



**The freedom of movement of workers in the context
of the Eastern enlargement of the European Union**



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The freedom of movement of workers in the context of the Eastern enlargement of the European Union

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[1] Introduction

This paper aims at getting a clear picture of what can be expected in terms of intra-EU migration when the European Union of 15 is enlarged towards the East and Southeast. The aim of this paper is not to make a prediction about the exact amounts of migrants that are to be expected in a given constellation of events, but to give a theoretically funded assessment of the possible impacts of a change in political structure on migration from the Eastern European Candidate Countries (EECC) to the European Union of 15 (EU15) as it exists today. As this very issue is currently regarded as one of the most problematic ones in the accession negotiations, I will also discuss the different policies aimed at regulating the expected migration movements that are currently discussed and put them in the context of my assessment of the developments.

The accessions to the European Union, of Greece in 1981 and of Portugal and Spain in 1986 will be used as a point of reference throughout this paper.

[1.1] Freedom of movement in the context of the Eastern Enlargement

The object of my research is the upcoming Eastern Enlargement of the European Union and the question how the accession process will incorporate the extension of one of the most fundamental rights the European Union grants to the citizens of its member states: The right of free movement of workers inside the member states.

This right has been perceived as problematic by the established members of Union in most cases of enlargement of the Union¹ so far. In cases where the new member states were less affluent than the existing ones it has usually been feared that the immediate expansion of the right to freedom of movement to the citizens of the new member states would lead to the migration of large numbers of them to the established member states. Only the 1995 expansion of the Union by Austria, Sweden and Finland has not spurred such concerns about possible problems with migration.

Although it is not clear yet which states will join the European Union next and when exactly this is going to happen, it is safe to say that with the upcoming enlargement the difference in wealth between the established member states and the newcomers will be bigger than ever before. This has resulted in a lot of attention for the question whether the citizens of the new member states should enjoy free movement immediately after the accession to the EU or not. These concerns are mainly

¹ When I am referring to the History of the European Union in this paper this includes the European Community, which turned into the European Union in 1992.

coming from those member states that see themselves as the prime destinations of the expected migration flows (Germany and Austria). My research aims at answering the question in how far these concerns are justified and what measures can, or should be taken to address them.

I will use the experiences from the accession of Greece on January 1st 1981 and Portugal and Spain on January 1st 1986 as important reference points throughout this paper. By comparing the structural relations between these countries and the EC9 member states to the situation in today's candidate countries and their relationship to the EU15 member states, I will establish patterns that help to assess future migrations flows between the Eastern European candidate countries and the European Union.

The current 'state of the art' concerning the scientific attention paid to this process can be divided into two different approaches. Beginning around 1995, a number of studies have been commissioned by government agencies on different levels (e.g the European Commission and various national governments) that were aimed at assessing the 'migration potential' in the Eastern European candidate countries. These studies, which generally identify a substantial potential for post accession East-West migration, have provided the empirical basis for the public discussions that took place during the last years on this topic. I will analyze a number of these studies in more detail in section 5.1 of my thesis.

More recently a small number of publications have centered on the methodological approaches that were used in the above-mentioned studies. Some of these publications have questioned the projected migration potentials. I have included the arguments raised in these publications in my own analysis in chapter 5.

[1.2] Relevance

In my opinion it is important to try to get as much insights in the (expected) patterns of migration as possible for two different reasons: The first, and most obvious of these two, is of political nature whereas the second one comes from scientific point of view:

In Western Europe, immigration is widely perceived as an issue that is problematic in terms of popular acceptance. This has lead to a situation in which debates of future immigration policies are accompanied by considerable amounts of demonizing and xenophobic fears from parts of the political elites and the media. In the highly developed Western European countries (and not only there²) immigration is often perceived to be a threat to the own economical well-being. In this

² For a discussion on the attitude towards Immigration in the CEE see Amato, 1999 p.10f.

situation the extension of the right of free movement and settlement, which lies at the heart of the European Union, to citizens of the EECs is perceived as threatening both by political elites and the general public in the established member states.

