified workers who had been educated at the Polish taxpayer's expense, but who then migrated westwards in pursuit of higher wages. Rusewicz, an official from PKPP Lewiatan, Poland's strongest business association assured me that:

We did not prepare an official opinion on that practice. However, we did address this issue to the Polish and German media. [...] What really concerns us is indeed the intensive courting for specialists and students. At the moment the Brandenburg government conducts talks with many regional associations and Lewiatan in the Masovian voivodeship about cooperation regarding students who would like to go to Germany, get some practical training there, but with the thought to employ them for longer. And indeed we perceive these activities as intensive. [...] In the future this could indeed endanger the human resource management in Poland and we fear the brain drain a bit. We have paid attention to this issue recently.

As Krzysztof Miszczak (2011, Interview) explained: “you cannot do that, attract the best brains but keep the others away”. Also the Tusk government was considering taking Germany to the ECJ due to the inappropriate prolongation of her TPs despite evidence that the labour market was not experiencing serious disturbances (official at German embassy in Warsaw, confirmed by Miszczak, 2011 Interview). The official reason for Polish inaction was that the two years would be up anyway by the time the case was resolved and it would have strained Polish-German relations to the detriment of Poland's interest in other areas:

Yes, that it is true [we did consider raising this issue in Brussels]. However for political reasons we refrained from such a step. [...] You can gain a lot today for two, three weeks but the political *raison d'être* is different. We need Germany's support in finance, CAP. We are not as developed in these areas. We also looked for France support. Politics has an element of concession. I give you something, you give me something in return [...]. (Miszczak, 2011 Interview)

Clearly, strained Polish-German relations would have been exploited by the opposition (PiS) for its own purposes, as it has often played the “anti-German card”.²¹⁶ Thus strategic party politics must also be “blamed” for the Polish

²¹⁵ See: “Miasta kuszą emigrantów: Wracajcie do Polski. Mamy dla was pracę”, *Gazeta Wyborcza*-online: <http://wyborcza.pl/1,75248,6140598.html>, accessed 30 November 2011.

²¹⁶ For the 2011 Sejm elections, PiS leader Jarosław Kaczyński again used anti-German rhetoric to attract voters. See: “Polens Oppositionschef unterstellt Großmachtphantasien:

government's inaction. Miszczak's (2011 Interview) comments Germany's 2009 decision as

a pity [...] Because of Germany's false policy Ireland and Britain profit. [...] We have appealed to the German government but there was a wall [meaning German government did not want to listen]. Now the German government acknowledged that they made a mistake. During our recent discussion the German government was saying that they would like to see up to 100,000 Poles on the German labour market, but Poles do not want to go. You know, the German society is so closed to foreigners, so conservative and anti-European and create their own psychological frontier because they think they are better. Somehow they have it codified here [points to the head] here that they are better.

V. Conclusion

The flexible 2+3+2 model, applied to free movement of workers and services in the construction industry, industrial cleaning and interior decorators for Germany at the EU-15 level does not correspond to preferences of all member states, but demonstrates the influence of sectoral interests in Germany. The construction sector was vociferous and successful in demands for a TP to protect its business. It benefited from Polish-German bilateral treaties. The construction sector often employed Polish workers illegally. Prior to Poland's EU accession this sector wished to fight competition from Polish companies providing services in Germany. The construction sector's influence is reflected in Chancellor Schröder's mention of it in his government policy statement in the *Bundestag* in January 2001, at the time when he himself raised the issue publicly. Schröder had only in November 1999 announced a governmental package to rescue Germany's biggest construction company, Philipp Holzmann, from insolvency. This was in line with the Chancellor's self-representation strategy as the saviour of German jobs, especially in the tabloid *Bild-Zeitung*.²¹⁷ The liberalisation of workers and services would, in that context, contradict the Chancellor's actions. But, business was slow in the new *Bundesländer*, which could call for help from their respective Minister-Presidents, and the Bavarian

Kaczynski zieht im Wahlkampf die anti-deutsche Karte", <http://www.tagesschau.de/ausland/polen400.html>, accessed 29 November 2011.

²¹⁷ For Chancellor Schröder, a good relationship with Germany's biggest tabloid *Bild* was particularly important. In 2002, *Bild's* chief reporter Béla Anda became government spokesman. For Schröder, *Bild* was "half of the media business" and during the first two years *Bild* presented him very favourably (Rosumek, 2007: 225).

CSU was the first party to demand a TP in that area. The unions had been in favour of a TP from the start, but one cannot automatically draw the conclusion that they defeated the interests of the employers' associations just because a TP was agreed. The flexible model of revisions and extensions indicates compromise and the possibility of adjusting policy in favour of business whenever needed.

Party politics and the electorate's fears also play a significant role in the accession negotiations as well as in the prolongations in 2006 and 2009. This is demonstrated by the coalition agreement between the CDU/CSU and the SPD in 2005 which agreed four years in advance to seek the last prolongation despite not knowing that far in advance whether the labour market would experience serious disturbances. The SPD could not afford to risk further confrontation with her left wing or the unions after the difficult social reforms of "Agenda 2010", and the CDU under Angela Merkel exploited the SPD's "*neue Mitte*" by moving left, avoiding confrontation with the SPD and presenting itself as more competent on questions of economics. In that context it is unsurprising that Merkel announced the introduction of a comprehensive minimum wage at the time of the TP's expiry in May 2011, and the SPD gained some momentum in the polls in the second half of 2011.

It is difficult to draw any meaningful conclusion about the role of non-state actors in Poland when examining *H3* for this topic. The unions and employers' associations were both in favour of the liberalisation of the free movement of workers, and that has been the Polish government's position since the UKIE's 1997 national strategy. Poland accepted the TPs in return for the meeting her demand that the acquisition of real estate by foreigners be restricted for 12 years. Despite growing concerns over the lack of qualified workers, especially in construction and craftsmanship, due to the mass exodus of Poles, workers which were much needed for the economic boom experienced since accession in 2004, the government insisted on a full liberalization of the German labour market and was particularly annoyed by *Arbeitsmigrationssteuerungsgesetz*, exacerbating Poland's "brain drain" problem. But no Polish government could permit itself to be anti-EU and openly state that it wishes a closed labour market for Germany, in order to protect Polish sectoral businesses.

Regarding *H1*; in this case the new *Bundesländer* played an important role in demanding a TP, justifying it by the high unemployment rate, especially in the low-wage sector. The regional divisions of unions also communicated their experiences to the top level. Party politics at the federal level prevented the respective Minister-

Presidents from making public their opposition to the last prolongation in 2009, but the fact that non-state actors have an additional access point at state-level has been made apparent and is an important distinctive feature, compared to the Polish policy-making apparatus. Also, in the German case, official position papers are respected by the government and are an integral part of the political system. In Poland, social partners often complained about a lack of information. Although they voiced their preferences they did so confrontationally, especially when the association's political affiliation did not match the party composition of the government. This has been consistently the case in the preceding chapter, as well as in this one. It must be admitted that for both issues in Poland and Germany public opinion and the fears of the electorate were very important for policy-makers in deciding on a position for the accession negotiations. Therefore, individual non-state actors' preferences were always weighed against the political costs and it is not possible to attribute clear-cut results to either the success or failure of any single actor's influence. This is valid for the DGB's positions, which matched the public's attitude towards enlargement as a whole in Germany, and the agricultural organisations in Poland which wanted what the majority of Poles did: to prevent Germans buying up land. Hence, at most it can be stated that these actors enhanced their demands by instrumentalising the media and the parliaments as a mouthpiece (especially in Poland's case).

Like Chapter V, this chapter cannot falsify *H2*. Joining the EU has meant both countries lifting their relations to a new level, institutionalising their relations more through inter-linkage and through joint or diametrically opposed interests which create friction or satisfaction. This chapter has shown that the German regional unions also argued on behalf of their Polish counterparts, even though the DGB as an umbrella organisation took a different position later, in 2009. Although the regional DGBs and eastern *Länder* were not successful in realising their preferences, the fact that they include these considerations adds to the multi-layered approach of Polish-German relations, making them more solid.

7. The “Centre Against Expulsions”

This chapter analyses the decision-making process leading to the establishment of a permanent exhibition at the Deutsches Historisches Museum (DHM – German

Historical Museum) in Berlin, depicting the flight and expulsion of millions of Germans, following the WWII and the Potsdam Conference. This issue differs from those looked at in the previous case studies in two crucial ways. First, whereas the free movement of workers and the free movement of capital were negotiated at the bilateral and EU levels, for the purpose of Poland's EU enlargement, this issue is in principle a German *domestic* political decision that affects Polish-German relations for reasons examined further below. Hence, there is limited opportunity for comparison between German and Polish foreign policy-making in this case. Nevertheless, the issue demonstrates how the German political system enables non-state actors to access decision-makers and successfully influence foreign relations. That a similar case cannot be found in Poland for comparative purposes, points to the limitations that non-state actors face in the Polish system. Furthermore, the original initiative for the project, which eventually resulted in the permanent exhibition still under development at the time of writing, stemmed from the Federation of Expellees (*Bund der Vertriebenen – BdV*), and the interest of the business community in what is essentially a cultural venture has therefore been unremarkable. Consequently, *H3* is addressed here indirectly by showing that it is not only non-state actors with economic interests which have an impact on decisions pertaining to Polish-German relations.

Second, whereas the previous case studies are completed in the sense that the chapters of the *acquis communautaire* and TPs have been negotiated, this issue is not entirely concluded. The exhibition is under development and the reactions to it will have much analytical value. The issue may play a role in Polish-German relations beyond this point, but this thesis is unable to take that into account. However, the most important *political* decisions have already been made and they are sufficient to showcase the topic of this thesis.

This topic is very contentious and laden with emotion on the Polish and German side - this is the issue that has strained relations between the two countries the most in the last decade. One relationship-straining argument has been the notion that the project allows Germany to reverse its own and Poland's roles as perpetrator and victim. The problem begins with differences between the terminology in circulation on each side. Whereas in Poland the terms *wysiedlenie* (resettlement;

Aussiedlung) and less often *przesiedlenie* (move; *Übersiedlung*)²¹⁸ are used, in Germany the term *Vertreibung* (expulsion; *wypędzenie*)²¹⁹ is commonly accepted. This is reflected in the historical texts used in Polish secondary and grammar schools (Ruchniewicz, 2006: 151-59; Migdalski *et al.*, 2007; Strobel and Maier, 2008; Ruchniewicz, 2010: 2-8).²²⁰ What seems like minor linguistic difference carries wide-reaching, potentially explosive political and societal implications based on differing perceptions of history and what constitutes “the truth”. This thesis uses the terms ‘expulsion’ and ‘expellees’ throughout – this must not be interpreted as a sign of partiality. This chapter does not engage in the debate over how nations should remember events; it also does not give a “correct” account of historical events. Rather, it examines the process of political decisions and, in that context, the selection of certain terminology is unavoidable. Using the word “resettlement” would not do justice to the numerous cases where Germans were moved in a more violent manner.²²¹ Hence, “expulsion” and “expellees” is understood as collective term for the events that took place during and right after WWII and the people affected.

The chapter first presents a brief overview of the expellees’ role in German society, their political organisation and their activity until the end of the Cold War.

²¹⁸ In this particular context the German language is more specific than the English language. The Oxford Duden German Dictionary (1990: 727) translates the term *Übersiedler* simply as a German native moving to the Federal Republic from East Germany. Ruchniewicz (2006) also uses the word *Zwangsmigration* (forced migration).

²¹⁹ The German law distinguishes between *Vertriebene* (expellees) who were residents of the former German *Ostgebiete* on 1 January 1939 and *Heimatvertriebene* (Heimat expellees) who were residents of the former *Ostgebiete* on the 1 January 1937. The former received the *Vertriebenausweis B*, the latter the *Vertriebenausweis A* (see Art.1 and Art.2 BVFG). In Poland, due to the Cold War and the uncertainty of the final borders, any discussion about the expulsions were repressed since the regime sought to legitimise the new Poland and did not want to weaken its negotiating position with the FRG (see Madajczyk, 2006: 242-46).

²²⁰ Poland and Germany have acknowledged the problem of differing historical perceptions leading to misunderstandings, tensions and the straining of relations between peoples, and therefore in 1972 created a joint commission under the auspices of UNESCO for the creation of a Polish-German history book for schools (*Deutsch-Polnische Schulbuchkommission*). The Commission is based at the Georg-Eckert-Institut in Braunschweig. See: <http://www.gei.de>, accessed 13 March 2012. Höpken (2006: 114-15) identifies three weaknesses in dealing with the topic of expulsions in German schools: first, the German expulsions are not covered comparatively; second, there is superficial reflection on the causes; third, expellees’ experiences of integration into the FRG and GDR are not adequately dealt with.

²²¹ According to Salzborn (2007: 97) the generalised usage of the term “expulsion”, “obscures the ambiguous and contradictory nature of the historically diverse phenomenon which took place in several phases.” By referring to Schieder (in Salzborn, 2007: 97-98) he rightly points out that there were in truth four distinct, overlapping phases: i) evacuation of indigenous Germans by the German authorities; ii) flight; iii) “wild expulsion”, i.e. unofficial and unorganised expulsions before the Potsdam Conference; iv) deportation following the Potsdam Conference. The term “expulsion”, “purposefully introduced after the Second World War [...] was intentionally launched as part of victim terminology and as part of a political strategy [...] supposed to underline the status and the representation of the resettled Germans as victims.” (Salzborn, 2007: 98)

Then, the chapter analyses the events and the decisions which followed the initiative presented by the BdV in 2000. This includes Poland's reaction and the resulting lack of co-operation between the two countries on the project. The process is divided into three sub-sections roughly corresponding to the three different governments and their respective roles in tackling the issue: the SPD-Green government of 2000-05, the Grand Coalition of 2005-09 and the CDU/CSU-FDP government.

1. Ostflucht: flight and expulsion

In September 1939 millions of German were living in the so-called *Ostgebiete* (eastern territories): 9.955 million Germans within the German borders (*Reichsgrenzen*), and 8.312 million outside the German borders (Reichling in Kossert, 2008: 22).²²² The expellees did not come exclusively from the territories that would later become Polish, an important point for this chapter.

When Soviet troops advanced westwards in 1944, a mass exodus commenced of millions of German living in the *Ostgebiete*. As early as July 1944 the inhabitants of the Memel Territory (*Memelland*) were evacuated. When the Red Army crossed the Vistula in January 1945, some 4-5 million Germans fled westwards and hundreds of thousands died of hunger or allied bombing or were caught by the advancing army. Many women were raped (Hirsch in Kossert, 2008: 27-28).

At the 1943 Tehran and 1945 Yalta conferences the allies agreed to move Poland's eastern border back to the Curzon Line. This line had been Poland's border in the east after WWI until Marshal Piłsudski had moved it further east after victory in the Polish-Soviet war. Poland would lose 180,000 square kilometres in the east but would be compensated by gaining 103,000 square kilometres of land in the west, up to the Oder-Neisse Line. During the Potsdam Conference in July 1945 the allies agreed on the new borders but stated in point VIII of section B that the "final delimitation of the western frontier of Poland should await the peace settlement" (as discussed in Chapter III).²²³ Article XII states:

²²² On the history of Germans in the East see, for example, the ten volume *Deutsche Geschichte im Osten Europas* (2002) published by Siedler Verlag.

²²³ The full text of the Potsdam Communiqué is available at: http://www.pbs.org/wgbh/amex/truman/psources/ps_potsdam.html, accessed 9 March 2012.

The Three Governments, having considered the question in all its aspects, recognize that the transfer to Germany of German populations, or elements thereof, remaining in Poland, Czechoslovakia and Hungary, will have to be undertaken. They agree that any transfers that take place should be effected in an orderly and humane manner. (Potsdam Conference, 1945)

The allies considered the 1923 Treaty of Lausanne a successful precedent case for establishing an “exchange of people” between Turkey and Greece. Thus, the allies tolerated the Beneš Decrees expelling the German population from Czechoslovakia as well as the expulsions under Polish leader Bierut and in the other states. The argument used then was that “as long as there are no minorities, there cannot be any territory claims.” (Münz, 2002: 722) In 1945/46 these expulsions were seen, in terms of international law, as “harsh, but acceptable”. Today, however, these deeds would be retrospectively seen as ethnic cleansing and unacceptable, as demonstrated by the interventions in Kosovo, Bosnia and East-Timor. This observation, made correctly by Rainer Münz (2002: 723), is important because, as seen further below, it is one of the main explanatory arguments for why the BdV, under Erika Steinbach’s leadership, embarked on a project to erect a museum depicting and condemning the expulsions. International law changed over time and with it the expulsions of Germans can be seen in a different light.

Yalta and Potsdam reversed Hitler’s “*Generalplan Ost*” policy, and prepared and legitimised the expulsion of millions of Germans (Faber, 2002: 742). Other nations, though, suffered a similar fate, including 1.4 million *Kresy* Poles who were expelled and resettled in the regained lands (Kossert, 2008: 33) of the new *Piast* Poland. These expulsions were, more often than was necessary, not conducted in the “humane manner” stipulated at the Potsdam Conference. Officially, the Polish government forbade arbitrary acts of revenge under threat of harsh punishment. In reality, however, local Polish authorities tolerated excessively retributive acts, as described by Bahlcke (2006: 167) regarding the expulsion of Silesians. Essentially everywhere where expulsion of Germans occurred (from the territories mentioned above) it was often conducted in a cruel manner (see Kossert, 2008: 32-40). In total,

twelve to fourteen million Germans were expelled in the different phases,²²⁴ while two million perished (Kittel, 2007: 7).

Some ten million people arrived in the western zones, subsequently the FRG, excluding refugees from the Soviet Occupation Zone (SOZ) and *Spätaussiedler*.²²⁵ The allies, underestimating the sheer volume of arrivals, agreed on certain quotas for accommodating expellees, but they were very soon filled and the expellees were moved to areas where capacities were still available (Kossert, 2008: 59). Table 6.1 shows the total number of expellees and the proportion of the population they represented in the eleven *Bundesländer*. Additionally, four million expellees had to find a new home in the SOZ. The GDR government could not oppose Soviet policy and simply treated the expellees as “resettlers” (*Umsiedler*), denying them any victim status, and suppressing any culture of remembering the *Heimat* (see Kossert, 2008: 193-228).

²²⁴ Not all Germans were expelled immediately. For example, some qualified workers who were seen by the local authorities as irreplaceable for reconstruction and training of Polish workers were prevented from leaving (e.g. Bahlcke, 2006: 197-98). Others, such as the Silesians of the Upper Silesian industrial basin, were seen as suitable for “re-Polonisation”. These Germans would emigrate to Germany as *Spätaussiedler* (see below) in several waves from the 1950s onwards.

²²⁵ *Spätaussiedler* (late repatriates of German origin) are people of German origin, previously residing in the former Soviet Union or the former Eastern Bloc States, who have moved permanently to Germany. Bundesministerium des Inneren: http://www.zuwanderung.de/ZUW/DE/Zuwanderung_hat_Geschichte/Spaetaussiedler/Spaetaussiedler_node.html, accessed 12 January 2012.