Because of this, political leaders, mainly from those EU member states that share borders with the accession candidates, have voiced concerns against the immediate expansion of the right of freedom of movement³ to the citizens of the new member states. For example the German chancellor Gerhard Schröder has pleaded for a 7-year transitional-period during which citizens from the new member states should not be allowed to take up work⁴ in the established member states. The main reason given for this position is, that, because of high structural unemployment in Germany and other member states, the free movement of 'cheaper' labor from the accession states cannot be realized without inflicting considerable damage to the social-order in the established member countries.

If this position would become political practice it would mean, that the citizens of the new member states would be treated as second class EU-citizens for an extended period of time following the actual accession of their countries to the EU. Such a denial of some of the most basic rights the EU-membership must not be based on diffuse feelings of danger that are prominent among the population and the elites of the established member states. Therefore it is my objective with this thesis to come to a more solid assessment of what – in terms of migration – can be expected from the Eastern enlargement of the European Union.

Such an assessment should be at the basis of any strategy dealing with the question of freedom of movement in the process of accession of new member states.

The question of assessing migration flows also poses interesting scientific questions. The causes for migration flows are – in spite of manifold attempts from various disciplines – still not totally explained. The task of assessing possible migration flows comes down to a set of two closely related questions: *Why do people migrate?* and *why do people stay?* In past attempts to explain migration-flows much attention has been rewarded to the former while little attention has been paid to the latter. Comparing migration flows that take place in environments that share important structural similarities offers the possibility of learning more about how the factors that are held

³ While the object of this paper is the *freedom of movement of workers* as defined in article 48 of the Treaty of the European Union (TEU), this right is also referred to throughout the academic literature simply as *freedom of movement*. In this paper I will use both terms, to refer to the content of article 48 TEU.

⁴ See: 'Oost-Europeaanen pas na jaren op arbeidsmarkt EU' in *de Volkskrant* 19.12.2000

accountable for the migration decisions relate to each other. I will keep this opportunity in mind throughout this study.

[1.3] The structure of this paper

- In the next chapter I will conduct a closer inspection of the two historical events that are to be compared in this paper: I will report on the state of affairs concerning the upcoming Eastern enlargement, its relevance for migration between the EECC and the EU15. At this point I will also make a selection among the possible candidates for accession that will be the object of the research. Secondly, I will give a historical account of the Southern enlargement of the European Union and discuss the relevance of these events for my research question.
- Chapter three is dedicated to the theoretical frame of my research: Three main questions have to be put in a theoretical frame: *Why do people migrate?*, *Why do people stay (do not migrate)?* and *To what extent can the receiving countries influence these decisions?* I will use the results of these theoretical considerations as the basis of the comparison in the next chapter. This chapter will also include some reflections on the comparability of the two historical events on which this research is based.
- In chapter four I will compare the situation around the Southern enlargement of the 1980's to the situation as it presents itself before the upcoming Eastern enlargement. This comparison will focus on three different points: the comparison of the opportunities to migrate both before and after the accession, the economic situations inside the candidate countries, their relative position to the established EU member states and the comparison of the migration history of the countries in question.
- In chapter five I will use the conclusions that result from these comparisons to answer the central questions of my research: Will the upcoming enlargement generate new migration flows from the new to the established member states? What can be said about the magnitude of these possible flows? What will be the possible effects of these flows? And how will an eventual restriction of the right of free movement affect these migration flows?
- In chapter six I will wrap up the conclusions of my research and try to formulate concrete recommendations based on them.

[2] Migration, freedom of movement, and the Enlargements of the European Union

The concept of migration used in this paper encompasses one-way as well as repeated movements across nation-state borders for purposes other than (1.) exclusively recreation (tourism) and (2.) cross-border shopping for individual needs, regardless of the migrants' political status (documented or undocumented) and the duration of the trips.

[2.1] Migration in Europe in historical perspective

Contemporary migration movements in Europe have their roots (and structural parallels) in the era known as the "long turn of the century" (1870-1914) that witnessed migration flows of unprecedented magnitude. These migration flows have shaped migration patterns that still influence their counterparts nearly a century later.

At the end of the 19th century a new world system was emerging that was characterized by the maturation of modern Western capitalism, the accelerated urbanization/industrialization of societies in Europe and North-America and an intercontinental expansion of commerce, migration and capital flows, facilitated by rapid improvements in long distance transport and communication structures.

This 'Atlantic World System' (Morawska 1998, p.6f) was based on a profound inequality in development and the resulting technological/economic possibilities of the individual states. These differences in development were aligned along two geographical axes, one dividing the East from the West and the other one dividing the South from the North. Together these axes defined a core region of more developed states in the Northwest (Northwestern Europe and Northern America) and a periphery of less developed nations to the South and the East of the core.

The population movements of that time followed the structure of these imbalances in modernization. At the turn of the twentieth century migrants in search of labor went from the still largely rural, poor and overpopulated Southern and Eastern regions to the industrialized central parts of the European continent and further to North America where labor was needed in construction (railroads, expansion of the urban centers) and manufacturing.

These migration flows were of considerable size even by today's standards: It is estimated that between 1840 and 1914, 50 million Europeans left the continent for overseas destinations (of whom about one third would return after some time spend overseas) (Sassen 1999, p.43). The number of

migratory movements⁵ of East Europeans to the West between 1870 and 1914 reached 30 to 40 million (Morawska 1998, p.6). The national economies of the states of the European core were dependent on huge flows of seasonal migration: About 450.000 migrants (mainly from Eastern Europe but also from Scandinavia, Austria and Italy) were attracted by the German agricultural sector at the end of this period⁶ and the French vineyards were attracting another half million seasonal immigrants from Italy and the Iberian peninsula at the end of the Second Empire (Sassen 1999, p.42ff).

Although it became much more global, interlinked and encompasses more regions than ever, today's global system has retained major structural characteristics of its turn of the 19th century Atlantic predecessor. It continues to function in the context of the still existing NW/SE division of economic power and technological development. The core region of the system have been extended to some extent (notably to Southwestern Europe and into parts of Asia) but so have the peripheries of the system. These differences are still sustaining the basic patterns of migration movements that are directed from the peripheries of the East and the South to the core in the Northwest.

There have, however, been some internal shifts in the compositions of the migration flows from the peripheries to the core: Most notably the fact, that induced by the 'Cold War' history, the West-European Countries were cut off from their traditional labor supply from the East for most of the second half of the 20th century. Therefore, when faced with massive labor shortages in the 1960's, they had to import labor from the Mediterranean region, creating a new migratory system that is at the root for the so-called 'immigration question' as it is perceived in today's Europe.

It remains to be seen if, after the end of the isolation of Eastern Europe, this region can regain its position as primary supplier of migrant labor to parts of the Northwestern core economies.

In this paper I will further examine the effects of the extension of the core (the subsequent enlargements of the European Union) on the migratory patterns that take place between those semi-periphic regions that are to be included into the core and the core regions: On the European continent there are two major occurrences of this process: The first one is already completed, namely the inclusion of the Southern European countries into the core that was formally crowned by the accessions of Portugal, Spain and Greece to the European Community in the 1980's, while the second process is still in underway: The attempted inclusion of the East Central European

⁵ The number of actual migrants was considerably smaller as many of them repeatedly took part in seasonal migration systems.

⁶ This phenomenon was called 'Sachsgängerei' in German or 'chodźnic na saksy' in Poland where it survived until today as an idiom for going to Germany in order to augment the family income. (Morawska, 1998: p.21)

(ECE) countries into the capitalist core, which started after the fall of the Soviet block and lies at the heart of the upcoming eastern enlargement(s) of the European Union.