Table 7.1 *Total number of expellees in the eleven Bundesländer and their respective share of the population in 1950, 1961 and 1970*



Source: Neuhoff in Kossert (2008: 59)

The local populations were not always welcoming to the expellees. Offensive labels, such as *Polacken* (a pejorative term for a Pole), *Gesockse*, *Flüchtlingspack* (expelled rabble) and others, were often used; although many expelled families also had good experiences (see Kossert, 2008: 43-86). Local populations were poor, and were now forced to share their living space and food, and their reactions can be understood in that context. But, the expellees were part of the German *Volk* who experienced non-solidarity soon after Hitler's cult of *Deutschtum* (Germanness). This is an important point, it later plays a vital role in the BDV's project. The survivors remember the "xenophobia" they experienced, and they often lament the insufficient recognition of

the hardships they suffered²²⁶ and their contribution to the *Wirtschaftswunder* and the new Germany.

II. Organisation, integration and political activity and influence of the expellees in the FRG before 1990

In autumn 1945, the first expellee organisations emerged as registered associations (*eingetragener Verein*, e.V.),²²⁷ although they were officially forbidden by the allies (Kossert, 2008: 139-40). In 1948, the first umbrella organisation was founded in the British zone, disguised as a reconstruction organisation (Stickler, 2004: 35). The expellees organised themselves into *Landsmannschaften*,²²⁸ representing their regions of origin. In April 1949, two umbrella organisations emerged: the *Zentralverband der vertriebenen Deutschen* (ZvD) for economic and social questions and the *Vereinigte Ostdeutsche Landsmannschaften* (VOL) responsible for cultural tasks. This divided structure reflects the struggle between the two organisations' leaders who often used their positions as springboards for a political career. Throughout the 1950s conflict prevailed between the two, leading to the failure to found a united *Bund der vertriebenen Deutschen* (BvD) (Stickler, 2004: 33-53). In 1959 the two organisations merge into the single umbrella organisation *Bund der Vertriebenen* (BdV) (Stickler, 2004: 78-98). By 1956 the two organisations had over 2.1 million members, amounting to 23.7% of expellees (Stickler, 2004: 147). Although this seems to be an impressive degree of organisation, four years previously the number of members had been 3.5 million (or 42% of expellees), so they had dropped by roughly a third. Numbers declined partly due to the Federal Expellee Law (*Bundesvertriebenengesetz – BVFG*)²²⁹ passed in 1953 and the Equalization of War Burdens Act

²²⁶ In a December 2002 representative poll by Allensbach, 66 % of all expellees in West Germany, and 70 % of all expellees in East Germany responded that they had had problems with integration into the new societies for a long time (Petersen, 2005: 24-25).

²²⁷ In the German legal system an *eingetragener Verein* is a legal person and enjoys many legal rights as defined in the Bürgerliches Gesetzbuch (German Civil Code - BGB). Most German amateur sports clubs are e.Vs.

²²⁸ According to the BdV, twenty *Landsmannschaften* are organised today under the umbrella organisation BdV: <http://www.bund-der-vertriebenen.de/derbdv/struktur-1.php3>, accessed 15 January 2012. The total number of *Landsmannschaften* varied at times due to splits and mergers.

²²⁹ The BVFG, besides stipulating the conditions that had to be met in order to qualify as an expellee *Vertriebener*, *Heimatvertriebener*, *Sowjetzonenflüchtling* and *Spätaussiedler* (first section), grants rights and benefits (second section) and regulates the administrative procedure. For this chapter, Article 96 is of importance since it ensures financial support for cultural activities, maintenance of culture and

(*Lastenausgleichsgesetz* – LAG)²³⁰ passed in 1952. Both laws promised expellees improvements in social conditions and permanent integration into West-German post war society. The *Wirtschaftswunder* contributed to declining membership figures (Stickler, 2004: 147).

Nevertheless, this group had disproportionately high unemployment rates and low property ownership compared to the local population (see Kossert: 2008: 87-109). In 1992, an evaluation of 212 interviews with expellees born between 1900 and 1932 revealed that for 49% of the interviewees (and 77% of their parents) social status declined following expulsion. Only 8% of the interviewees (and 1% of their parents) experience social advancement (von Engelhardt in Kossert, 2008: 136). Moreover, the LAG was perceived by the local population as an unfair burden and as overly generous to the expellees,²³¹ which helps to explain why expellees were often treated with hostility and a lack of sympathy when they later protested against Brandt's *Ostpolitik*.

The expellees meet at annual *Heimat*-meetings (*Tag der Heimat*). On 5 August 1950 the spokespersons of the *Landmannschaften* and the umbrella organisation signed the Charter of German Expellees (*Charta der deutschen Heimatvertriebenen*) in which the expellees refrained from “revenge” (*Rache und Vergeltung*), but also asserted that “forcing man to separate from his homeland means to kill him in spirit” (Charta, 1950). Hence, the Charter established the right to a homeland, and is a cornerstone for the organisations' demands for the return of the territories. Retrospectively, politicians and intellectuals evaluated the Charter differently. Interior Minister Wolfgang Schäuble said on the 26 August 2006 in Stuttgart at the 65th anniversary of the expulsion of Germans from Russia (*Russlanddeutsche*),²³² that the Charter shows “greatness and an aptitude for learning”, and that “it is not revanchism and depression which dictate the Charter but

scientific engagement with the topic (see below). See <http://www.gesetze-im-internet.de/bvfg/index.html>, accessed 16 January 2012.

²³⁰ Up to 1987, the law was modified 31 times (Kossert, 2008: 98).

²³¹ The LAG forced the local population to pay, over the next thirty years, 50 % of the value of their property at the time of the 1948 currency reform. The money was used to compensate those who had lost or suffered heavy damage to their property in WWII. The expellees were one group which benefited most since they had had to leave their property behind. However, by 1979, the expellees had received compensation amounting to only 22 % of their property which, in addition, was undervalued (Grosser in Kossert, 2008: 101).

²³² Stalin expelled the Russian Germans (also known as Volga-Germans) from the Volga German Autonomous Soviet Socialist Republic, east of Kazakhstan, Kyrgyzstan and Tajikistan, after Hitler's Operation Barbarossa commenced in June 1941 (e.g. Muth, 2010). These Germans were also used for forced labour.

the belief in the future, Europeanness and Christian humanity.” (Schäuble, 2006)²³³ Brumlik (2005: 92-108) opines that the Charter stresses the singularity of German suffering, reflects the repression of national-socialism, does not deal with the causes of the expulsions, and that the wording “refrain from revenge” was wrongly chosen since one can only refrain from something when one is entitled to it. That opinion is widely accepted in Poland, and in an interview for this thesis, Director of the Office of the Plenipotentiary of Prime Minister for International Dialogue, Krzysztof Miszczak, called the Charter “insolent” since it was Poland which was “entitled to refrain from revenge for the suffering caused by Germans including the misdeeds in the *Warthegau*”.

Contemporaries evaluated the influence of the expellees as “not unremarkable” (Jöhren in Stickler, 2004: 191). The expellee party *Gesamtdeutscher Block/Bund der Heimatvertriebenen und Entrechteten* (BHE) was a junior coalition partner in five *Bundesländer* in the 1950s. A Ministry for Expellee Questions (*Bundesministerium für Angelegenheiten der Vertriebenen*)²³⁴ was established; in Adenauer’s second cabinet (1953-57), four ministers were expellees; and the number of expellee civil servants in all the ministries was quite high (Stickler, 2004: 191-208). Nevertheless, despite the big parties’ recognition of their voting power, the expellee organization(s) “were not [in contrast to contemporary portrayals] a powerful pressure group and their influence was kept within narrow limits by their own structural weakness and the mechanisms of party democracy.” (Stickler, 2004: 209)

The big *Volksparteien* (the CDU/CSU and the SPD) both courted the expellee vote, often making hopeful and unrealistic promises (see Stickler, 2004: 212-346; Kossert, 2008: 165-81). The following two quotes from the two most important political figures in the young FRG serve as excellent examples of this. As late as 1961, Adenauer said at the annual meeting of Silesians in Cologne that “Alsace-Lorraine returned to France, according to its own wish, only after 47 years. Do have patience, have endurance and have hope.” (in Kittel, 2007: 9)²³⁵ However, in a 1957 interview, Adenauer remarked in the context of the new borders that “one cannot turn

²³³ Former Chancellor Helmut Kohl laments in his memoirs that the Charter “has still not been sufficiently recognised” (Kohl, 2005: 371).

²³⁴ The Ministry was renamed the *Bundesministerium für Vertriebene, Flüchtlinge und Kriegsgeschädigte* and was closed in 1969. From then on, the Interior Ministry was responsible for questions dealing with the expellees.

²³⁵ For more on Adenauer’s revisionist position on the question of the *Ostgebiete* at the beginning of his Chancellery see, for example, Bingen (1998: 26-35).

the wheel back, I think this is impossible. The Russians moved the Poles westwards, the Germans further west [...] Therefore one needs to find an agreement with Poland, perhaps at the European level as well.” (in Bingen, 1998: 65) Brandt signed a message to the same group’s 1963 meeting with the words: “Breslau, Oppeln, Gleiwitz, Hirschberg, Glogau, Grünberg are not only names, these are living memories [...] Renunciation equals treason, who would deny it? 100 years SPD [...] means 100 years of struggle for the self-determination of peoples.” (in Stickler, 2004: 244)²³⁶ The same year Bahr drafted the beginning of *Ostpolitik* with the concept of “change through rapprochement” (Bingen, 1998: 95).

That the expellees could not prevent the 1970 Warsaw Treaty underlines the thesis that they were not as influential as often portrayed and were rather “vocal but uninfluential” (von Dannenberg, 2008: 221-30). However, earlier tentative attempts by CDU officials to accept the Oder-Neisse line failed due to immense public pressure and the “vociferous protests of expellee activists” (Ahonen, 1998: 44). That it took West Germany a quarter of a century to recognise the border and normalise relations with the eastern bloc countries can be attributed to domestic pressures and the expellees’ efforts, not just to the West German *Staatsräson* of isolating the GDR, as Ahonen (1998) points out. *Ostpolitik* also marked the beginning of the BdV’s alliance with the CDU/CSU. Initially, many expellees were more inclined towards the SPD since it was the party which stood up for those who did not have much and supported the LAG.²³⁷ After the launch of *Ostpolitik*, many expellees turned their backs on the SPD and switched to the opposition CDU, such as Reinhold Rehs (spokeperson for the *Landsmannschaft Ostpreußen* and president of the BdV 1967-70) and Herbert Hupka, thus calling into question the BDV’s official stance of being above party politics (Stickler, 2004: 252-79). Even before the launch of the SPD’s *Ostpolitik*, the link between the SPD and the expellees had weakened considerably for a number of reasons overlapping with the above-mentioned declining membership rate in the expellee organisations. As discussed, the CDU’s rhetoric courted the expellees and promised a Germany within its 1937 borders. Further, Adenauer’s CDU skilfully integrated the expellees politically by establishing a special Ministry for

²³⁶ Brandt’s rhetoric represents a continuation of the first SPD postwar leader Kurt Schumacher’s endorsement of the expellee cause, promising as early as 1946 to “fight with all peaceful means... over every square kilometre east of the Oder-Neisse.” (in Ahonen, 1998: 42)

²³⁷ The CDU managed to successfully integrate the members of the BHE, which was dissolved in 1961 (see Bösch, 2001).

Expellee Affairs, by giving ministerial posts to expellees, and by integrating BHE politicians into the CDU. Also, pressing social needs were resolved with the LAG and the BVFG. Lastly, Adenauer's *Westbindung* proved to be economically beneficial and the *Wirtschaftswunder* replaced irredentism on the list of priorities. Michael Schwartz's argument that "expellee integration equals economic growth plus time" (in Ahonen, 2005: 13) is perhaps too simplistic, but is certainly valid for the two Germanies and Finland (Ahonen, 2005).²³⁸

After the launch of *Ostpolitik* the expellees put their hopes in the conservative party. Undoubtedly the CDU/CSU was not honest with the expellees about the border question in the 1980s, meaning that Kohl had to manoeuvre carefully to reconcile reunification, recognising the Oder-Neisse line, possible exploitation of the issue by right-wing parties and his own electoral ambitions (see Chapter III). However, by 1990 the overall influence of the BdV had declined significantly, leading to its marginalization, according to Ociepka (1997: 286). She identifies four main reasons. First, economic equalization with the "local population" was completed, alongside compensation for the war losses through the LAG. Hence, the BdV could no longer claim to represent an economically disadvantaged group, thereby losing an important part of its appeal in the 1950/60s. Second, although the BdV managed to find MPs in the CDU/CSU party who would vote for its interests in the *Bundestag*, such as the 23 MPs who voted against ratification of the 1990 Border Treaty (see Chapter III), the fact that it could not live up to its own ambition to be an organisation which transcended party politics and found support across all parties weakened its range of influence among elites. Third, the BdV does not possess the instrument of a classic interest group: party financing. Rather, the BdV relies on subsidies from the federal and *Länder* budgets. Fourth, this leaves only one leverage method: the voting behaviour of its members, but the parties know that an electoral recommendation by the board does not necessarily reflect the opinions of its members (Ociepka, 1997: 286-91). To this list one could add declining membership due to natural "dying out". As Stickler comments on the declining trend in the 1960s, "the significance of the organization falls together with declining membership. Therefore, the BdV and its

²³⁸ Ahonen's (2005) article compares the two Germanies' and Finland's experience with expellees, and tries to establish the underlying cause of the "taming" of the "expellee threat" after 1945. He identifies three transnational underlying causes. First, the Cold War itself, with the presence of two powerful hegemonies in the two Germanies, prevented the expellees' claims from materialising. Second, economic growth. Third, the emergence of a new more dynamic society which accepted change due to the destruction of the war, which had uprooted old structures.

predecessor organization have always been eager to overestimate the membership.” (2004: 140) However, whilst the BdV’s membership declines,²³⁹ the number of expellees does not necessarily decline as well. The BVFG originally granted the status not only to the actual expellees but also to their descendants, meaning that by 1974, 31.4% of all “expellees” had been born after 1949 (Schlau in Hopp, 2010: 90), leading to the bizarre situation that the absolute number of “expellees” is increasing. Although an opinion poll by the Allensbach institute suggests only 6% of the German population thinks that the children and grandchildren of the contemporary witnesses should also be seen as expellees, 29% responded that that they themselves or someone in their family had been affected by the expulsions, a rate that has increased from 24% in 1959 (Petersen, 2005: 20-21). This offers the BdV the *potential* to play an important role in issues like the preservation of the memory and heritage of the historical *Ostgerman* culture. This is underlined by the fact that 44% of the population and 63% of the expellees opine that the expellee organizations are important for the maintenance of traditions (Petersen, 2005: 55). Hence, despite all the apparent weaknesses of the BdV and the *Landsmannschaften*, how is it possible that the organization, under Erika Steinbach, succeeded in her proposed project, straining Polish-German relations for over a decade? I suggest that one contributory factor was the expellees’ assumed quasi-monopoly on the maintenance of the *Ostgerman* culture and heritage due to the general apathy of the wider population about this, and the CDU/CSU’s generous financial support for the expellee organizations.

Memory politics; financial support; CDU/CSU-expellees link and the effects

Under the 1982-98 CDU/CSU-FDP coalition, federal subsidies for the maintenance and development of and research on the cultural heritage of expellees’, as anchored in Article 96 BVFG, increased significantly, underlining the alliance of expellee

²³⁹ As of today (January 2012) the BdV claims that some 1.3 million individuals are organised in the 16 *Landesverbände* and 20 *Landsmannschaften*. See: <http://www.bund-der-vertriebenen.de/derbdv/struktur-1.php3>, accessed 9 March 2012. The actual amount is most likely much lower. At the time of the controversy surrounding the manning of the foundation board of the “Flight, Expulsion, Reconciliation” foundation, the BdV claimed to represent two million members. The news agency DDP claimed in its research a membership of 550,000. See: “Verwirrung um Mitgliederzahl - FDP fordert Aufklärung über Größe des Vertriebenenbundes”, <http://www.spiegel.de/politik/deutschland/0,1518,670494,00.html>, *Spiegel-online*, 06.01.2010, accessed 9 March 2012.

organisations with conservatives (see Table 6.2). In addition, individual *Bundesländer* were able to finance expellee organisations and their activities. The *Länder* assumed patronage over the *Volksgruppen*²⁴⁰ and subsidised their respective protégé-groups. Especially in Bavaria, where the CSU governed with an absolute majority from 1962-2008, the Sudeten German *Landsmannschaft* was integrated into the state as the “fourth tribe” (*vierter Stamm*),²⁴¹ thus enjoying many privileges. For example, a Sudeten-German Foundation was created in 1970 and the Bavarian Minister-President is always its chairman. Also, Bavaria contributed half of the DM 25 million expenses for the Sudeten German House in Munich (Hopp, 2010: 130-31).

Table 7.2 Federal subsidies in thousand DM* for the maintenance of the cultural heritage of the expellees as stipulated in Art. 96 BVFG in the years 1973-2010**

Year	The entry “subsidies for the maintenance of the cultural heritage of the expellees” in the Interior Ministry	The entry “subsidies for German-political work including the tasks according to Article 96 BVFG as well as the foundation “Deutschlandhaus” in Berlin” in the Federal Ministry for Interior German Questions	Subsidy for cultural encounters of Germans in their Heimat and the local population there	Total***
1973	2,938			
1974	3,051			
1975	3,387	1,039		
1976	3,557	1,000		
1977	3,773	1,007		
1978	3,868	1,159		4,218
1979	4,029	1,945		4,274
1980	4,186	2,101		5,006
1981	4,282	2,251		4,282
1982	4,170 start of Kohl CDU/CSU-FDP coalition	2,344		4,170
1983	4,360	2,435		4,360
1984	6,200	3,000		6,200
1985	6,500	4,000		6,500
1986	8,000	3,500		8,000
1987	10,500	3,700		10,500

²⁴⁰ With the term *Volksgruppe*, the author means German groups coming from different regions, such as Volga Germans, Danube Swabians etc. The English approximation “ethnic group” would not accurately enough convey the meaning of *Volksgruppe*, stressing the cultural component rather than just the “blood” element of an ethnos.

²⁴¹ Since 1956, the Sudeten Germans have been recognised as constituting a “tribe” alongside the Franks, the Swabians and the Old Bavarians (Cordell and Wolff, 2005: 94). It is also noteworthy that the Sudeten Germans have been the most cohesive expellee group and most adept at maintaining a collective identity (Hahn in Cordell and Wolff, 2005: 93).