In Spain emigration was prohibited from 1939 to 1946. Before this period and in the 20 years after the end of this period Latin America was the main destination for Spaniards that were leaving their country for good.

Beginning in the mid-1950s the growing economies of Northwestern Europe became more and more important as a destination for Spanish emigrants. In reaction to the growing shortage of labor the Northern European countries opened their markets for unskilled and comparatively cheap labor from Spain (and other Mediterranean countries). This led to massive migration flows from Spain to Northwestern Europe that consisted of two main groups:

Long term immigrants that found permanent employment in Northwestern Europe and established themselves in the destination countries for longer periods: Close to 2 million people left Spain between 1962 and 1976. The most important destinations were Switzerland (38%), West Germany (35%) and France (21%). In 1976 1 million of these emigrants were living outside Spain.

The other group consisted of temporary agricultural workers that found employment in France. This group numbered 1.5 million persons in the period from 1962 to 1976 (Shubert 1990, p.217).

The temporary character of these sojourns, that were intended as temporary moves to acquire financial resources, shows in the demographic composition of the migration flows. Only 1 percent of the total amount of migrants was not economically active and a mere 15% of the migrants were women.

The situations for Portugal and Greece are comparable. The two countries were affected by the same structural migration patterns. After 1950 both countries exported labor to the countries of the European Community in the frame of various 'guestworker'-arrangements. At the end of these 'guestworker'-arrangements that came with the oil-crisis of 1973/74 significant colonies of immigrants were present inside the EC of 9: In 1976 there were 447.000 Spanish, 569.000 Portuguese and 239.000 Greek *workers*⁷ present inside the nine countries (Wedell 1980, p.50). At the beginning of the 1970s the structure of these colonies began to change. The predominately young male workers that had originally migrated to the North in order to acquire savings that could be spent on returning to their countries of origin began to settle in the host countries. This settlement process included the arrival and settlement of partners and children of these migrants.

⁷ Note that these figures concern workers and not all nationals from the given countries being present inside the EC. This also explains the discrepancy with the Spanish figures given above by Shubert.

At the beginning the 1980s it was clear that the large portion of them that was still present inside the Northern European countries were there to stay. The 'guestworkers' had become permanent immigrants.

The attitude in the West European countries towards migration from the former communist Eastern European countries to the West changed almost immediately after the fall of the iron curtain: Regarded as a form of liberation from the communist regimes in the past, migration and the migrants were now seen as a threat for the economic and social stability of the Western European countries themselves. Some incidents - the threat of a Russian minister, that 20 million Russians would migrate west if the financial aid for Russia would not be increased or the widely televised scenes of ships that flooded the docks of the South Italian town of Bari with thousands of Albanian refugees - contributed to the rising fear of an invasion of migrants in search of a better future, often depicted as potential criminals from the East. These fears have lead the Western European countries to significantly restrict their admittance policies towards asylum seekers and other forms of migrants, but the feared invasion from the East never really happened (cf. van der Meulen 1999, p.8).

Although the possibilities to go to Western Europe opened up, the vast majority of the citizens of Poland, Hungary Czechoslovakia and the other Eastern European countries stayed in their home countries. Even in Germany, where after the reunification it was possible to move from the former Eastern part to the Western part without any legal barriers and without the risk of loosing social protection only a minority of the former East-Germans made use of this possibility⁸.

[2.2] Present types of East-West migration

There are different forms of present-day (post 1990) migrations from the ECE countries to the European Union. As it was the case with the turn of the 19th century migration flows, their main purpose is to generate (additional) income. The main difference between the earlier migration movements and today's movements lies in the temporary character of most of today's sojourns to the West while the latter where mostly permanent⁹. There are a number of reasons that contribute to the fact that most travels are temporary:

⁸ This has somewhat changed recently. Since the late 1990s there is significant labor migration by predominantly young former East Germans to the West. For a more detailed discussion of the situation in the early 1990s see Boeri and Brückner 2000, p 191ff.

⁹ Most turn of the century migrants however intended their migration to be temporary but ended up settling in their countries of destination. It is estimated that only 30-40% actually returned to their home countries. (Sassen 1999, p.43)

The receiving countries have made legal permanent immigration increasingly difficult and therefore permanent migration has become more difficult/risky as it has to be undertaken outside the legal framework of the receiving countries. Also the structure of jobs available to migrants in the European countries has changed. There are less (documented) long-term employment opportunities for migrants and more (undocumented) short term and seasonal ones. The main asset of migrants on the labor market of the receiving countries is - alongside their 'cost-efficiency' - their flexibility. Other factors of relevance for the temporary nature of today's migrations are the improved transportation possibilities that greatly reduce the costs - both monetary and time wise - of shuttle migration and the ongoing changes in the ECE-Countries that offer the promise of better opportunities in the migrants countries of origin in the future (cf. Frejka et al., 1998, p.56ff). In the following section I will give a brief description of the different forms of present day migratory movements from the ECE-Countries to Western Europe. The estimates concerning the size of the different migrant populations are compiled from Morawska 1998, p.14ff and 2000, p.6ff unless otherwise stated.

- *Tourist Workers*: The most common form of ECE - EU migration occurs in the form of tourist-workers, who use the possibility to enter the EU as tourist in order to engage in temporary undocumented work. The forms of work that are performed by these migrants differ considerably from short irregular jobs in the border regions, seasonal jobs in the agricultural sector of more distant regions and longer term jobs in gastronomy/construction/small scale production all over the EU. Although tourist-workers are residents of their countries of origin there are considerable differences in the amount of time they spend in the EU (ranging from a week per year to multiple periods of several months, the average stay in the EU is 2.5 to 3 months) and the purpose of their activities (generating their primary income in the EU or supplementing a primary income earned in the country of origin). The number of ECE tourist-workers is estimated at about 600.000 to 700.000 (Morawska, 2000, p.7).

In a number of EU member countries there are also some possibilities for Eastern Europeans to legally engage in seasonal employment. These employment opportunities are usually limited to agricultural work during harvest periods and the number of permits issued in this context is limited (20.000 in Germany in 1999 for example). Therefore the share of documented tourist-workers is rather small.

- *Tourist Traders*: Migrants that use the possibility to enter the EU legally as tourists to buy or sell consumer goods taking advantage of different price structures in the border regions. This form of

migration is mostly confined to the border regions of Austria and Germany. The frequency of these trips typically ranges from a few times per month in order to supplement a regular income in the home country to the daily trips of so-called ‘ants’ that have made the buying-and-selling trips their primary occupation.

- *Contract Workers*: In contrast to the first two groups of migrants contract-workers are legally employed in the EU. Contract workers are persons that are employed by a foreign (in this case Eastern European) company that performs services (primarily in the construction sector) in an EU country. These services are performed by employees of the company that are entitled to work and stay inside the host country for the duration of the project. Contact-worker arrangements are subject to the legal regulations of the individual member states of the Union. It is estimated that there are about 300.000 ECE contract workers in the EU at any given time.

- *(Permanent) Immigrants*: There are various groups of (permanent) immigrants from the ECE countries in the EU. The persons denoted in this context as immigrants differ from the above categories in so far that they (intend to) establish their primary place of residence inside the EU for a longer period of time (more than a year). The group of immigrants is quite heterogeneous as legal immigration into the EU member states is only possible in exceptional cases. The EU member countries immigration policies are currently aimed at preventing (permanent) immigration. The most important groups of persons exempted are:

Family related migration: Close relatives (usually first grade) of persons already residing legally inside a member state can enter that EU member state on grounds of family unification or forming.