1988	15,000	4,147		15,000
1989	17,594	5,383		22,870
1990	20,424	5,510		26,618
1991	35,045	5,990 (from now on Interior Ministry)	2,000	43,579
1992	36,100	5,563	2,000	46,884
1993	36,100	6,007	2,000	47,398
1994	35,100			56,756
1995	30,665		1,800	44,273
1996	30,690		2,000	45,459
1997	32,000		2,000	52,917
1998	29,000 (start of Schröder SPD-Greens coalition)		2,000	52,453
1999	26,164 (from now on competence lies in the hands of the Minister of State in the Federal Chancellery and the Federal Government Commissioner for Culture and the Media)		1,400	49,321 (includes 6,100 for cultural measures under Art. 96 BVFG and the cultural life of foreign minorities)
2000	26,943		1,000	43,493 (3,600)
2001	20,198		1,000	35,149 (1.950)
2002	19,899		1,482 renamed exchange of culture and history of Germans in eastern Europe	31,252 (1.950)
2003	19,801		-	31,252 (1.950)
2004	24,638		-	30,787 (1.950)
2005	18,838 start of Merkel CDU/CSU-SPD govt.		-	27,057 (1.893)
2006	21,285		-	29,114 (1.835)
2007	21,006		-	30,748 (1.866)
2008	20,401		391	31,718 (1.561)
2009	22,126 start of Merkel CDU/CSU-FDP govt.		391	36,464 (1.244)
2010	20,722		391	32,592 (1.409)

* all amounts stated in Euro have been converted into DM

** In addition to the federal government, the individual *Bundesländer* have the possibility of subsidising expellee organisations and maintaining their cultural heritage according to Art. 96 BVFG

*** The amounts stated in the previous columns do not necessarily add up to the total stated here. Several positions in the federal budget cite Art. 96 BVFG as a legal reference

Source: collated from the Federal Budgets of the Federal Republic of Germany (1973-2010)

The inter-linkage between the conservatives and the expellee organisations went beyond financial support. Until 1998, Interior Minister Schäuble, Chancellor Kohl and several other members of the government and lower ministerial levels either

visited the organisations' events or sent festive greetings to them. Also, several motions demanding the protection of minorities and settlement rights in the CEEC states, the acknowledgement of expellees' contribution to Germany's reconstruction and the injustice of expulsions, and the continuation of subsidies – prepared by the Union faction “Expellees and Refugees” – were passed during the CDU/CSU government's tenure (Hopp, 2010: 128). MP Herbert Czaja (CDU) was president of the BdV from 1970 until 1994, when MP Fritz Wittmann (CSU) took over. In 1998 MP Erika Steinbach (CDU) became its president, demonstrating once more the expellee organization's affiliation with conservatives.

The expellee organizations used the subsidies for their *Heimat* meetings, their maintenance costs, and also for museums depicting the *Ostgebiete* culture and other Eastern settlements.²⁴² Whether the cultural heritage of the *Ostgebiete* and the German settlers in the East has been sufficiently cultivated can only be answered subjectively. Kittel (2007) suggests a second “expulsion of expellees” from the collective memory²⁴³ of Germans by analysing memory politics from the 1961 Berlin crisis until the beginning of the Kohl era in 1982. He sees a relentless decline and “ghettoization” of expellees and their memories following Brandt's *Ostpolitik*, and a tendency of the population to see the expulsions as “a just atonement for guilt for the world war and the Holocaust without an engagement with its own injustice in a proper cause and effect analysis. Kittel argues furthermore (2007: 169) that the expellees “were given special guilt for national-socialism,” which is “historically wrong”. Nevertheless, by 1989 some 5,000 academic titles were published on the topic of “expulsions” and “expellees” (Wolfrum in Wittlinger, 2006: 72), and by 2003 some

²⁴² By the year 2000, the following museums were subsidised by the federal budget: Pommersches Landesmuseum (Greifswald), Ostpreußische Landesmuseum (Lüneburg), Westpreußische Landesmuseum (Münster), Schlesisches Museum zu Görlitz (Görlitz), Oberschlesisches Landesmuseum (Ratingen), Haus Schlesien-Schaufenster Schlesien (Königswinter), Donauschwäbisches Zentralmuseum (Ulm), Siebenbürgisches Museum (Gundelsheim), Museum Ostdeutsche Galerie (Regensburg). Furthermore, the following regional establishments were subsidised: Ostpreußische Kulturstiftung (Ellingen), Nordostdeutsches Kulturwerk (Lüneburg), Göttinger Arbeitskreis (Göttingen), Stiftung Haus Oberschlesien (Ratingen), Stiftung Kulturwerk Schlesien (Würzburg), Adalbert Stifter-Verein (München), Südostdeutsches Kulturwerk (München); and the nationwide: Martin Opitz-Bibliothek (Herne), Institut für deutsche Musikkultur im östlichen Europa (Bonn), Künstlergilde Esslingen (Esslingen), Stiftung Museum Ostdeutsche Galerie (Regensburg) (Drucksache, 14/4586: 4).

²⁴³ Maurice Halbwachs coined the term “collective memory”. An engagement with the concept for the purpose of this thesis would lead to an unnecessary deviation. Suffice to say that the term describes the memory of groups that is constantly reconstructed on the basis of the present and is therefore a social construct (Halbwachs, 1992: 39-40). The concept is not uncontested since it is very difficult to measure.

100 authors had dealt with these topics in approximately 50 novels and other forms of fiction (Flögel in Wittlinger, 2006: 72),²⁴⁴ so that Wittlinger subsumes (2006: 73) that despite the predominant discourse of German responsibility for war guilt, another “counter-discourse” of “Germans as victims” has existed. Despite all that, by 2002, only 18% of all Germans could exactly pinpoint and a further 21% could vaguely indicate where Silesia is located on a map (Petersen, 2005: 32-33).²⁴⁵ Also, over two thirds of all respondents had never heard of any of the museums dealing with the history of the expellees and their culture (Petersen, 2005: 59).

Paired with the public perception of the expellee organisations preservers of traditions, this gives the BdV a great deal of legitimacy to launch the project that is this chapter’s subject of analysis. The exact causes for the population’s ignorance about the historical German East can only be speculated, but a mixture of general indifference, the low priority set by the *Bundesländer* in schools as well as insufficient promotional work by the expellee organisations is responsible in part. Cordell and Wolff (2005: 94) identify in regards to the *Sudetendeutsche Landsmannschaft’s* (SdL) role on questions of property restitution from the Czech Republic and their *Recht auf Heimat* credo: due to “wider societal apathy and lack of interest with regards to the expellees” the SdL gains prominence within and outside of Germany since it has the field to itself. Here, the same effect can be identified at the level of the umbrella organisation.

III. The expellees after 1990: critical juncture and Steinbach’s presidency

After the 1989 and the cementation of the Oder-Neisse line in the 1990 Border Treaty (see Chapter III), the expellee organisations were confronted with a new reality. It was clear that the last hopes of a return of the *Ostgebiete* to Germany were shattered, but the open borders of a free Europe would enable expellees to visit their former

²⁴⁴ In a representative poll in December 2002 by Allensbach, 26 % of the overall German population and 39 % of all expellees said that they had at least heard of Siegdried Lenz’s *So zärtlich war Suleyken*. Also, 21(38) % of the respondents had at least heard of Lenz’s *Heimatmuseum* and another 21(34) % had heard of Günter Grass *Im Krebsgang* (Petersen, 2005: 43; in brackets the responses from expellees).

²⁴⁵ Also, 32 % could exactly and another 25 % could vaguely indicate the location of the Sudetenland. Petersen (2005: 32) explains that at the time of the poll, the *Sudeten* was in the media because former Czech Minister-President Zeman called the *Volksgruppe* “Hitler’s fifth column” and the media attention probably contributed to the population’s better knowledge of that geographic location.

Heimat, establish contact with the new inhabitants and remaining Germans, and enable new possibilities for restitution claims and demands for the right to settle. The choice was hence one of reconciliation versus antagonism. The different *Landsmannschaften* of the BdV took different paths. Most famously, in 1990 the SdL decided to support the filing in the US of a collective court case for restitution against the Czech Republic (Cordell and Wolff, 2005: 96); and on 14 December 2000 the Prussian Claims Society (*Preußische Treuhand* – PT) was founded as a limited liability corporation (*GmbH*), with the *Landsmannschaft Ostpreußen* participating as a partner with 40%. In September 2001 the *Landsmannschaft Schlesien* acquired another 10% of the stake.²⁴⁶ Parallel to this, the *Landsmannschaft Schlesien* had been engaged with Poland in a process of reconciliation and cross-border co-operation, and many expellees, as private individuals, had been active in the restoration of churches, theatres, cemeteries, monuments, and the creation of small *Heimat*-museums in the former *Ostgebiete* (Cordell and Wolff, 2005: 100-02; Steinbach, 2010 Interview).²⁴⁷ Therefore, although activities which strained Polish-German relations were perhaps not officially supported by the BdV as a whole, the individual *Landsmannschaften* were nonetheless its members, and suspicion from CEEC states are understandable, no matter what the BdV's intention's and despite the PT's claim that to be independent of the BdV.²⁴⁸ In addition, the persons who were active in the BdV, the individual *Landsmannschaften* and the PT overlap,²⁴⁹ meaning that many Poles might see the BdV and its project as a wolf in sheep's clothing.

In 1998 Erika Steinbach became the BdV's new president; the first leader in the organisation's history without any recollection of the expulsions. Steinbach was born in 1943 in Rumia/Rahmel (in then occupied *Reichsgau Danzig-Westpreußen*). She fled with her mother and siblings from Gotenhafen (Gdynia) on the ship *Pelikan*, two days after the MV *Wilhelm Gustloff* was sunk (Steinbach, 2010: 29-43). The fact that Steinbach is the daughter of an occupier is often a point of criticism in Poland (e.g. Mischczak, 2011 Interview), but her father came from Lower Silesia, making

²⁴⁶ See: <http://www.preussische-treuhand.org/de/PVerwirklichung.html>, accessed 20 January 2012. In September 2001, the *Preußische Treuhand* was turned into a *GmbH & Co.KG a.A.*, a special type of limited partnership in which the general partner is a GmbH, but which nevertheless constitutes a variant with shares.

²⁴⁷ There are no official statistics measuring the number of expellees active in the restoration of their former *Heimat*, as they undertake these projects as private citizens (Steinbach, 2010 Interview).

²⁴⁸ (*ibid.*)

²⁴⁹ See: "Polen fürchten die Preußische Treuhand", *tageszeitung*, 13.02.2004.

Steinbach an expellee according to the BVFG, since her family could not return there. Experts in Germany and Poland give Steinbach credit for moderating the tone of BdV members vis-à-vis expeller states (*Vertreiberstaaten*), and also skilfully modernizing the organization (Baring, 2010 Interview; Kwiatkowska-Drożdż, 2011 Interview). Nevertheless, Steinbach aroused a lot of controversy: she was one of the 23 *Bundestag* MPs voting against recognition of the Oder-Neisse line in 1990 (see Chapter III). She made some insensitive remarks even before the project was presented by the BdV in 2000. In 1999, when criticising the fact that expulsion decrees were still in force in some candidate countries, and that the property restitution question was still open she stated: “no fighter jets (*Kampfflugzeuge*) are needed. A simple ‘veto’ is enough for the accession of unreasonable candidates.”²⁵⁰ She made a similar remark when justifying her “yes” for the ratification of the 2003 EU Accession Treaty (Steinbach, 2003; Meckel, 2006: 14-15).²⁵¹ Other controversial statements followed after the project was presented in 2000 (see below). This, of course, has not made it any easier to convince Poles and nationals of the other CEEC states to trust the BdV’s intentions – even though they might be honest and reconciliatory – not least because the BdV carries the history of decades of opposition to *Ostpolitik*.

Whether Steinbach made these statements consciously or not, the effect is the same: they are not taken lightly abroad, causing a storm of outrage in the media²⁵² and amongst political elites, thereby bringing Steinbach to prominence in Germany, and leaving the political elite no choice but to deal with the issue and try to mend strained Polish-German relations. Steinbach is aware that the print media is interested in selling their product (Steinbach, 2011 – Interview), and this might be a tactic for achieving her goals. This thesis is supported by her remark at a CDU-*Landtagsfraktion* workshop in Düsseldorf in February 2010 when she commented on

²⁵⁰ Quoted in “Das Gewissen ist gegen Vertreibungen sensibilisiert – Den Worten müssen Taten folgen”, *Süddeutsche Zeitung*, 26.08.1999

²⁵¹ Steinbach said that she only said “yes” to the Accession Treaties because the Bundestag voted on all ten treaties as a package, implying that had the vote been conducted on each candidate separately, she would have said “no” to the Czech Republic and Poland.

²⁵² Perhaps most famously, the Polish weekly *Wprost* depicted Steinbach on the cover of its 38/2003 issue in Nazi uniform sitting on Chancellor Schröder’s back as a comment on Steinbach’s initiative to erect a Centre Against Expulsions in Berlin.

the opposition to her project that “a dragon only climbs with a headwind” (Steinbach, 2010).²⁵³

IV. The process to the decision

The process leading to the decision to create a permanent exhibition at the DHM in Berlin depicting the flight and expulsion of Germans can be divided into three phases, roughly coinciding with office terms of three governments. The first phase begins in 2000, with the presentation of the idea by the BdV and ends in 2005 when the Red-Green coalition ends. During that time, a heated debate begins in both countries; characterised by SPD opposition to the idea, with two counter-projects as an attempt to pull the carpet from under the BdV’s feet. A second phase lasts between 2005 and 2009, when the Grand Coalition agreed on a “Visible Sign”, but did not agree on how to realise the project. This phase coincides with the PiS-led government in Poland and is a low point in Polish-German relations. The third phase, commencing with the CDU/CSU-FDP coalition in 2009, is characterised by the realisation of the “Visible Sign” accompanied by a quarrel over the composition of the foundation board and the scientific advisory board. The following three sections are organised according to this pattern.

A Centre Against Expulsions – Act I

According to Steinbach, it was her idea to establish a “central memorial and remembrance site” exhibiting the flight and expulsion of Germans from the east. When she became president of the BdV in 1998, she asked herself, “what do I want to make mine and my organisation’s task?” (Steinbach, 2010 – Interview). She names her motivations as, first the general public’s lack of knowledge about the “diversity of expulsions and resettlements”; second, to show the rich cultural heritage of the expellees; and third, to “remind of the fate of almost fifteen million expellees of

²⁵³ In the original: “*ein Drache steigt erst auf durch Gegenwind*”, meaning that opposition is helpful in achieving a goal.

which about two million perished, and which belongs to Germany's history and identity." In the BdV committee's discussions, "we decided that [the memorial] should be in Berlin to make it visible for all," and it was also Steinbach's idea to "show solidarity with the other expellees" and to depict not only the fate of the Germans, but of the other nations of the 20th century, "to outlaw expulsion publicly because it is always illegal under international law." (Steinbach, 2010 Interview) Although these statements offer satisfactory explanations, especially in public discourse, a number of other, possible motivations should be explored.

First, Markus Meckel (2010 Interview), then an SPD MP and chairman of the German-Polish Parliamentary Group (1994-2009), suggests that due to the professionalisation and increased scholarisation of the museums, paired with reductions in the federal funding for the expellees (see Table 6.2), as part of the new "Concept for Research and Presentation of German Culture and History in Eastern Europe" (see Drucksache 14/4586), the BdV found a new project to counter the Red-Green government's interference. Steinbach (2010 Interview) denied this by saying that the cutbacks had come much later than the idea, which was developed in March 1999 and presented in June 2000.²⁵⁴ However, as Knut Nevermann (2010 Interview), SPD Deputy Minister of the Federal Government Commissioner for Culture and the Media from 1998 to 2006, explained in our interview, "we were not even in office and it was obvious to us that we wanted to cut them down to size [the subsidies]" since the BdV had been "a pure front organization" under Kohl.²⁵⁵ It is likely that the BdV knew about these plans and that the leaders had an inkling of the rough climate to come under a Red-Green coalition, given their strong affiliation with the CDU since the launch of *Ostpolitik*.

Second, Meckel (2010 Interview) also suggests that this, the BdV's most prominent project, was intended to establish the organisation permanently across all party lines, as for some time the BdV had been experiencing a fall in membership.²⁵⁶ The way the BdV executed its plan appears to support this thesis. Steinbach managed

²⁵⁴ The BdV made plans for a "Centre Against Expulsions" public for the first time at the 1999 *Tag der deutschen Heimatvertriebenen* in Berlin on 29 May 1999. The BdV's concept was presented in June 2000 in a 21 page paper (Salzborn 2003: 1021-22). See also the foundation's website: <http://www.z-g-v.de/english/aktuelles/?id=39>, accessed 29 January 2012.

²⁵⁵ Nevermann explained to the author that the federal government was paying 44 full time cultural advisors (*Kulturreferenten*) and that the museums' directors were not acting independently of the BdV.

²⁵⁶ Similarly, Mildenerger (2002: 732-33) argues that the BdV used the project to try to find a place in the new Berlin Republic.

to win over Peter Glotz (SPD), who became her co-chair at the “Centre Against Expulsions” foundation (*Zentrum gegen Vertreibungen – ZgV*), founded on 6 September 2000.²⁵⁷ Glotz, born in the *Sudetenland* and a professor of media and society at the University of St. Gallen (2000-2004), was a respected, high profile social democrat, and his visibility contributed to bridging the gap between the Social Democrats and the expellees. When in the summer 2001 the ZgV foundation sent letters to all German municipalities inviting them to support the foundation with one ten-pfennig piece per inhabitant, many SPD-led city councils approved the call for donations because they saw Glotz was a co-signatory.²⁵⁸ Other SPD-politicians also sympathised with the BdV and its project. At the *Tag der deutschen Heimatvertriebenen* on 29 May 1999, Interior Minister Otto Schily (SPD) criticised the political left for its bad relationship with the expellees (in Salzborn, 2003: 1121), an issue Günter Grass²⁵⁹ deals with in the novel *Crabwalk* (Kossert, 2008: 9). Later it became clear that Schily was an advocate for the BdV’s project, and wanted to create a task-force including members from the government and the ZgV foundation which would try to find a suitable location in Berlin for a museum, but the advance was blocked by the SPD and Green factions in the *Bundestag*.²⁶⁰ When Glotz died in 2005, Schily was asked by Steinbach whether he would like to become his successor as co-chairman of the ZgV foundation (Baring, 2010 Interview).

The fact that Steinbach managed to convince the BdV board to strive for a museum which would not only depict the flight and expulsions of Germans, but also the other forced migrations of the 20th century, was a shrewd move aimed at gaining support from the public and politicians from other political parties. Such a project would show a universal phenomenon of expulsion, distract from the focus on the BdV and German expellees alone and open new angles on the topic. It would seem to contradict the perception of the BdV as an organisation which only stood for its own interests; and it would put opponents in a tight spot by suggesting that the “BdV is able to show empathy for the fate of others, but if you oppose our project you not only deny us empathy, but also the other international expellees.” The idea has also been

²⁵⁷ See: <http://www.z-g-v.de/aktuelles/?id=39>, accessed 28 January 2012.

²⁵⁸ See: “Die Katze im Sack gekauft – Wie deutsche Gemeinden etwas vorschnell Geld für das Zentrum gegen Vertreibungen spendeten”, *Süddeutsche Zeitung*, 11.11.2003.

²⁵⁹ Nobel Prize for Literature winner Günter Grass is also a prominent SPD member.

²⁶⁰ See: “Berlin vor neuem Mahnmal-Streit - Ein ‘nationales Projekt’ verstört die Nachbarn – Gedenkstätte für deutsche Vertriebene trifft bei Polen und Tschechen auf Widerstand: Keine Aufrechnung von Unrecht”, *Süddeutsche Zeitung*, 15.07.2003

linked to the tragedies of the Balkan Wars in the 1990s when many displaced persons found refuge in Germany, making the issue of expulsions topical again for the public and politicians (e.g. Schlögel, 2003: 18; Ther, 2003: 215-16a) and hence difficult to ignore.

Third, Baring (2010 Interview) suggests that the ZgV would function as a “final festive funeral for the lost *Ostgebiete*”. Steinbach (2010 Interview) called this a “stupid remark” since the expellees not only came from there, but also from the Banat for example. This is a valid point, but the fact that Baring is a member of the scientific advisory board of the BdV’s ZgV foundation carries some weight, and whilst perhaps this was not the primary motive, it could serve as a farewell to the *Heimat* in general.

Fourth, a ZgV located in Berlin would seek proximity to the “Memorial to the Murdered Jews of Europe” which the *Bundestag* decided to erect in 1999, and which was completed in 2005, thereby claiming victim status for the expellees as well. Moreover, the ZgV would imitate the conceptualisation and realisation of the US Holocaust Memorial Museum in Washington. Although Steinbach (2010 Interview) denied this to the author, Salzborn (2003: 1123) identifies this from the interview she gave in May 2000 to the *Leipziger Volkszeitung*. As mentioned above, Germany’s main “collective memory discourse” since the launch of *Ostpolitik* has centred on her role as perpetrator, although a parallel “Germans as victims discourse” also existed, though overshadowed by the former. Since the end of the Cold War, Germany has also increasingly engaged in the latter discourse.²⁶¹ Another phenomenon that has been observed since the student revolts is a “memorial movement” (“*Gedenkstättenbewegung*”) which has led to over 100 memorial sites reminding three million annual visitors of Nazi crimes (Lutz, 2003: 251-60).²⁶² This was also criticised by the intellectuals Stefan Berg and Henry Broder in a *Spiegel* article.²⁶³ The authors complain that Jews, the Sinti and Roma, homosexuals, expellees and other groups demand their own memorial and use Wolfgang Thierse’s vocabulary of “victim-lobbyism” (“*Opfer-Lobbyismus*”).

Although none of the above four “alternative” motives for erecting the memorial can be proved with absolute certainty, they are clearly identifiable and lie

²⁶¹ Two published works exemplify this thesis: Jörg Friedrich’s (2002) *Der Brand. Deutschland im Bombenkrieg 1940-45*, dealing with the bombing of Germany by the allies, arguing that from 1944 the bombings no longer made military sense; and the 2006 movie *Dresden* portraying the bombing of the city in 1945.

²⁶² See also <http://www.gedenkstaettenforum.de/>, accessed 30 January 2012.

²⁶³ See: “Gedenken – Jedem das Seine”, *der Spiegel*, 05.01.2004.

within the realm of possibility and have been used in critical debates among intellectuals and politicians in Germany as well as in Poland.

The first two years after the BdV's official presentation of the project in 2000 were rather quiet in terms of public debate and political activity. On the 50th anniversary of the Charter of the German Expellees on 3 September 2000, Chancellor Schröder stated that Poland's and the Czech Republic's EU accession negotiations would not be linked to the expellees' property restitution demands, and that he was reserved on the prospect of a Centre Against Expulsions. This was interpreted by the BdV as a rejection, even though Schröder's remark did not give a definitive answer (Salzborn, 2003: 1122). The BdV continued its work on the foundation and sent the above-mentioned requests for donations to all municipalities and *Bundesländer*. The CDU-governed *Länder*, Lower Saxony, Hesse and Baden-Württemberg as well as CSU-governed Bavaria assumed patronage over the foundation and sponsored the ZgV with five Euro cents per inhabitant. The foundation managed to attract well-respected personalities like the historian Arnulf Baring, professor of international law Alfred-Maurice de Zayas and the German rabbi Walter Homolka to support its cause by joining its scientific advisory board. Moreover, support was won from individuals including Deutsch Bank CEO Rolf Breuer, theologian, civil-rights activist and President of Germany since March 2012 Joachim Gauck, Hungarian novelist György Konrad, football coach Udo Lattek and TV-entertainer Harlad Schmidt.²⁶⁴ To date Steinbach has used these personalities skillfully as proof of wide support across German society and globally (e.g. Steinbach, 2010). The impressive list of supporters became an effective way to exercise pressure on politicians to tackle the issue since it demonstrates broad support, and legitimizes the need for such a centre.

In February 2002, the German Cultural Forum for Eastern Europe²⁶⁵ organized a debate on the ZgV. During the debate Markus Meckel suggested such a centre in Wrocław (Breslau) to prevent a "national house of expulsion" and to create a European project (Meckel, 2002: 30). Meckel (2010 Interview) claims this was spontaneous. The initial reaction in Poland was negative, but the Polish historian Włodzimierz Borodziej defended Meckel's suggestion and called for a debate on his

²⁶⁴ For the full list see: <http://www.z-g-v.de/aktuelles/?id=40>, accessed 3 February 2012.

²⁶⁵ The German Cultural Forum for Eastern Europe was founded in 2000 as a non-profit organization and is financed by the Federal Government's Commission for Cultural and Media Affairs. See: <http://www.kulturforum-ome.de/>, accessed 3 February 2012.

suggestion.²⁶⁶ On 15 May 2002, one day before a *Bundestag* debate was scheduled on a possible ZgV in Berlin, the chief editor of Poland's largest daily, *Gazeta Wyborcza*, published an open letter in his paper and *Die Welt* addressed to Chancellor Schröder and Prime-Minister Leszek Miller suggesting that such a centre should be built in Wrocław that would “neither be a centre or museum of German suffering that would turn perpetrators into victims, nor a museum of Polish martyrdom and colonization, but a museum of catastrophes and symbol of a renewal of our joint Europe.”²⁶⁷ The *Bundestag* debated three motions. The CDU/CSU faction called for the government to create the basis for a “constructive [...] collaboration with the ZgV [foundation] [...] and to find a suitable building in Berlin to realize the project.” (Drucksache, 14/8594) The FDP, in turn, supported such a centre, but wanted co-operation from European partners (Drucksache, 14/9068). The SPD-Green coalition called for the beginning of a European dialogue to talk about a ZgV, co-operation from personalities from other European states on such a centre and that the preparatory work by the House of History in Bonn which had prepared an exhibition on the expulsion of Germans should be incorporated into it (Drucksache, 14/9033). The debate that followed reveals how successfully the BdV managed to convince politicians from parties other than just the CDU/CSU of its intentions. Hans-Joachim Otto (FDP) linked the topic of expulsions to the tragedies in Kosovo, Sudan and Liberia and specifically stated that the ZgV foundation was non-partisan and that personalities such as Arnulf Baring, Dieter Blumenwitz and György Konrad, participants in its scientific advisory council, proved its international orientation (Bundestag, 16.05.2002). Antje Vollmer (Greens) stated that the causes of the expulsions could be found in the French Revolution which had given birth to populism and nationalism, and therefore favoured a European centre and advocated the co-operation with other nations (Bundestag, 16.05.2002). Norbert Lammert (CDU/CSU) defended Berlin as the location since Germany had a special relationship to the causes and effects of expulsions, along with 15 million victims (Bundestag, 16.05.2002). Vollmer's remark is of particular interest. She acknowledges that different expulsions can be shown in one centre/museum by making nationalism a common thread of all the expulsions of the 19th and 20th centuries, and thereby supports the BdV's idea. This, however, is very

²⁶⁶ See: “Porozmawiajmy o propozycji Meckela”, *Rzeczpospolita*, 7.03.2002.

²⁶⁷ “Breslau, nicht Berlin – Auf Initiative des Bundes der Vertriebenen soll in Berlin ein Zentrum gegen Vertreibungen entstehen – Gastkommentar”, *Die Welt*, 15.05.2002. See: http://www.welt.de/print-welt/article389241/Breslau_nicht_Berlin.html, accessed 4 February 2012.

controversial. Lutz (2003: 258-59) explains that it is problematic to show different expulsions together, since the viewer often mixes up the events. This, in turn, could lead to a hidden suggestion that Germany is trying to attenuate its war guilt by blaming nationalism as the cause of WWII and hence make perpetrators into the victims of an abstract ideology that practically all nation-states share. This has been one of the major points of criticism in Poland (Miszczak, 2011 Interview).

Steinbach responded to Michnik's letter in *Die Welt* on 18 May 2002 stating that unfortunately not many Germans would travel to Wrocław to see an exhibition, but it was the purpose of the centre to confront as many Germans as possible with the topic.²⁶⁸ On 4 July 2002, the *Bundestag* rejected the CDU/CSU's motion and passed the SPD's motion (Plenarprotokoll 14/248). A day later, Meckel and Rita Süßmuth (CDU) wrote a letter to the presidents of the Czech Republic, Poland, Hungary, Slovakia and Bosnia informing them about the *Bundestag*'s resolution and asking their respective countries to cooperate on a European project for the erection of a centre against expulsions (in Troebst, 2006: 68-69). Meckel's (2010 Interview) strategy was to push the issue on two levels - governmental and presidential - to create so much pressure that a national centre would never be possible. However, Poland's President Kwaśniewski did not respond. According to Meckel (2010 Interview), Kwaśniewski was afraid of the CDU/CSU Chancellor candidate Stoiber who was demanded that Poland annul the Bierut Decrees. Kwaśniewski's concern was that Stoiber might not be able to take his remarks back if he were elected as Chancellor given the privileged position of the expellees in Bavaria (see above). Poland's former ambassador to Germany, Janusz Reiter, explained in *Der Spiegel* on 1 July²⁶⁹ that the expulsion decrees have been annulled and that only the nationalization decrees of the most important sectors of economy were still in force. Moreover, the term "Bierut Decrees" was a German invention, since in Poland the legal basis for the expulsions was the Potsdam Declaration rather than a governmental decree, as was the case with the Beneš Decrees in Czechoslovakia. Furthermore, Reiter compared that the planned ZgV was a "pendant to the Holocaust Memorial".

²⁶⁸ "Stellungnahme des Bundes der Vertriebenen vom 18. Mai 2002 zum offenen Brief von Adam Michnik and Bundeskanzler Schröder und Premierminister Miller", *Die Welt*, 18.05.2002.

²⁶⁹ See: "Unnötige Polemik – Interview with Janusz Reiter", *Der Spiegel*, 1.07.2002.

After Stoiber's remarks, Schäuble flew to Warsaw and explained that this was a misunderstanding.²⁷⁰

Stoiber's remarks, paired with the Prussian Claims Society's activities, help to explain why Poland became mistrustful. Given the proximity of Poland's referendum on EU accession in June 2003, German elites decided to halt the issue (Meckel, 2010 Interview). After Poland's "yes" in the referendum, the issue surfaced again. On 14 July 2003, Meckel called publicly for a "European Centre Against Expulsions, Forced Migrations and Deportations", and by 5 September 2003 numerous experts and politicians from Germany and the CEEC countries, including Poland's former Foreign Ministers Bartoszewski and Geremek, and Marek Edelman, the last survivor of the 1943 Warsaw Ghetto Uprising, signed it.²⁷¹ Intellectuals from Wrocław, in turn, published a plea to erect such a centre in their city in the regional issue of *Gazeta Wyborcza* (in Troebst, 2006: 84-85). The advisory board of the ZgV foundation responded with a condemnation of the perceived artificial polarizing debate between a national versus a European project on expulsions and underlined that a European approach was already included in its own foundation. Furthermore, the centre was foremost an issue of internal politics, a matter of showing empathy towards German expellees who had not received any in previous decades.²⁷² Also, Glotz argued that such a centre could not be built without the expellees, should not be moved up to state level and that an international project would take 30 years to realise.²⁷³

In the meantime, the BDV's ZgV foundation set up the Franz-Werfel Memorial Prize for human rights, to be awarded every second year to persons or institutions working against expulsions and ethnic cleansing.²⁷⁴ This was another intelligent move by the foundation to become accepted by society as an institution which did not concentrate on the sufferings of Germans, and helped the ZgV to gain international prestige.

Christina Weiss, Federal Government Commissioner for Culture and the Media published an article in the German weekly *Die Zeit* on 2 October 2003

²⁷⁰ See: "Verbitterung über Ignoranz", *die tageszeitung*, 4.07.2002.

²⁷¹ See: http://markus-meckel.de/wp-content/uploads/2009/12/Aufruf-Europäisches-Zentrum-gegen-Vertreibungen_mit-Unterschrift.pdf, accessed 5 February 2012.

²⁷² "Ein nationales und ein europäisches Anliegen", <http://www.z-g-v.de/aktuelles/index.php3?id=23>, accessed 5 February 2012.

²⁷³ "Ein 'nationales Projekt' verstört die Nachbarn", *Süddeutsche Zeitung*, 15.07.2003.

²⁷⁴ "Franz-Werfel-Menschenrechtspreis gestiftet", <http://www.z-g-v.de/aktuelles/index.php3?id=18>, accessed 5 February 2012. Since 2009, the prize has been awarded annually.

advocating an idea developed by the SPD's historical commission to create a network of scientists, publicists and museum experts across all European countries (in Troebst, 2006: 95-99). Similarly, Germany's President Rau and Poland's President Kwaśniewski called jointly on 29 October for a European dialogue on this issue.²⁷⁵ Meckel (2010 Interview) and Nevermann (2010 Interview) both admit that the concept of developing a European network was meant to destabilise the BdV's and make their foundation obsolete. The idea was to create a foundation in Poland that would officially be equally funded by Poles, Czechs and Germans. The German government, however, was willing to carry most of the costs (Nevermann, 2010 Interview). After several meetings between international experts on a possible European Network,²⁷⁶ conferences on the topic of expulsions²⁷⁷ and meetings by the culture ministers of Germany, Poland and other CEECs,²⁷⁸ on 2 February 2005 the culture ministers of Germany, Poland, Slovakia and Hungary finally published a declaration of intent to found a European Network of Memory and Solidarity. Austria and the Czech Republic, however, declared they would co-operate on its projects, but did not agree to participate in the foundation itself, demonstrating how difficult it is to achieve international consensus on the issue.²⁷⁹ Before the intention could become a reality, the sudden change of government in Germany in 2005 and the electoral victory of Law and Justice in Poland halted the possible projects of the European Network Memory and Solidarity foundation, founded on 23 August 2005. According to Nevermann (2010 Interview) "about a year of work was missing and the network would have made the ZgV superfluous." Whilst the ZgV foundation congratulated the European Network on its creation, and saw it as a gift for its fifth birthday (in Troebst, 2006: 227-28), Steinbach could not conceal her *Schadenfreude* in an interview to the author (2010), when commenting on the failed attempt to oust the ZgV.

In the meantime, on 27 November 2003, the Sejm passed a resolution founding a Centre for the Remembrance of European Nations under the auspices of

²⁷⁵ See: http://www.dpg-bundesverband.de/links_und_dokumente/by_zeitgeschichte/1187815.html, accessed 5 February 2012.

²⁷⁶ See Troebst (2006: 169-70).

²⁷⁷ See Troebst (2006: 100-105).

²⁷⁸ See Troebst (2006: 161-62). According to Nevermann (2010 Interview) the negotiations with the other CEEC states were very difficult. The Czech envoys especially were resistant to the idea.

²⁷⁹ See: <http://markus-meckel.de/ehrenamtliche-taetigkeiten/aufarbeitung-von-geschichte/europaeisches-netzwerk/>, accessed 5 February 2012.

the Council of Europe. The resolution warns that “certain national experiences cannot be taken out of their historical context”, underlines that German suffering was a consequence of WWII, reminds that the “resettlements” were decided at the Potsdam Conference by the allies and advocates a centre which would commemorate the sufferings of all European nations in the 20th century. In particular, the crimes of both totalitarian regimes, Nazism and Communism, should be commemorated and researched under the auspices of the Council of Europe (in Troebst, 2006: 105-07). After a year of debates in the Council, however, the Polish proposal was rejected since a two thirds majority was needed and only a simple majority was achieved. The French envoy Bernard Schreiner spoke against such a centre, since it would deal with two different tragedies on the same level, deportations to death camps and expulsions of nations (in Troebst, 2006: 216). It borders on naivety if Polish politicians seriously believed they could obtain the necessary approval in the 47 state Council of Europe, let alone that the realization of such a mammoth project was possible with the consent of states like Russia. What this shows though is how sensitive Poland was about the ZgV at that time and how all possible means were used to undermine Steinbach’s project.

In September 2003 Steinbach was invited to Warsaw by Poland’s daily *Rzeczpospolita* to present the ZgV and to participate in a debate. This falls into the period when the weekly *Wprost* published a cover picture of Steinbach in Nazi-uniform riding Chancellor Schröder, and a *Rzeczpospolita* journalist even asked Steinbach if she was washed as a child with soap made from concentration camp victims.²⁸⁰ This public focus on Steinbach, amounting to her demonization and making her effectively public enemy number one has been rather helpful for the BdV’s cause, since she could not be ignored anymore. The German press had never paid much attention to this ordinary CDU MP, but by 2003 many articles were covering Polish reactions to Steinbach,²⁸¹ possibly even making the German public more sympathetic to her cause.

This is supported by the 19 July 2004 (the 60th anniversary of the Warsaw Uprising) BdV organization of a Berlin event, “Empathy – The Way to Engage with One Another”²⁸² in which personalities like Ralph Giordano and Cardinal Karl

²⁸⁰ See: “Die Austreibung der Angst vor der Erinnerung”, *Süddeutsche Zeitung*, 2.09.2003.

²⁸¹ See *Ibid.* as an example.

²⁸² In the original: *Empathie – der Weg zum Miteinander.*

Lehmann participated.²⁸³ Whatever its intentions, this was another useful tool for convincing the German domestic political landscape that the BdV's approach had changed from the "vociferous naysayers" of the Cold War. In Poland, however, this was seen by former Foreign Minister Bartoszewski as provocation, saying that the Warsaw Ghetto Uprising is "holy in Poland" and that he did not want this organization [the BdV] to commemorate it.²⁸⁴

A Centre Against Expulsions – Act II

When the SPD lost elections in North Rhine-Westphalia in May 2005, the party leadership decided to dissolve parliament.²⁸⁵ This led to the formation of a Grand Coalition with Merkel (CDU) as the new Chancellor. Whilst the SPD neither mentioned the ZgV nor the European Network in its manifesto, the CDU/CSU manifesto specifically stated that it wanted to "set a sign in Berlin in the spirit of reconciliation and commemorate the injustice of expulsions and to outlaw them forever." (DCU/CSU, 2005: 36) The compromise in the Coalition Agreement stipulated that the coalition "also wants to set a visible sign in Berlin to, in cooperation with the European Network Memory and Solidarity [...], commemorate and outlaw forever the injustice of expulsions." (CDU/CSU-SPD, 2005: 114) For the ZgV, the Grand Coalition was good news on the one hand, since the CDU/CSU was now in power, but on the other hand the SPD would thwart any plans to create a museum with the participation of the BdV. Lutz (2003: 256) gives a good account of why the participation of a victim organisation is problematic:

Since memorial places are closely connected to certain groups, political aims can obstruct a critical discussion. Therefore, in Germany memorial places are often structured as a foundation under public law. The advisory board is divided into a body of victims organised into an international advisory council as well as a scientific advisory council. The highest organ is the foundation board where the chairmen of both advisory councils have voting rights. Either the federation, or the state where the memorial place is located mostly funds the foundation board. The foundation is

²⁸³ See <http://www.bund-der-vertriebenen.de/presse/index.php3?id=95>, accessed 6 February 2012.

²⁸⁴ See: http://www.ipn.gov.pl/portal/pl/18/2626/PRZEGLAD_MEDIOW_19_lipca_2004_r.html, accessed 6 February 2012.

²⁸⁵ The government decided to undergo the procedure of a vote of no confidence in the *Bundestag* and the SPD and Greens abstained, ensuring that elections were called for September 2005.

subsidised by the state and is hence not absolutely free but due to the structure decoupled from the daily political business.

As will be seen, the foundation board will become important later.

Before the “visible sign” was specified, the ZgV foundation continued its work and launched its first exhibition, called “Forced Paths – Flight and Expulsion in 20th century Europe” in the Kronprinzenpalais in Berlin, opened by the President of the *Bundestag* Norbert Lammert (CDU)²⁸⁶ on 10 August 2006. The exhibition displayed nine different examples of expulsions²⁸⁷ and around 300 exhibits were presented. Steinbach (2010 Interview) is very proud of the exhibition and underlines that it was entirely financed through expellees’ private donations. Of particular interest are also the 20 exhibits lent by Polish museums. A scandal was caused by the ship’s bell from the Wilhelm Gustloff, which was lent by the Central Maritime Museum in Gdańsk. The museum had kept the bell in storage for over a decade, and it was later kept in a restaurant, not attracting much attention. After the bell was borrowed by the ZgV and made public, PiS politician Dorota Arciszewska-Mielewczyk called it a scandal and nobody wanted to admit who gave permission to lend the bell. Obviously under huge pressure, the director of the maritime museum demanded the bell’s return.²⁸⁸ According to the ZgV, over 60,000 people visited the exhibition between 11 August 2011 and 29 October 2006, including 130 school classes.²⁸⁹ Thereafter, the exhibition went on tour, going to 14 German towns, with the last exhibit concluding on 29 September 2011.²⁹⁰ This became a useful tool for keeping the pressure on any German government to realize the agreed Visible Sign agreed by the Grand Coalition. Steinbach herself (2010 Interview) declared that the upcoming permanent exhibition in the German Historical Museum would be accompanied by “watchful eyes”.

Germany’s president Horst Köhler, whose ancestors hail from Bessarabia, attended the September 2006 *Tag der Heimat* and complimented the expellees for

²⁸⁶ See: <http://www.z-g-v.de/aktuelles/?id=39>, accessed 6 February 2012.

²⁸⁷ The exhibition showed the expulsion of Armenians in 1915/16; of Greek and Turks in 1922/23; of Jews in Germany after 1933; of Germans after WWII; Poles, Ukrainians and the Baltics; of Finns from Karelia in 1939/40-44; of Italians at the end of WWII; Cyprus 1963/64 and 1974-75; and Yugoslavia in the 1990s. For the complete catalogue, see: <http://erzwungenewege.z-g-v.de/>, accessed 6 February 2012.

²⁸⁸ See: “Awantura o dzwon z wraku ‘Wilhelma Gustloff’a’”, *gazeta wyborcza*, 17.08.2006. Also: “Erst die Glocke und dann? Polens rechte Regierung attackiert Berliner Vertreibungsausstellung”, *Süddeutsche Zeitung*, 19.08.2006.

²⁸⁹ See: <http://www.z-g-v.de/aktuelles/?id=49>, accessed 6 February 2012.

²⁹⁰ <http://www.z-g-v.de/aktuelles/?id=39>, accessed 6 February 2012.

having integrated well into German society and also encouraged them to co-operate with the European Network and the planned Visible Sign (Köhler, 2006). Poland's Prime-Minister Jarosław Kaczyński called this "one of the most disturbing events that has happened in Germany in recent times."²⁹¹ During the PiS government's term of office, Polish-German relations reached a low point for several reasons besides the planned memorial. At that time any cooperation on the museum/European Network issue was impossible (Meckel, 2010 – Interview).

Unsurprisingly, the coalition waited until a new Polish government was elected in October 2007 before making plans for the Visible Sign public. Tusk made Foreign Minister Bartoszewski Plenipotentiary to the Chairman of the Council of Ministers for International Dialogue, partly, it seems, because his authority might improve relations between Poland and Germany. Bartoszewski, an Auschwitz concentration camp survivor, gave an important speech in the *Bundestag* in 1995 stating that Poles were also perpetrators and mourned the Germans who had lost their *Heimat*.²⁹² But, Bartoszewski refused to answer any of Steinbach's letters since the ZgV had been launched.²⁹³ His appointment therefore symbolizes on the one hand the willingness of the government to enter a dialogue with the Germans, but on the other hand also indicates that dealing with Steinbach herself was unacceptable. On 22 October 2010, the 50th anniversary of the BdV, Chancellor Merkel said that a plan for the Visible Sign would be presented soon.²⁹⁴ Volker Kauder, chairman of the CDU/CSU parliamentary faction, announced that by the end of the year an SPD compromise would be reached and that, for him, "a documentary centre about flight and expulsions was unthinkable without Steinbach's participation."²⁹⁵ Tusk had already suggested a general museum of WWII in Gdańsk in December 2007, where expulsion could also find a suitable place. The chosen day for the announcement carries a hint of another attempt to neutralize the Visible Sign, even though Miszczak

²⁹¹ See: "Lammert will im Streit um Köhler-Rede vermitteln", <http://www.spiegel.de/politik/ausland/0,1518,434959,00.html>, accessed 6 February 2012.

²⁹² See: http://www.bundestag.de/kulturundgeschichte/geschichte/gastredner/bartoszewski/rede_bartoszewski.html#barto, accessed 6 February 2012.

²⁹³ All Steinbach's letters to Bartoszewski can be found in Steinbach (2010: 148-50). Miszczak (2011 Interview) confirmed that Bartoszewski did not respond to any of her letters.

²⁹⁴ http://www.bundesregierung.de/nm_916176/Content/DE/Bulletin/2007/10/112-1-bk-bdv.html, accessed 1 September 2010. Content has been removed.

²⁹⁵ See: http://www.welt.de/politik/article1301871/Kein_Zentrum_aber_ein_sichtbares_Zeichen.html, accessed 6 February 2012.

(2011 Interview) denied that the museum in Danzig had anything to do with any planned museums in Berlin.

Early in February 2008, Neumann (CDU), Germany's Federal Commissioner for Culture, presented, in Warsaw, the plan for the Visible Sign. Germany was hoping for Polish co-operation, but to no avail.²⁹⁶ Poland's new government, whilst signalling willingness to improve relations, was under pressure from the opposition and the public "not to sell out to the Germans". Due to the contentious public perception in Poland of expellees, the BdV and Steinbach, the room for manoeuvre was limited, regardless of Bartoszewski's personal animosity towards Steinbach. As Mischak (2011 Interview) explained, the plenipotentiary made it clear to Neumann that Steinbach was no partner for the Polish government since she was part of an NGO, whilst Bartoszewski was the government and therefore there could be no dialogue on the matter. In March 2008 the federal cabinet passed a plan of how to turn the Visible Sign into practice as a law to be submitted to the *Bundestag*. The work undertaken by the House of History (Bonn), exhibiting the topic of expulsions and engaging with the various interpretations of expulsions, was meant to become the basis for a permanent exhibition in Berlin. The *Deutschlandhaus* in Berlin would be renovated at a cost of €29 million and would be subordinated to the German Historical Museum (DHM).²⁹⁷ The most important questions, of who would lead the conceptualization of the exhibition and who would be nominated for the foundation board, remained.

²⁹⁶ "Vertrieben oder ausgesiedelt; Berlin und Warschau tun sich mit dem Erinnern schwer", *Süddeutsche Zeitung*, 5.02.2008.

²⁹⁷ "Gedankenloses Gedenken", *Süddeutsche Zeitung*, 25.03.2008.

A Centre Against Expulsions – Act III

At the end of December 2008, the *Bundestag* finally passed a law creating the German Historical Museum foundation according to German foundation laws. Section Two of the law gave birth to the dependent Flight, Expulsion, Reconciliation Foundation (Stiftung Flucht, Vertreibung, Versöhnung – SFVV), whose purpose is “in the spirit of reconciliation to commemorate flight and expulsion of the 20th century in the historical context of WWII and the national-socialist expansionist and annihilation policies and their causes.”²⁹⁸ The foundation board was intended as thirteen members of which two had to be members of the *Bundestag*, while other institutions could also appoint members. The foreign office, the Interior Ministry and the Commissioner for Culture and the Media could appoint one member each, the BdV three members, and the Protestant Church, the Catholic Church and the Central Council of Jews one member each. It was obvious from the start that the BdV would nominate Steinbach as one of its appointees, since paragraph 19 does not stipulate that Steinbach could not be appointed. Bartoszewski warned that the German government should not accept Steinbach’s candidacy since this would lead to complications in Polish-German relations. Appointing Steinbach would be “as if the Vatican sent Bishop Williamson, who denied the Holocaust, to Jerusalem for talks.”²⁹⁹ According to Miszczak (2011 Interview), Bartoszewski talked with Merkel about this point as did Miszczak with Christoph Heusgen, Merkel’s influential foreign policy advisor. Merkel assured the Polish government that Steinbach would not form part of the foundation board. The reason for Bartoszewski’s insistence was opposition pressure that the “government would sell out to the Germans and be their vassals” and the cards were put on the table: “either you want normal Polish-German relations or you talk to Steinbach and damage the policy of this government for the future and you will lose a partner.” (Miszczak, 2011 Interview) Merkel, on the other hand, was pressured by the CDU/CSU for being too liberal and for softening the Christian Democrats’ conservative line, as exemplified by Georg Brunnhuber’s (CDU) remark: “We have to be careful not to lose the last stalwart. We haven’t got many left that are emotionally

²⁹⁸ See: Gesetz zur Errichtung einer Stiftung “Deutsches Historisches Museum” (DHMG): <http://www.gesetze-im-internet.de/bundesrecht/dhmg/gesamt.pdf>, accessed 6 February 2012.

²⁹⁹ See: Bartoszewski ostrzega Berlin, *Rzeczpospolita*, 16.02.2009.

connected to us [CDU].”³⁰⁰

This situation is a good example of what Otto Kirchheimer (1966) identified as a process that catch-all parties undergo: de-ideologisation in order to attract voters from the centre. At the same time the CDU/CSU had to accommodate the wishes of the different strands within the party, and expellees, together with the more conservative branch of the Union constitute one such strand.³⁰¹ Given that the number of expellees has declined significantly over the last six decades and that the 1.3 million members that the BdV claims to represent is probably an exaggeration (see above), one can only speculate as to why the two Union parties pay so much attention to the BdV. It is likely that the CDU and CSU deem it better to accommodate various smaller and rather unimportant groupings within its own ranks rather than to risk losing them to other parties. A similar example of a small group managing to gain the support of the Christian-Democrats are farmers, who also represent only a fraction of the population and the economy. The BdV case is even more salient since, in contrast to the farmers’ association, it is not a group with important financial resources since it is not an economic association, but relies on federal and *Länder* subsidies for survival itself. This seems to call into question the general hypothesis which claims that actors strongest in resources should be most successful in influencing policy-making. This is a case that proves that resources are not necessarily needed to do so.

Since the CDU/CSU could not decide alone (with SPD as a coalition partner) Steinbach was cornered, but the BdV had another ace up its sleeve. Rather than nominating Steinbach as the third BdV member, the post was symbolically left empty as a gesture of protest,³⁰² in the conviction that there would be another opportunity. The idea was to postpone the issue until after the September 2009 federal elections and to then decide anew. However, the CDU/CSU’s new coalition partner, the FDP, had no intention of supporting the conservative wing of the CDU/CSU. Since Article 19(3) of the initial SFVV law stipulated that the government decides on the

³⁰⁰ See: “Union – Angst vor der Wahrheit; Der Streit um Vertriebenenchefin Erika Steinbach belastet die innere Balance der CDU/CSU”, *Der Spiegel*, 02.03.2009.

³⁰¹ If any “international comparison” must be found for this issue, then it would be the Yasukuni Shrine in Tokyo, which Japan’s Prime Ministers have visited regularly because of the conservative faction which the LPD has to pacify, despite violent protests abroad. For a discussion of the shrine see: Breen, John (2008) (Ed.) *Yasukuni, the War Dead and the Struggle for Japan’s Past*. New York: Columbia University Press.

³⁰² Der Stuhl bleibt leer; am Ende wollte Steinbach nicht riskieren, ihrem eigenen Projekt im Wege zu stehen: dem Zentrum gegen Vertreibungen – und den deutsch-polnischen Beziehungen, *Süddeutsche Zeitung*, 5.03.2009.

composition of the foundation board, the FDP effectively had a veto. How important the issue has become can be seen by the fact that the new Foreign Minister Westerwelle's (FDP) inaugural visit was to Poland, which was a minor affront to France, traditionally a first port of call for new German governments. Westerwelle underlined that the new government will "prevent anything that is not in the spirit of reconciliation".³⁰³ After a long coalition quarrel on the Steinbach issue,³⁰⁴ the BdV suggested a change in the SFVV law meaning that the government would not have a veto on the appointment of the board. In return, the BdV was willing to relinquish its right to nominate Steinbach for one of the seats.³⁰⁵ This would increase the foundation's independence from the government. The final compromise between the CDU/CSU, FDP and the BdV was different. The SFVV law's new Article 19 would now stipulate that, instead of the government, the *Bundestag* would appoint the nominated candidates. Also, the foundation board would be increased from thirteen to 21 members and the BdV could nominate six instead of three members, meaning a slight increase in "influence" from 23.8% to 28.6%. Miszczak (2011 Interview) explained that the Polish government understands that seven *Bundesländer* parliaments would be elected in 2011, but called this compromise "weak" from Merkel's side since she admittedly prevented Steinbach from being on the board "but she did not do more" and allowed an increase in the BdV's influence.

Finally, a scandal erupted around the SFVV's scientific advisory council. On 7 July 2009, Tomasz Szarota, a Polish professor of Polish history and WWII expert, was invited by Hans Ottomeyer, director of the DHM in Berlin, to be part of the scientific advisory council, having cooperated with DHM on a previous exhibition.³⁰⁶ According to Szarota (2011 Interview) "due to the name 'reconciliation of Polish-German relations'" he saw it as "a duty to participate". Szarota, whose father was shot by Germans, would have brought to the SFVV not only his expertise as an academic, but enormous symbolic weight and his acceptance of the position must be seen as a success for the foundation. However, Szarota left the council shortly afterwards since

³⁰³ Cited in: "Vorsichtiger Auftritt in Warschau; Polen reagiert positiv auf den Besuch des neuen Außenminister Westerwelle", *Süddeutsche Zeitung*, 02.11.2009.

³⁰⁴ See: "UNION – Der Quälgeist; Das zerrüttete Verhältnis zwischen Kanzlerin Merkel und Vertriebenen-Chefin Steinbach", *Der Spiegel*, 25.01.2010.

³⁰⁵ See: "Nach monatelangem Streit; Vertriebene bieten Verzicht Steinbachs an; Im Gegenzug soll sich die bundesregierung künftig bei der Besetzung des Stiftungsrats heraushalten", *Süddeutsche Zeitung*, 05.01.2010.

³⁰⁶ Szarota presented the official letter to the author in January 2011.

he felt he was being used as a “fig leaf” rather than as an expert. What convinced him of this assumption is the position of council chair being awarded to Hans Maier, a former CSU politician from Munich and political scientist, but who was also on the ZgV’s scientific council (Baring, 2010 Interview). Moreover, Helga Hirsch, a publicist, became the council’s vice-chair. A DHM worker (Anon. c 2010 Interview) suggested to the author that the Polish media’s pressure to “defend Poland’s interests” was probably too great a burden to bear and that this was the reason why Szarota left the council. Szarota evidence presented to the author, however, overwhelmingly supported Szarota’s version. The dilettante manner in which the museum managed this sensitive issue is further demonstrated by the fact that, besides Szarota, the Czech expert Kristina Kaiserová, the Hungarian Krisztián Ungvary and the publicist Helga Hirsch had left the council by March 2010, shedding a bad light on Manfred Kittel, the director of the foundation, and his staff. It took the DHM staff and the government another year to extend the scientific advisory council from nine to fifteen members. In January 2011, Polish experts Krzysztof Ruchniewicz and Piotr Madajczyk were invited by the SFVV to participate in the council and both accepted.³⁰⁷

V. Conclusion

This chapter explored the possible motives behind the launch of the permanent exhibition on expulsions, and it concludes that a combination of various reasons is likely behind it: the need for the BdV to adopt a strategy for survival as a political player in the Berlin Republic, that expellees are dying out; countering the SPD-Green coalition’s modernisation of the “subsidy system” which existed during Kohl’s governments and led to the diminished influence of the BdV; Steinbach’s personal ambitions and skills; as well the search for final recognition of the suffering of expellees, not only the loss of their *Heimat*, but also the hardships experienced during the process of integration into the FRG. The theoretical framework of Chapter I argued that the structure and the institutionalisation of bilateral relations determine the success that non-state actors have on foreign policy-making (Risse-Kappen, 1995). This chapter confirms this postulate. As explored in Chapter II, Germany’s political system is geared towards consensus rather than confrontation. Despite the SPD’s

³⁰⁷ See: http://www.dhm.de/sfvv/wissenschaftlicher_beraterkreis.html, accessed 7 February 2012.

insistence on a European project instead of a national museum, with the rise of the Grand Coalition in 2005 the SPD had to compromise on a Visible Sign which was later conceptualised into the Flight, Expulsion, Reconciliation Foundation. For decades, all the presidents of the BdV have also been MPs, giving them access to policy-makers through their party affiliation and the knowledge of how to “play the game”, indicated by the increased subsidies under the 1982-98 CDU/CSU-FDP governments. This fits nicely into Saalfeld’s (1999: 44-45) analysis of interest groups’ influence on the *Bundestag* which takes place through maintenance of close links to political parties, participation in committee hearings and influence through informal contacts.

The semi-sovereign (Katzenstein, 1987) structure that Germany imposed on itself after WWII also plays a significant role since, in the federal structure, elections in every single state are important. This allowed the BdV to find important political allies in the conservative south within the CDU and especially the CSU, when many expellees could not identify with the SPD after the launch of *Ostpolitik* in the 1960s.

Cultural reasons also play a role in the SVFF’s planned creation of a permanent exhibition in Berlin, namely the shift from a Germans as perpetrators towards a Germans as victims discourse from the 1990s onwards. One should not automatically conclude that the expellees represented a powerful political lobby. Crucially, now the objectives of the German governments and the expellees are not congruent. Poland and Germany are not locked in their respective Cold War camps anymore, but pursue policies of reconciliation. The BdV wants a permanent exhibition, jeopardising reconciliation, the objective of all post-Cold War German governments, and yet the exhibition will be built. Once again, I would argue that Germany’s political structure (see above) is responsible for this, along with the CDU/CSU heeding its loyal supporters, and the fact that now the “Germans as perpetrators” and “Germans and victims” discourses coexist in Germany and the public is largely indifferent to the issue.

In Poland, political elites have tried all means to hollow out the BdV’s advance. The main reason is the fear that Germany might attempt to rewrite history and reverse the victim-perpetrator roles, since any engagement with expulsions entails an engagement with expellers as well. The European Network Memory and Solidarity, a child of the SPD, took a very long time to materialise, due to its international approach, and it finally ground to a halt with the governmental changes

in Germany and Poland in 2005, not to be revived until 2009. Poland also tried to create an institution that would commemorate the victims of National Socialism and Communism under the auspices of the Council of Europe, but the motion failed. Also, the discourse focused on Steinbach, which seems to have helped her cause. In Miszczak's words (2011 Interview) "Our mistake was to pay attention to her [Steinbach] because it gives birth to demons. Steinbach and our radicals like Radio Maryja need each other." Due to the focus on her, Steinbach's words were carefully weighed, in turn forcing policy-makers to take action in order to make the issue go away. Steinbach's controversial remarks must be placed in that context. It is possible that she uses them as a tool to achieve her goals. This alone is too simplistic as an explanation. It seems that the quality of Polish-German relations contributed to the issue being so controversial, and that the reconciliation of the 1990s was too shallow, being filled with symbolism but without the engagement with painful issue which would lead to a joint "coming to terms with the past". This thesis concurs with Mildeberger's (2002: 731) assessment that Poland and Germany started to talk about a shared Europe, but not about each other.³⁰⁸ What supports this view is the 2005 PiS rise and open Polish resentment against Germany.

³⁰⁸ This, in turn, discredits the academic reconciliation literature that accompanied that process (see Chapter I)

8. Conclusion

This thesis attempted to uncover the influence of non-state actors on Polish-German relations by examining foreign policy making towards Poland in Germany and vice versa. As discussed in Chapter I, this topic feeds into the debate about the influence of non-state actors on policy-making in general, or “governance”, a growing body of literature that emphasises that political decisions stem from a network of multiple vertically and horizontally acting governmental and non-state actors (e.g. Knoke 1996; Rhodes, 1997; Kjær, 2004). The approach chosen in this thesis has been interdisciplinary in nature, taking IR literature into consideration on the one hand and making use of FPA on the other. It has been argued that IR, by purely looking into the quality of inter-state relations, too often treats these relations as a result of policies emanating from the relevant governments, without considering the policies’ background. Hence, treating states as “black boxes” where policies simply seem to appear, does not sufficiently explain *why* specific policies emerge. In addition, IR loses ground to the humanities if, by analysing states using the “billiard ball model”, it does not take into account human action and human behaviour (Hudson, 2005). As Kindermann argues (1986: 75), “foreign policy is a product of international and *national factors* and the existent linkages between both factors.”³⁰⁹ I have, by examining the role of non-state actors in the context of Polish-German relations, made herewith a contribution to the study of the *national factors* which explain foreign relations.

Therefore, the thesis’ main research question was:

What is the influence of non-state actors on Polish-German relations?

In Chapter I, I defined “influence” in broad terms as “affecting policy decisions” congruent with Dahl’s (1961) conceptualisation, which Lukes calls *one-dimensional power*. The focus is on “*behaviour* in the making of *decisions* on *issues* over which there is an observable *conflict* of (subjective) *interests*, seen as express policy

³⁰⁹ Emphasis added.

preferences, revealed by political participation” (Lukes, 2004: 19).³¹⁰ From there onwards, I established and assessed “a causal relation between the preferences of an actor regarding an outcome and the outcome itself” (Nagel 1975: 29). As argued, it must be acknowledged that non-state actors may also be influential in policy making in an insidious way. Therefore, a final assessment that certain non-state actors are not influential because there is no apparent evidence might be premature for this thesis because the government can always make certain decisions to prevent conflict with silent non-state actors which have not voiced their preferences at all. However, this limitation is true for all investigations of this kind, unless researchers include this covert influence, or the so-called “two-dimensional power” (Lukes 2004). However, this is more difficult to operationalise precisely because the researcher often needs to detect issues (or actors) that have not entered the agenda and where no official documents exist.

In order to research non-state actors’ influence or Lukes’ (2004) one-dimensional power I argued that it is necessary to establish “causality between the preferences of an actor regarding an outcome and the outcome itself” (Nagel, 1975: 29) which I did by using process-tracing. I used this qualitative method to avoid simply equating the correspondence of preference voicing with policy output as influence. Other methods, such as quantitative text analysis, for example, may establish many overlaps between certain non-state actors’ preferences and the final governmental decision without reflecting whether the policy-makers based their decisions on these preferences. Subsequently I argued that process-tracing is better suited to assess causality since it investigates each element of the causal chain (Zürn, 1998: 640). Process-tracing allows an examination of: first, the process of preference voicing, i.e. the access to policy-makers, intentional transmission of information, and what tactics and resources were used; second, an analysis of behaviour alteration in response to that transmission by other non-state actors and the government; third, the evaluation of policy outcome against the individual preference voicing (Betsill and Corell, 2001: 74-78); and fourth, equifinality, i.e. considering alternative paths through which the outcome might have occurred (George and Bennett, 2005: 207).

Next to establishing causality between specific non-state actors, the other problem relates to finding a satisfactory measurement of influence in order to assess

³¹⁰ Emphasis in the original

the non-state actors' role in specific policy-making. Following March (1955: 432-34) I argued that generally "there is lacking not only an immediately obvious unit of measurement, but even a generally feasible means of providing simple rankings". As noted in Chapter I, besides the occurrence of covert influence, further problems that arise when trying to measure influence are different channels of influence; occurrence of counteracting lobbying; and the wielding of influence at different stages of the policy process (Dür 2008: 561-62). I also contributed with another problem not covered in much detail in the literature: how can the amount of time and resources that a non-state actor spends on lobbying - in order to achieve influence - be incorporated in a final assessment of whether the influence has been low or high? In other words, simply saying that a non-state actor's influence is great on the basis that it was successful - if we compare the preference statements with the final policy-decision - would not do justice to the complexities of the whole process. That is because a non-state actor might spend a vast quantity of resources and time to exercise some influence. Another non-state actor might have been similarly successful in terms of outcome but spent fewer resources on the lobbying process and achieved it quicker. This might be due to the underlying conditions that favour certain actors over other such as the domestic structures. This leads to the question how to assess which actor is more influential if we seek to deliver a comparative evaluation. Ultimately, perhaps this cannot be answered especially when researchers try to compare influence across different issues since different issues involve a different set of actors, lobbying strategies and resources used. I address this question once more further below by when I evaluate the three case studies.

Consequently, the thesis does not chart influence with a 'yardstick'. Rather, it assesses the non-state actors' influence as either high or low (but does not provide rankings) by examining whether and to what extent the respective non-state-actors' preferences have materialised in the agenda setting and decision-taking stage of policy-making. By examining actual results the thesis avoided the pitfall of identifying influence solely on the basis of evidence of access to policy-makers, lobbying activity and available and spent resources for such cause which does not necessarily lead to influence and only tells us *how* influence has been achieved (Betsill and Corell, 2001: 69-70).

Process-tracing was used in three selected case studies which examined the influence of non-state actors on Polish-German relations: first, in Chapter IV, I

examined the role of non-state actors in Poland's demands for restrictions on the free movement of capital during EU accession negotiations. Second, the role non-state actors in Germany's policy decision to restrict its labour market until 1 May 2011 to the eight new member states from Central and Eastern Europe joining the EU in 2004, which was examined in Chapter VI. The transitional period was established and anchored in the Accession Treaty in a flexible 2+3+2 model which required Germany to review its labour market restrictions twice. Therefore, I also examined the two prolongations of this TP in 2006 and 2009 respectively. The third case study examined is the role non-state actors played in the process that led to the decision to build a permanent exhibition in Berlin depicting the flight and expulsion of Germans as a consequence of WWII, discussed in Chapter VII. By limiting the scope of analysis to three case studies, the thesis attempted to balance "width" implied in uncovering the influence of non-state actors on foreign policy-making in Poland and Germany in general with "depth". A quantitative approach would not be able to claim depth of analysis and likely lack an investigation of the motivation behind the involved non-state actors' actions. Neither would quantitative methods tell us anything about what strategies and tactics these actors used to materialise their preferences, nor would it acknowledge that different means and different actors are likely to be involved across different issues.

That being said, as will be demonstrated, my findings do have broad relevance although the thesis can only add limited comparative value. That is because the small sample $N=3$ bears an important disadvantage: small N -studies do not allow us to generalize findings convincingly, especially since small N -studies are often biased towards conflicting decisions that have attained a high degree of media coverage (Dür, 2008: 564-65). As the three case studies confirm, all three issues generated considerable media coverage in both countries with one exception: the free movement of capital issue did not feature prominently in the German press.

According to Sartori (1994: 23), case studies can only serve as a tool for comparison if a well-defined theoretical framework informs them. I followed this argumentation by using Risse-Kappen's (1995) theoretical framework. His theory argues that the degree of influence non-state actors can have on policy decision depends on two variables: firstly, the *domestic structures*, and secondly, the *institutionalisation of relations*. Domestic structures provide the channels for non-state actors to access policy-makers, and they determine the conditions for winning

coalitions. Risse-Kappen (1995: 6-7) argues that the more the state dominates the domestic structure, the more difficult it should be for non-state actors to penetrate the policy-making structure. Nevertheless, if a non-state actors manages to penetrate the structures, the influence might be great since the winning coalition will be rather small. In fragmented state structures with a well-developed civil society access of non-state actors to the policy-makers might be well-defined, but the ultimate influence of individual non-state actors might be low since winning coalitions will rather consist of multiple actors. Risse-Kappen's (1995) other variable, *international institutionalisation*, refers to "specific issue-area" regulations as achieved through bilateral agreements, multilateral regimes, and/or international organizations.

Consequently, I have developed three research questions that address Risse-Kappen's theory for the purpose of this thesis' topic:

1. *What is the degree of institutionalisation in Polish-German relations?*
 - 2a. *What are the domestic structures of foreign policy-making in Germany?*
 - 2b. *What are the domestic structures of foreign policy-making in Poland?*

Questions 2a and 2b were both tackled in Chapter II and Question 1 was addressed in Chapter III. The purpose of the investigation was to analyse broadly both factors that determine non-state actors' access to policy-makers in Poland and Germany thereby setting-up the stage for the subsequent three case studies.

Chapter II has looked into the domestic structures in Germany and Poland using three levels of analysis: i) the official foreign policy apparatus; ii) civil society; and iii) the nature of the policy networks which link the two. The thesis has shown that the German official foreign policy apparatus is ambivalent in the sense that whilst foreign policy-making is officially concentrated in the foreign ministry and decisions are co-ordinated there, the Chancellor has plenty of influence in this area, as well as the capability of overriding the foreign ministry's preferences. However, whilst it is true that the Chancellor has the key cards at his/her disposal and can completely dominate an issue, as for example Paterson (2010) regarding Merkel's dominance of *Europapolitik* during the second Grand Coalition (2005-09), this does not mean that he/she can sacrifice crucial domestic interests in favour of his/her personal preferences. My investigation of the Schröder government seems to uphold these findings. This is suggested by Schröder's interesting remark, "but actually I do not

want to [support Poland's efforts to join the EU]," to Markus Meckel when flying to Warsaw for his first official visit, an incident discussed in Chapter IV, which was in contrast to his actions. Meckel (2010 Interview) was not sure whether Schröder's remark was a joke or not and his uncertainty about this, as well as the Chancellor's failure to retract or clarify it at that moment points strongly to the possibility that he actually meant it. Schröder may have preferred to concentrate on relations with Russia, knowing that close Polish-German ties would make it harder for him to foster Russian-German relations due to Poland's difficult relationship with Russia.³¹¹ Schröder developed a close friendship with Putin later in his tenure (the Schröders adopted two children from St Petersburg – Putin's hometown) and he also strongly advocated the Nord Stream project, later becoming head of the shareholder committee on behalf of Gazprom. Despite all this, Schröder continued to support Poland's EU ambitions. Two major reasons might serve as valid explanations. First, as seen in Chapter II, Germany's structure allows only incremental policy change, and the path taken by previous governments was irreversible at that point. Second, as seen in Chapter IV, the economic interests of all the German economic players (especially the car industry in case of Poland), and the benefits of an expanding free and EU-regulated market, far outweigh the Chancellor's *personal preferences* and his *capabilities*. So far, literature has mostly emphasised the powers the Chancellor has in foreign policy-making in setting the parameters in all policy areas (see Chapter II). However, future research might perhaps distinguish between the *formal and informal* powers that are delineated by law and path-dependency that are vested with the institution, and personal preferences that a Chancellor is capable to actually pursue.

Furthermore, as stated in Chapter II, the Chancellery and Foreign Ministry are always led by different parties, meaning there is often great potential for party-political conflict and constant campaigning for electoral glory at federal and state level. This is a result of the proportional representation system which, together with federalism, was developed to force political consensus, as well as to prevent a recurrence of dictatorship. Hence, Germany's "semi-sovereign" structure, as defined by Katzenstein (1987), is also present in her foreign policy-making, once again allowing only incremental policy changes. This can be clearly seen in the context of

³¹¹ The difficulties in Polish-Russian relations have been shown on numerous occasions in the new millennium. The Russian ban on Polish meat and the abundance of conspiracy theories in the Polish public debates which followed the Smolensk air disaster exemplify this.

Polish-German relations, in the fact that Brandt's *Ostpolitik* was not jettisoned by the CDU/CSU-FDP government, but was ultimately pushed further, despite the conservatives' abstention on ratification of the Moscow and Warsaw Treaties in 1971.

The thesis assessed Germany's civil society as strong in the sense that interest groups are rather concentrated, while there are no *deep* religious, class or ideological cleavages around which politics revolves. Furthermore, official forums for voicing the preferences of interest groups, anchored in the GGO and GOBReg, give society ample opportunity to influence the foreign policy-making process whenever the interests of any group are affected.

Poland's foreign policy-making apparatus has, like Germany's, been identified as centralised, but due to the directly elected President – who therefore enjoys considerably more legitimacy – foreign policy-making has experienced power struggles between the Prime-Minister and the President in times of cohabitation, especially at the EU-level. One crucial post-1989 element in Polish politics has been the political rotation. Only one government, the PO-PSL coalition led by Donald Tusk has managed to be re-elected in 2011. These rotations together with the sudden changes of the policy-making structures, such as experienced in the MSZ – the Polish Foreign Ministry - in the past twenty years, has been identified as a substantial weakness in Polish politics by key policy-makers in Poland as my interview with Krzysztof Miszczak (2011), the Director of the Office of the Plenipotentiary of Prime Minister for International Dialogue, reveals. Interestingly, the Eastern neighbour seems to admire the continuity in the German political apparatus that leads to the incremental policy changes described above and, more extensively, in Chapter II. It is too early to tell whether Poland already has or will eventually consolidate their policy-making structures so as to allow more continuity in the policy choices. As Miszczak explained (see Chapter II) institutional memory is an important asset for the state achieved if policy experts are employed beyond the frequent cycles of four-years tenures.

The communist period has left a significant legacy in Polish civil society, in the sense that the degree of organisation in unions and employers' associations is not only comparatively lower than in Western democracies, but is also much more fragmented than in corporatist Germany. Moreover, anti-politics and facing the political elite in a confrontational manner has rather been the norm. Various original interviews carried out for this thesis have revealed that the confrontational style of co-

operation does not only exist between the social partners - i.e. business and trade unions - and the government officials, but also between the social partners as well. This leads to few consensus among the social partners and therefore seems to allow the government to dominate and dictate policy directions. However, in the rare case where consensus between the social partners is achieved, such as in the case of the anti-crisis law, the government seems to have no choice but to address and incorporate the social partners' demands in its policy-making (as discussed in Chapter II, with reference to the Interview with Małgorzata Rusewicz from PKPP Lewiatan). In addition, forums for voicing policy preferences are relatively new, insufficiently anchored in the policy process and overshadowed by unofficial links. As a result, a culture of "accessing the policy makers via personal contacts and the back door" has developed and needs better regulation, as the lobbying legislation is currently (June 2012) seen as insufficient since it mentions only sanctions in case of the law's breach, but does not address any rights (see Chapter II). In the words of Soszka-Ogrodnik (2011 Interview) from AHK Polska:

To date, in Poland, informal lobbying is still most effective, a lobbying based on the tradition that who has the possibilities of approaching the lawmaking source is effective.

It is surprising that over twenty years after the end of Communism and almost ten years after joining the EU with all the rules and norms transfer the political culture and practices that were used in the Communist part are still dominant. This seems to be a case where the concept and argument of path-dependency has the upper hand over the rapidly growing Europeanization literature. In future research, this would be a worthy avenue to pursue.

Chapter III analysed the institutionalisation of Polish-German relations thereby addressing Risse-Kappen's (1995) second variable determining non-state actors' access to policy-makers. The two most important bilateral treaties marking the end of the Cold War, which lifted Polish-German relations to a new level are the Border Treaty of 1990 and the Polish-German Treaty of Good Neighbourship and Friendly Cooperation of 1991. The border treaty was the final act in reaffirming the Oder-Neisse line, as necessitated by the 2+4 Treaty which made German re-

unification possible. Even though the border treaty merely recognizes the border delineated by the two rivers and does not mention both states' societies, it has had an enormous influence upon the *Landsmannschaften* and its umbrella organisation, the Federation of Expellees (BdV). That is because for over four decades the expellees had been fighting for a return of the German *Ostgebiete* to Germany, and with the re-affirmation of the border, the last hopes of making this happen were destroyed. Kohl's skilful manoeuvring has irreversibly locked the expellees within the norm parameters of *Ostpolitik* (Tewes, 2001: 59). Nevertheless, I showed that, at the time of the formulation of the treaty, the expellees' influence was significant since the CDU/CSU relied on their votes. It is also important to see what the treaty does not contain: the contentious issue around compensation for the loss of properties following the flight and expulsion of Germans after Poland's move westwards, and compensation payments to Poles who suffered from the Nazi regime. Whereas the latter was later resolved with the establishment of a fund by Germany, the former would resurface again in the new millennium when the Prussian Claims Society, whose members overlap with the BdV, started a lawsuit by 23 individuals against Poland for property restitution. Even though the European Court of Human Rights judged the case as inadmissible, this issue, which poisoned Polish-German relations for a long period in the new millennium, might arguably have been precluded by clearer legal codification. The omission of the painful issues that resurfaced later demonstrates why the analyses which had been so popular in the 1990s comparing Polish-German relations to the Franco-German case (see Chapter I) were somewhat premature. This policy of symbolism was later labelled as reconciliation kitsch (*Versöhnungskitsch*) (e.g. Hahn *et al.*, 2008). However, one should bear in mind that reconciliation is not a linear process and that setbacks are possible as argued by Gardner Feldman (2012). The restitution issue connected with fears present in a wider circle of Polish society that Germans might want to either reclaim their lost land or demand significant compensation fed into much of the political debate surrounding Poland's EU accession and also at the time when the BdV lobbied for a Centre Against Expulsions in Berlin (on the Polish side; and in the German and Polish media). Hence, understanding these wider implications of the border treaty was highly relevant for the case study dealing with the free movement of capital (Chapter IV) as well as the case study analysing the museum issue (Chapter VI).

The border treaty was also a prerequisite for the co-operation treaty that followed in 1991, since through the guarantee of the Oder-Neisse line certain topics which had been on the German agenda for over a decade, such the recognition of the German minority and bi-lingual place names in the Opole voivodeship, were suddenly made possible as my Interview with Wilhelm Höynck, the German chief negotiator of the co-operation treaty revealed. The co-operation treaty has introduced a completely different multi-layered dimension into Polish-German relations. On the inter-governmental level, for the next few years, Germany became Poland's prime advocate at the inter-governmental level for her ambitions to enter the EU. On the inter-societal level, relations have been institutionalised and contribute enormously to the daily practice of contacts between Poles and Germans solidifying non-governmental Polish-German relations as my interview partners Krzysztof Miszczak and Eugeniusz Smolar revealed. This positive development proved helpful immediately after Poland's EU accession when Law and Justice (PiS) led by the Kaczyński tried to instrumentalise fears of Germany for political ends and even tried to cut funds for the youth co-operation programme. This met opposition in Poland and PiS did not succeed in cutting the budget for this purpose. Moreover, the analysis of the *Sejm* elections in 2005 and 2007 show that in the former German *Ostgebiete*, support for PiS was much lower than in the rest of Poland. Again, as in the case of the border treaty, the issue of property loss was not addressed in the co-operation treaty.

This preliminary general analysis of Poland's and Germany's domestic structures as well as the two states' institutionalisation in Chapter II and Chapter III revealed possible access points of non-state actors for influencing foreign policy-making in both countries. The analysis also underlines why the following hypotheses were developed in Chapter I:

H1: Non-state actors have a large degree of influence on foreign policy-making in both countries.

H2: German non-state actors are more successful in influencing the government on foreign policy decisions directed towards Poland than their Polish equivalents have in influencing the government on foreign policy decisions directed towards Germany.

H3: Non-state actors with business interests have the greatest impact on foreign policy-making towards the other country.

Chapter IV prepared the first two case studies and analysed the process of Poland's 2004 EU accession, thereby already engaging with *H1* since this chapter showed once more how institutionalization of state relations provides more incentives for non-state actors to influence policy-making. More precisely, this chapter revealed that the process of Eastern Enlargement started as early as 1989, and, in the course, Poland was given a favourable Association Agreement. However, already by then, old member states only favoured a free market with Poland as long as it would not hurt their own sectors where Poland could have gained the most such as in agriculture, iron, steel and textiles. Germany was no exception here with a strong agricultural lobby and vital interest in the coal and steel industry of Saarland and North Rhine-Westphalia. This foreshadowed the laborious EU accession negotiations which commenced later in 1998. I also analysed the possible motives for Germany's continuous support for Poland's EU accession. Three reasons stand out: a moral dimension and the desire for reconciliation, security and economic opportunities. Especially the last point concerns non-state actors interests the most since a prosperous neighbour could provide new business opportunities, thereby justifying the formulation of *H3*. Especially when we consider how German foreign direct investments to Poland significantly increased after Poland's EU accession in 2004 one could retrospectively assume that many non-state actors with business interests should have pressured the German government to support Poland in the efforts to join the EU. That is because common EU membership provides important legal certainties for these actors, but also, the EU structural and cohesion funds help new member states' economies to develop faster, thereby establishing new tariff-free markets. A country with over 38 million people (and consumers) 'right next door' clearly represented such an opportunity. Trade unions, on the other hand, and the German eastern *Länder* should be expected to demand labour mobility restrictions since it could lead to wage pressure and arguably higher unemployment rates in this region. However, as noted, a prospering neighbour also demands more goods and services helping to secure German jobs in the long run. Poland's motivations to join the EU were connected to

overcoming the Cold War division by joining western structures, security and economic prosperity; an expectation shared by most of Poland's population. Both states' negotiation structures reveal that various access points for non-state actors' preference voicing were created, notably at the ministerial and head of government levels. Poland's negotiation structure was changed in 2001 affecting the negotiation style but also creating a different constellation possibly favouring a different set of non-state actors due to different parties being in power. That is also important, since the negotiation positions were passed to the parliament where parties had a great opportunity in commenting on these positions bringing them to the public and forcing a debate that would most likely lead into a confrontational style of dialogue as Chapter II has shown. Poland's first chief negotiator Jan Kułakowski tried to involve as many actors as possible in the negotiation decisions trying to force consensus that would back the government. As revealed by my interview with a representative from the trade union OPZZ, some non-state actors seem to have been favoured over others, especially when these actors were ideologically closer to the government.

Chapter V analysed the transitional periods for the free movement of capital negotiated by Poland for EU accession in 2004. It paid attention to the role of non-state actors in Poland and Germany during these negotiations predominantly focusing on Poland since, as it turned out, German interest groups paid little interest to this matter.

H1 has postulated that *non-state actors have a large degree of influence on foreign policy-making in both countries.*

The entire Chapter V cannot falsify H1 since the EU is an institution that both countries aspired to share, a wish that would be fulfilled on 1 May 2004. During the negotiations for this common goal a plethora of non-state actors had the chance to influence their respective governments to maintain certain negotiation positions – in this case regarding the free movement of capital, or Chapter 4 of the *aquis communautaire*. In the case of Germany this was already common practice as codified in the German foreign policy-making structure seen in Chapter II of this thesis. The Commission urged Poland to establish dialogue with her respective social partners. Two distinct negotiation phases were identified. For the first period of negotiations, during the AWS-UW coalition, dialogue was indeed intensive, and chief negotiator Jan Kułakowski or the Task Sub-Groups of the Negotiation Team held frequent ad-

hoc meetings with relevant social partners, professional groups, church representatives, academia and the media during the course of the accession negotiations (Polish Government, 2000: 56-60). Kułakowski even visited all sixteen new administrative divisions. It could be argued that the fact that Poland managed to distinguish between former German territories in the north and west of the country and the other voivodeships in the south and east when it comes to the length of time foreigners must lease agricultural land before they can purchase it (seven or three years respectively), may be a case of regions having a say in foreign policy-making. This would contradict the analysis in Chapter II where I show that regions are unimportant in Polish foreign policy-making. However, it should be borne in mind that this is a unique case that has not established a precedent in the strictest sense. That is because this case can be identified as foreign as well as domestic policy at the same time since if foreigners are allowed to purchase land in Poland it also concerns internal affairs. Also, the Commission insisted that social partners were included in the EU accession process to include the society. Therefore, in future research, one should also investigate a case where non-state actors could be involved when foreign policy is at stake in a more traditional sense such as, for example, the recent revival of the Weimar Triangle. Moreover, it must also be concluded that certain social partners were disfavoured when trying to voice their preferences to the government, especially interest groups that were not affiliated with the government, as the example of the SLD-affiliated trade union NSZZ Solidarność has shown. Also, during the second and final phase of negotiations under the SLD-PSL coalition, the new government position was presented over the heads of most non-state actors, precipitating an outcry from the opposition as well as farmers' associations, to the bewilderment of the European Commission. In this context we should, once more, evaluate the quote from my Interview with Ewa Synowiec (2011) who said

In my opinion [...] during the meetings at the civil servant or even political level mostly the position outweighed 'we will not enter the EU cheaply' i.e. give too many concessions. It was clear that the question of land purchase was politically very sensitive, and for sure SLD did not want to allow to be accused that it is selling land to Germans because such slogans were in circulation.

Two interesting things can be derived from this quote. First, one can interpret the general attitude of Polish politicians and civil servants towards the EU and Poland's role in it. It seems that Poland at that time perceived the EU in realist terms, to use IR

language. If the leaders did not want to enter the EU “cheaply”, it means that either Poland perceived that it had something to lose and did not want to lose too much, or that the EU had to pay the right price for Poland to enter. This is not the perception of a win-win situation as more argued in the liberal tradition of IR, but rather of a win-lose situation as interpreted by realists. Even though this seems a bit speculative, this kind of language, however, would also match my other interview quotes underlining the perception of Poland’s place in the world in more realist terms. For example, in Chapter II Krzysztof Miszczak (2011 Interview) is quoted with “Germany will only respect Poland as a serious partner when Poland’s level of economy will match Germany’s” and explaining the situation in Europe the Polish Prime Minister’s plenipotentiary explained:

“[...] everybody fears Germany and Germany knows that because they are the strongest country in Europe because facts are facts and you cannot fight these. [...] If you put a bear and next to it a chicken then the chicken will go around the bear.”

The perception of power seems to occupy a significant role in Polish foreign policy thinking, and the means how to achieve power (strength of economy). Perhaps this reflects the dilemma of a new mid-size country within the EU with, on the one hand, ambitions to be a EU agenda-setter and leader, and, on the other hand, the knowledge that Poland still needs to catch up economically (at least as measured by per capita) to match the power of Germany, and the frustration that the traditional Franco-German axis is only hard to breach or join.

The second issue that can be derived from the Synowiec quote is, arguably, the attitude of the then-ruling SLD-government towards civil society. She reveals that the SLD coalition insisted on long traditional periods for the land issue because it feared certain slogans that were in circulation such as that the government was selling out to the Germans. This shows that, on the one hand, this government did react to a *general* and strong pressure that was maintained high by the opposition, the media and opinion polls whilst individual positions of non-state actors were mostly ignored. This would be congruent with my analysis and findings of Chapter II where I researched the quality of the links between the government and non-state actors. There, Rusewicz (2011 Interview) from PKPP Lewiatan revealed that

[t]he governmental representatives very often do already have a position and they often insist that their position should be supported. Depending on who is closer to the position, the employers associations or the trade unions, in that way the talks are being conducted. Hence, there is no level of real dialogue.

All evidence points to the fact that back in 2001 the government conducted the negotiations in a similar fashion. The government put a position on the table and all other interested actors had to follow suit.

In that context, however, it must be said that the inclusion of other non-state actors in a new compromise position would most likely have led to further rigid and confrontational stances as the opposition has continuously demonstrated, once more confirming the analysis in Chapter II, where it was argued that civil society in Poland often pursues the tactics of anti-politics.

As stated, the pressure on the government over the real estate question was immensely high throughout the entire period of negotiations, coming from parties in parliament, the media, public opinion and, above all, farmers and certain farmers' associations. The latter group was able to exercise pressure on the PSL, in government from September 2001 until February 2003, since these associations and their members form the core of the PSL's electorate. It is difficult to draw a definite conclusion about which non-state actors were the most successful in exercising influence on the government in the case of Poland, since all the aforementioned actors contributed directly or indirectly to this pressure, and in addition shared the same goal. What can be concluded with certainty is that, judging based on the final outcome in terms of the Polish government's final positions as well as the final solution that was accepted by the EU, these pressure groups were very successful as Poland obtained the longest transitional period for the acquisition of agricultural land of the ten CEEC countries (including Bulgaria and Romania). Contributing to the argument is the fact that the Commission and the member states granted these transitional periods as they acknowledged that the Polish governments faced a difficult domestic situation. With respect to second homes, Poland obtained a five-years TP, the same length obtained by most other states in the Eastern Enlargement. From this fact, one could deduce that the influence of Polish farmers' is a significant force, not falsifying H3: *Non-state actors with business interests have the greatest impact on foreign policy-making towards the other country.*

Comparing this issue with Germany is difficult since most German interest groups were, bluntly speaking, uninterested in the topic, including the DBV, the organisation representing the German farmers who were, according to the real or projected fears in Poland, supposed to buy up Polish land at the first opportunity. The only pressure group paying attention to the topic was the BDI, representing German industry. The point of contention was Poland's application for a transitional period for the acquisition of real estate for investment purposes. This would have collided with the industry's interests in investing in Poland. Ultimately, Poland dropped this demand, realising that such a practice would have significantly harmed Polish economic interests. Therefore, in Germany's case the facts point towards not falsifying H3, but it cannot be quantified with certainty how influential the BDI was in pursuing the German government to defend German economic interests within EU structures, leading to the EU refusing this Polish demand. This is because the EU negotiates candidacies collectively and decisions are taken unanimously. Moreover, as Synowiec confirmed in my interview, restricting the acquisition of real estate for investment purposes would have harmed Poland's interests as well so that German and Polish interests overlap in that instance. Hence, Chapter VI of this thesis, dealing with the free movement of labour, is a better case to test H3 because there Poland's and Germany's interests clash allowing for a more holistic comparison of the two state's systems which H2 tries to uncover with the postulate: *German non-state actors are more successful in influencing the government on foreign policy decisions directed towards Poland than their Polish equivalents have in influencing the government on foreign policy decisions directed towards Germany.*

Chapter VI then examined the free movement of labour issue during the accession negotiations as well as Germany's decision to twice prolong the negotiated transitional period in 2006 and 2009 respectively. Unlike in the preceding chapter where it was shown that German non-state actors did not really pay much attention to the TPs in land acquisition, especially in regards to agricultural real estate, this issue provoked both, the interest of trade unions and business associations alike. Also Polish non-state actors also voiced their preferences as well.

Returning to *H3* which postulates that *non-state actors with business interests have the greatest impact on foreign policy-making towards the other country*: The flexible 2+3+2 model which was achieved for the free movement of workers and

services in the construction industry, industrial cleaning and for interior decorators for Germany at the EU-15 level does not correspond to the different wishes of every single EU member state alone, but certainly demonstrates the influence of sectoral interests in Germany. The construction sector especially was very vociferous and successful in demands for a TP to protect its business. The German construction sector had benefited from Polish-German bilateral treaties for decades as they contained stipulations allowing Poles to work in Germany, and construction was by far the most popular sector among Poles back then. Very often the construction sector illegally employed Polish workers beyond the end of the migrant workers' contracts, and had witnessed not only the skills but also the work ethic of the Polish workers. On the eve of Poland's EU accession this sector panicked and wished to shield its territory from competition in the form of Polish companies providing services on German soil. The construction sector's influence is reflected in Chancellor Schröder's mention of it in his government policy statement in the *Bundestag* in January 2001, at the time when the Chancellor himself raised the issue publicly. The Chancellor had only in November 1999 announced a governmental package to rescue Germany's biggest construction company, Philipp Holzmann, from insolvency. This was in line with the Chancellor's strategy of presenting himself in the media as the saviour of German jobs, especially in the tabloid *Bild-Zeitung*, whose readership is primarily the blue-collar working class. The liberalisation of workers and services would, in that context, only contradict the Chancellor's actions of stepping in to protect German jobs. With the demands for a TP the government effectively expressed doubts for an entirely *laissez-faire* run market economy. What aided the sector was the fact that their business was – following the initial boom after re-unification – particularly sluggish in the new *Bundesländer*, which could call for help from their respective Minister-Presidents, and it was the Bavarian CSU which was the first party to demand a transitional period in that area. The unions had been in favour of a TP from the start, but one cannot automatically draw the conclusion that they defeated the interests of the employers' associations just because a TP was agreed. The flexible model, agreed at EU level, which could be revised effectively each year after the initial two years would pass, speaks rather the language of a compromise with the possibility of adjusting policy in favour of business whenever needed. This is underlined by the fact that in January 2009 the Grand Coalition answered the BDI's calls for qualified labour by passing the *Arbeitsmigrationssteuerungsgesetz*, allowing all citizens from

the new member states and their families to migrate to Germany as long as they could provide a university degree or earn more than €63,600 of the social security contribution ceiling. However, party politics and the electorate's fears, which existed due to high unemployment rates in the unskilled and low wage sectors, also play a significant role in the accession negotiations as well as in the prolongations in 2006 and 2009 respectively. This is demonstrated by the coalition agreement between the CDU/CSU and the SPD in 2005, which, four years in advance (!), agreed to seek the last prolongation despite not possibly knowing that far in advance whether the labour market would experience serious disturbances. The occurrence of serious disturbances at the labour market was a condition written into the 2+3+2 compromise, and it is surprising that the Commission itself did not raise its own doubts about the legitimacy of Germany's 2009 decision. One can only speculate for the reasons which would make an excellent topic for a follow up research. Perhaps in the midst of the financial crisis the Commission did not want to provoke anti-EU sentiment in Germany knowing that Germany's support would be needed during the crisis. Another reason might be that Germany somehow convinced the Commission and other member states not to pursue this matter.

This would perhaps be a case demonstrating how Germany is influential enough to see its own preferences turned into practice, or even dominate the EU altogether. In more academic parlance, perhaps this reflects Germany's "reluctant hegemon" (Paterson 2011) role in the EU. Earlier literature (Paterson 1993) argued that due to Germany's traumatic war experiences, Germany could not exercise leadership in the EU and in case where it did, it could only do it by offering joint leadership to France. This Franco-German sharing of leadership has been labeled as "co-operative hegemony" by Thomas Pedersen (1998). With the eurozone crisis Paterson (2011) argues that a tipping point has been reached where Germany assumes the role of a "reluctant hegemon" at a moment when resistance to German leadership in the EU fades without Germany actually seeking such a position. Perhaps Germany's 2009 unchallenged decision to prolong its transitional period for the free movement of labour is a first testing field for this "reluctant hegemony" concept. This is very speculative at the moment, but would make an excellent follow up study. In Chapter VI, however, I explored Poland's motives not to challenge Germany openly. As Miszczak (2011 Interview) explained

Yes, that it is true [we did consider raising this issue in Brussels]. However for political reasons we refrained from such a step. [...] You can gain a lot today for two, three weeks but the political *raison d'être* is different. We need Germany's support in finance, CAP. We are not as developed in these areas. We also looked for France support. Politics has an element of concession. I give you something, you give me something in return [...].

Poland simply did not want to antagonise a needed partner in the EU. Given that the PiS government (2005-2007) was characterised by antagonism against Germany the PO government sought not to worsen these relations but to create a more amicable atmosphere. That is also reflected in Tusk's choice to appoint Bartoszewski to the post of secretary of state in the Office of the Chairman of the Council of Ministers and plenipotentiary for international affairs responsible for Polish-German relations as explained in Chapter II. Bartoszewski, an Auschwitz concentration camp survivor who gave a conciliatory speech to the Bundestag in 1995 to standing ovation where he condemned the expulsions of Germans during and after WWII, was clearly the best choice if improving Polish-German relations was the motive.

I have also presented evidence demonstrating that unlike during the accession negotiations when Polish trade unions and business association demanded the opening of borders for Polish migrant workers, after 2006 the situation changed and some business associations were worried with the situation that emerged. After May 2004 an exodus of Poles to the British Isles occurred, leading to a shortage of skilled labour, especially in the construction sector and medical professions. Therefore, some sectors were clearly glad that this situation would not be aggravated with Germany also providing an additional target country for potential migration of skilled labour so close geographically. Some regions and cities in Poland even launched programmes to attract the migrants back. What clearly irritated Poland was the above-mentioned *Arbeitsmigrationssteuerungsgesetz* since it was targeted at skilled labour whilst at the same time leaving the doors closed to unqualified workers. Miszczak and a representative from PKPP Lewiatan - who both expressed worries of a brain drain situation in Poland because some eastern Bundesländer such as Brandenburg have been actively courting Polish students and young recruits - confirmed this. It is difficult to draw any meaningful conclusion about the role of non-state actors in Poland when examining *H3* for this topic. The unions and employers' associations were both in favour of the liberalisation of the free movement of workers, and that has been the Polish government's position since the UKIE's 1997 national strategy. In the

end, Poland accepted the TPs in return for the meeting her demand that the acquisition of real estate by foreigners be restricted for 12 years. This seems to be a compromise on the highest level and since the domestic pressure was higher regarding the land issue the decision to strike a deal is understandable and rational if viewed from the government's perspective.

The wide political party support in Germany for the 2009 decision is quite obvious. The SPD could not afford to risk further confrontation with her left wing or the unions after the difficult social reforms of "Agenda 2010". The CDU under Angela Merkel exploited the SPD's "*neue Mitte*" by moving left, avoiding confrontation with the SPD and presenting itself as more competent on questions of the economy. In that context it is hardly surprising that Merkel announced the desire to introduce a comprehensive minimum wage at the time of the TP's expiry in May 2011 undermining further the SPD's traditional claims as a party fighting for the blue-collar class. Additionally, labour mobility was perceived by the German public as a threat to attempts to bring down the already high unemployment rate of the time, as well as to the generous social benefit system. The latter was reformed through the above-mentioned painful measures (Agenda 2010) during the Red-Green coalition, leaving the SPD little room to allow the end of restrictive measures on the labour market without causing its electorate to be further alienated. Therefore, the CDU under Merkel seized the opportunity to present the party as a newly "social-democratised" one in order to steal the votes of dissatisfied SPD supporters. The two prolongations of the transitional period agreed during the Grand Coalition are therefore not only the result of coalition politics, but calculated strategy. The final prolongation, in 2009, which was decided against the recommendation of the Foreign Office and most likely in contravention of the EU law allowing this to happen only in the case of *serious* disturbances to the labour market, must be seen in this light. The apparent "social-democratisation" of the CDU represents another important insight which should be further analysed in future research concerning the German conservative party. This would be especially suitable in the context of the concept of "catch-all-parties", a label developed by Kirchheimer, that describes the erosion of traditional opposition parties and their de-ideologisation (*Entideologisierung*) (Kirchheimer, 1966). It seems that the CDU move to the left would support Kirchheimer's thesis. If we consider other decisions of the CDU under Merkel such as

the phasing out of nuclear energy after the Fukushima MCA in 2011 right before the elections in Baden-Württemberg - clearly in order to not lose too many votes to the Green-party – one is inclined to ask what does the CDU under Merkel actually stand for and why?

Regarding the 2009 decision there is also another discovery worth mentioning. So far literature has argued that in case of a clash between ministries on issues concerning foreign relations the Foreign Office did usually prevail. As shown in Chapter II, all post-war governments have followed the primacy of foreign policy over departmental policy whenever the interests of the state as a whole were at stake, leaving the Foreign Office in charge of affairs. An especially illuminating case with relevance to this issue is the 1991 dispute between the Ministry of the Interior and the Foreign Office over who should be responsible for granting visas. In the end the latter ministry prevailed over the question of lifting visa requirements for Poles (Andrea and Kaiser, 2001: 42-46; 49-50). As seen in Chapter VI the Foreign Office was in favour of not prolonging the transitional period, as my anonymous Interview (2011) with a civil servant at the German embassy in Warsaw revealed. Other than all the main parties (for political reasons) the interior Ministry also preferred keeping the TP for as long as possible, to the frustration of Polish policy-makers who describe the German Interior Ministry as “damn conservative” (Miszczak 2011 Interview). It seems that if an issue is relevant enough to the public and, ultimately the electorate, the Foreign Office is not able to prevail if such a decision could influence electoral results. Of course, in a federal system where important elections take place every year the government will perhaps pay more attention to these decisions than in centralised states.

What is also interesting is the fact that some German *Länder* such as Brandenburg and regional trade unions such as DGB-Saxony also argued on behalf of their Polish counterparts wanting *not* to prolong the TP, even though the DGB as an umbrella organisation took a different position in 2009 and was clearly in favour of maintaining the TP. Although the regional DGBs and eastern *Länder* were not successful in realising their preferences, the fact that they include these considerations adds to the multi-layered approach of Polish-German relations, making them more solid, something which was unthinkable only twenty years ago.

Due to the decisions of the German and Polish governments that were taken under similar circumstances comparing the first case study with the second study now makes sense when considering *H2* which supposes that *German non-state actors are more successful in influencing the government on foreign policy decisions directed towards Poland than their Polish equivalents have in influencing the government on foreign policy decisions directed towards Germany.*

Risse-Kappen argues (1995) that the more the state dominates the domestic structure, the more difficult it should be for non-state actors to penetrate the policy-making structure. Nevertheless, if a non-state actor manages to penetrate the structures, the influence might be great since the winning coalition will be rather small. In fragmented state structures with a well-developed civil society access of non-state actors to the policy-makers might be well-defined, but the ultimate influence of individual non-state actors might be low since winning coalitions will rather consist of multiple actors. This theory seems to fit the comparison between the free movement of capital and the free movement of labour issue rather well. As demonstrated, in Poland as a centralist state with a far less developed civil society due to its historical legacies, it is more difficult to not only to access policy-makers but to exercise enough influence on the government to see the voiced preferences turned into actual policy-decisions. In the case of the free movement of capital, the agricultural interests represented with the PSL party which effectively has a universal appeal to farmers and formed part of the government during the entire period, managed to get its wishes fulfilled: a very long TP for foreigners wanting to acquire agricultural land in Poland. Therefore, this may be an exemplifying case of what Risse-Kappen (1995) argues regarding cases where the state dominates the domestic structures. However, a wide societal consensus existed on this issue so that the theory should be tested on an issue where there is an open clash between the government and a non-state actor, or where there is an obvious clash of preferences among two or more non-state actors.

On the issue of free movement of labour, it is possible to detect a constellation of opposing interests in Germany with the DGB always in favour of TPs for labour mobility whilst the employers' associations were divided at first and by 2009 in favour of opening the market altogether. Germany's ultimate policy decisions were always crafted in such a way to allow as much concessions to either side's demands as long as they would not become an electoral topic at either the federal or state level.

Therefore, ultimately *H2* cannot be falsified with certainty, and rather structural differences, it is the issue itself that determines whether a non-state actor can be successful in Poland as well as in Germany. This would be in line with Mahoney's (2007) argument, which states that in the US and in the EU issue context is more influential as a determinant of lobbying success rather than structural factors.

What can also be said for the issue of free movement of labour, is that the employers' associations were divided: some sectors, such as construction, wanted a TP whilst most other sectors wanted to see an immediate liberalisation of the market. This internal dispute was not only visible in the final position papers but also affected the strength of this interest group. In fact, this is a factor determining lobbying success identified by Bachrach and Baratz (1962). This pattern is also mimicked at a more macro-level when governments negotiate on the international stage as proposed by Putnam's (1988) logic of two-level games. Especially in the EU when member states negotiate it makes a difference whether the government has domestic backing on the issue or whether the government is on its own. This is why the Polish government could achieve such a long TP for the free movement of capital in the first place.

Chapter VII dealt with the process leading to the decision to establish a permanent exhibition in Berlin depicting the flight and expulsion of millions of Germans following WWII. The BdV, with Erika Steinbach as its president, launched the idea of a Centre Against Expulsions in Berlin in 2000. It was, as a non-state organisation with no primary economic interests, directly or indirectly successful in pressuring three different German governments to tackle the issue. Three reasons can serve as an explanation for this success: first, the structure of policy-making and the preferential access points to policy-makers which the BdV had, especially via the CDU/CSU; second, the quality of Polish-German relations, necessitating fast resolution of all contentious issues which might jeopardise reconciliation; and third, Germany's acceptance of the "Germans as victims" discourse.

This thesis has exploited extensively the possible motives behind the launch of the project and concludes that a combination of various reasons is likely behind it. Those include the need for the BdV to adopt a strategy for survival as a political player in the Berlin Republic, due to the fact that the contemporary and active expellees are dying out. Additionally, countering the SPD-Green coalition's

modernisation of the “subsidy system” which existed during Kohl’s governments and led to the diminished influence of the BdV. This was supplemented by Steinbach’s personal ambitions and skills and the search for final recognition of the suffering of expellees, not only the loss of their *Heimat*, but also the hardships experienced during the process of integration into the FRG. The theoretical framework of Chapter I of this thesis has argued that the structure and the institutionalisation of bilateral relations determine the success that non-state actors have on foreign policy-making (Risse-Kappen, 1995). This chapter confirms this postulate. As explored in Chapter II, Germany’s political system is geared towards consensus rather than confrontation. Despite the SPD’s insistence on a European project instead of a national museum, with the rise of the Grand Coalition in 2005 the SPD had to compromise on a Visible Sign which was later conceptualised into the Flight, Expulsion, Reconciliation Foundation. For decades, all the presidents of the BdV have also been MPs, giving them access to policy-makers through their party affiliation and the knowledge of how to “play the game”, indicated by the increased subsidies under the 1982-98 CDU/CSU-FDP governments. This fits well into Saalfeld’s (1999: 44-45) analysis of interest groups’ influence on the *Bundestag*:

There are three principal ways in which interest groups attempt to influence deliberations and decision making in the Bundestag: (a) they maintain close links to political parties; inter alia they ensure that a number of officials are nominated as parliamentary candidates and, after their election., placed in the appropriate working groups of their parliamentary parties and, as a result, delegated to the relevant parliamentary committees (“internal lobby”); (b) formalised influence through, for example, participation in the Bundestag committee’s hearings; and (c) influence through informal contacts with members of the Bundestag.

The semi-sovereign (Katzenstein, 1987) structure that Germany imposed on itself after WWII also plays a significant role since, in the federal structure, elections in every single state are important. This allowed the BdV to find important political allies in the conservative south within the CDU and especially the CSU, when many expellees could not identify with the SPD after the launch of *Ostpolitik* in the 1960s. The BdV’s strategy for pressuring the government, however, was to find allies across all parties, which has been partially successful. Not only did Steinbach manage to convince the influential SPD politicians Peter Glotz and Otto Schily to support her cause, but also attracted important personalities from society: intellectuals, businessmen, entertainers, athletes and others. Moreover, by seemingly

conceptualising the expulsions as part of a European phenomenon of 20th century ethnic cleansing, the BdV started to be perceived as an organisation that had genuine universal appeal – a shift from the “self-entertainment” of the past – adding credibility to the project in a Germany committed to European integration and naturally “fond of European ideas”. The BdV created its own ZgV foundation, which gave way to a travelling exhibition financed by private donations and subsidies from four CDU/CSU states and over 400 municipalities. Due to the Grand Coalition’s creation of the SFVV foundation, a bizarre situation has arisen in which two separate foundations are carrying out a similar task. For the BdV, the ZgV is an effective tool to “accompany the SFVV’s work critically” (Steinbach, 2010 Interview) and perhaps to pressure the SFVV to “exhibit the right things”; one wonders, though, whether an earlier concession by the SPD could have prevented this.

It should not be forgotten, though, that cultural reasons also play a role in the SVFF’s planned creation of a permanent exhibition in Berlin. Although a strong “Germans as victims” discourse did exist in the 1950s and 1960s, it was embedded in the Cold War context. The Allies openly confronted the USSR and opened the border question as early as 1946-47, insisting that Germany continued to exist within its 1937 borders (Ahonen, 2005: 5). In that context, the “Germans as victims discourse” was welcomed by the Allies and instrumentalised by practically all of Germany’s political parties, cultivating the principle of self-determination for the expellees and the objective of border revision. This led to a congruence of interests between political elites, parties and expellee organisations (Ahonen, 2005: 5). From this, one should not automatically conclude that the expellees represented a powerful political lobby. Rather, there was simply a concord of interests for about two decades. With the launch of the SPD’s *Ostpolitik* (in turn strongly influenced by détente), the “Germans as victims discourse” was overshadowed by the “Germans as perpetrators discourse” until the end of the Cold War. A sign of the overestimation of the power of the expellees lobby is the very fact that they could not prevent the 1970 Warsaw Treaty. After re-unification, the “Germans as victims discourse” became more accepted and German intellectuals dealt increasingly with topics such as the bombing of German cities during WWII and expulsions, seemingly going beyond the *Historikerstreit* of the 1980s. Also, the creation of memorial sites by various victim groups has become “fashionable” and various victim organisations do not want to be left out. This all legitimises the BdV’s project in the eyes of public opinion. Interestingly, the planned

exhibition would not change the public's perception on the topic – something that the *Wehrmachtsausstellung* in the 1995-99 and 2001-04 achieved by destroying the myth of the “clean *Wehrmacht*” that was supposedly not involved in Nazi crimes – but rather would fit into an already existing discourse that expellees are also victims. The crucial observation here is that now the objectives of the German governments and the expellees are not congruent. Poland and Germany are not locked in their respective Cold War camps anymore, but pursue policies of reconciliation. The BdV wants a permanent exhibition, jeopardising reconciliation, the objective of all post-Cold War German governments, and yet the exhibition will be built. Once again, this thesis argues that Germany's political structure (as discussed above) is responsible for this, along with the CDU/CSU heeding its loyal supporters, and the fact that now the “Germans as perpetrators” and “Germans and victims” discourses coexist in Germany and the public is largely indifferent to the issue.

In Poland, political elites have tried everything to hollow out the BdV's advance. The main reason is the fear that Germany might attempt to rewrite history and reverse the victim-perpetrator roles, since any engagement with expulsions entails an engagement with expellers as well. The European Network Memory and Solidarity, a child of the SPD, took a very long time to materialise, due to its international approach, and it finally ground to a halt with the governmental changes in Germany and Poland in 2005, not to be revived until 2009. Poland also tried to create an institution that would commemorate the victims of National Socialism and Communism under the auspices of the Council of Europe, but the motion failed. Also, the discourse focused on Steinbach, which seems to have helped her cause. In Mischak's words (2011 Interview) “Our mistake was to pay attention to her [Steinbach] because it gives birth to demons. Steinbach and our radicals like Radio Maryja need each other.” Due to the focus on her, Steinbach's words were carefully weighed, in turn forcing policy-makers to take action in order to make the issue go away. Steinbach's numerous controversial remarks must be placed in that context. It is possible that she uses them as a tool to achieve her goals. This alone, however, would be too simplistic as an explanation. It seems that the quality of Polish-German relations contributed to the issue being so controversial, and that the reconciliation of the 1990s was too shallow, being filled with symbolism but without the solid engagement with painful issues which would lead to a joint “coming to terms with the past”. This thesis follows and concurs with Mildeberger's (2002: 731) comment that

Poland and Germany started to talk about a shared Europe, but not about each other.³¹² What seems to support this thesis is the rise of Law and Justice in 2005 when Polish resentment against Germany was openly displayed. Was this perhaps only made possible because Poland has now “got what it wanted”, while EU accession, and talking about a common Europe has become secondary?

Applying *H3* to Chapter VII of this thesis shows that non-state actors do not have to have business interests alone in order to influence foreign relations. It also shows that material resources are also not the only significant means in order to influence bi-lateral relations. *H2* cannot be tested here since there was no equivalent Polish non-state actor involved in the process on this issue other than the parties. It is somewhat surprising that not even the Polish church, which enjoys a high standing in Poland to date, has not come forward on this topic. Given the prominent role the Catholic church played as a motor of Polish-German reconciliation in the 1960s as seen in Chapter I this is something that I did not expect. Chapter VII once more does not allow to falsify *H1* since the BdV played a significant role in Germany’s foreign relations towards Poland. Unlike the first two case studies where the free movement of capital and the free movement of labour entered both governments’ agenda automatically through the EU accession negotiations and various private actors then submitted their position to their respective governments, here, the BdV managed to put an issue on the German government’s agenda and then tried to shape the final decision according to its own preferences. This makes it difficult to render a comparison between the free movement of labour and the Centre Against Expulsions issue especially if one would have to “measure” the influence of the non-state actors involved. As explained at the beginning simply saying that a non-state actor’s influence is great on the basis that it was successful if we compare the preference statements with the final policy-decision would not do the complexities of the whole process justice. That is because a non-state actor might spend a vast quantity of resources and time to exercise some influence. Another non-state actor might have been similarly successful in terms of outcome but spent fewer resources on the lobbying process and achieved it quicker. That is exactly the problem here. The BdV has been successful in putting the issue on the agenda, but then it took a very long

³¹² This, in turn, discredits the academic reconciliation literature that accompanied that process (see Chapter I)

time until finally the Grand Coalition found a compromise and the project went ahead.

To summarise the case studies presented in Chapter V through Chapter VII, it can be said that Risse-Kappen's (1995) theory that domestic structures and institutionalisation of bi-lateral relations are indeed significant variables that determine non-state actors' influence in foreign policy-making. However, the issue context is an additional factor that plays a role. It seems that if an issue is controversial enough to provoke a reaction from the other state, then not even a great amount of material resources is necessary to shape the government's agenda as demonstrated in Chapter VII. Therefore I propose this as a theory that would need to be tested in future research.

This thesis also bears important significance for the discipline of international relations. Much of IR literature has focused on interdemocratic peace. i.e. the hypothesis that democracies rarely go to war with one another. Various approaches have been chosen to study this phenomenon: with statistics, case studies, and multi-method approaches since the early 1960s (George and Bennett 2005: 37-59). Questions of war and peace are of course worthy their attention, but I suggest to focus more on how differently structured democracies is a crucial factor in shaping bi-lateral relations. In this thesis, there are at least four examples that point to the notion that bi-lateral relations are influenced by the structural differences between states. In the Polish-German case it seems to affect relations negatively. I presented the first example in Chapter II where Markus Meckel (2010 Interview), the leader of the German-Polish parliamentary group (1994-2009), revealed that when he organized conferences on cross-border co-operation, Euroregions and Poland's accession to the EU, where members of the German *Länder* parliaments and *Bundestag*, MEPs and members of the Polish *Sejm*, *Senat* and regional *Sejmiks* were incorporated, the Polish side often expressed concerns regarding overly strong regionalization or even federalization. The second example was revealed by Krzysztof Mischczak (2011 Interview) who expressed dissatisfaction that in Germany the person responsible for Polish-German relation is a Minister of State, Cornelia Pieper whilst in Poland this is a Secretary of State located in the Chancellery of the Prime-Minister. Third, some German *Länder* would have like to see co-operation with their bordering

voivodeships in medical services. However, negotiations were very slow since in Poland Warsaw insisted on negotiating over this issue (see Chapter II). Fourth, since education policy in Germany lies exclusively within the *Länder* the federal government could not monitor the transposition of the Co-operation Treaty where it was agreed in Article 20 that Poles and people of Polish descent living in Germany should have the right to safeguard their ethnic, cultural, linguistic and religious identity. Article 21 pledges that this identity should be protected and cultivated through necessary conditions such as education in the mother tongue, such provisions have not been established by the German authorities so far. In Poland the safeguard of the German culture in the Opole voivodeship has been much more extensively guarded. It would be interesting to see in future research whether this surprising discovery could be substantiated, for example on bi-lateral relations between two democracies with centralised government, or between two federal states.

Closely connected to this, I would argue that domestic structures are also a crucial variable in shaping the process of reconciliation. A leading scholar in reconciliation studies identifies four variables that determine reconciliation: history, leadership, institutions, and the international context (Gardner Feldman 2012). Although she indirectly notes the impact domestic structures can have on reconciliation, she does not make it a separate variable. Her variable *institutions* entails not only joint institutions that states share such as the EU, but also the interaction between governments and societies. She categorizes societal actors according to their activities in relation to their home government as catalysts, complements, conduits, or competitors. However, whether and how societal actors influence concrete government policy depends to a large degree on the domestic structures since they pre-determine the relationship of the government to its society. As seen in this thesis, well-defined lobbying legislation not only legitimizes societal actors' influence seeking, but also makes the process more transparent and makes it easier for those actors which do not have a lot of resources available to access policy-makers. It becomes particularly instructive how much domestic structures matter when one compares different states who embarked on reconciliation efforts. I argue that a comparison between Germany and Japan would render interesting results (see Wochnik 2012). This would be an interesting follow-up project.

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