Exceptions for certain professions: Immigration into the EU member states in order to take up work is generally prohibited. There are, however, a number of exemptions in the various member states for certain profession. Generally persons that have highly specialized and/or paid professions (scientists, managers, etc.) can be admitted if their immigration is in the interest of the receiving state. Recently these exemptions have been broadened in a number of member states in order to fill vacancies in certain sectors of the labor market. Most notably are regulations in a number of member states that allow the immigration (and in many cases the active recruitment) of ‘IT-specialists’, but there are also programs that permit the recruitment of nurses and other medical personal.

- *Aussiedler*: Persons that are descendents of German nationals who are able to pass a test on their ‘German-ness’ (Deutschtum) are considered Germans by the German constitutional law and are therefore entitled to the German nationality. This has lead to huge migratory movements after 1990

mainly from Russia and Romania where large minorities of German origin lived. This rule also applies to ethnic Germans in parts of Poland of whom many have obtained the German nationality.

[2.2] The freedom of movement inside the European Union

The freedom of movement of workers has a very prominent position in the current EU treaty: It is one of the fundamental freedoms that characterize the internal market that forms the heart of the proclaimed 'Europe without borders'¹⁰.

The freedom of movement of workers is based on Article 39 (ex 48) EC Treaty. According to this part of the treaty that has not been changed since 1957 free movement consists of four central elements:

- the principle of non-discrimination on the ground of nationality between the workers of the member states as regards employment, remuneration and all other conditions of work and employment.
- free access to all employment (with the exclusion of certain public service functions)
- the right to enter and reside in the member states for this purpose
- the right to integrate in the country, as expressed in the right to continued residence after the end of the professional life of the worker in question.

The different aspects of the free movement of are governed by the EU's regulation 1612/68, which addresses the right of free access to the labor markets of other member states, the right to equal treatment while being employed in another member state and the rights of family members of workers employed in another member state.

The regulations concerning the free access to the labor market, that are found in the Articles 1-6 of regulation 1612/68 mandate that workers must have free access to the labor markets of all member states and must not be required to obtain permissions in order to exercise this right. Any form of discrimination based on nationality in the recruitment process is prohibited and the workers from other member states must have access to the same amount of public assistance from the labor agencies as nationals when they are looking for work in another member country.

¹⁰ Of course, borders continue to exist in this Europe. Not only have the intra EU borders been replaced by a much stricter regime on the outside borders of the European Union, the borders that are claimed to be vanished continue to exist inside the 'border-less' EU: Residents from Third countries lose their rights when they cross them and law enforcement and border control operations are still in place along the borders and have been extended in range so that some of the abolished borders have become thicker than they were before.

It is important to realize in this context that this does not include social security transfers or any other form of social advantages while looking for employment: Persons that go to a member state to seek employment enjoy "a right of residence for a 'reasonable period', a time limit which in reality is laid down by the host member state [...]. But this is a limited right of residence, and the substance, i.e. equal treatment, is absent: job-seekers are not entitled to social advantages." (Bonnechere 2000, p.170)

Articles 7-9 of regulation 1612/68 are covering the working conditions of workers employed in another member state: In the areas of remuneration, working conditions, reintegration and termination of contracts any form of discrimination based on nationality is prohibited. The same goes for taxation and the access to social services, especially in the field of housing benefits and education.

Finally the articles 10-12 of the regulation cover the rights of family members of workers employed in another member state: Article 10 grants the right to reside alongside the worker to his or her spouse, children that are younger than 21 and all other relatives in ascending line. Art 11 mandates that the children and/or the spouse of a worker employed in another member state can take up work in that country without any restrictions.¹¹ And according to Article 12 children of the worker must have unrestricted access to the education system of the host country.

These rights appear to be impressively substantial, but in the context of this study it is important to notice two important limitations:

First, free movement is a right that is given to *workers* as opposed to *citizens* of the member states and, second, free movement is granted to workers *in order to access the labor market* of the other member states (cf. Denys, 2000, 63-68).

Where workers and their family members enjoy *unconditional* freedom of movement persons who are not economically active have only been granted *conditional* freedom of movement and the right of residence: The three directives, 90/364 on the general right of residence, 90/365 on the residence rights of ex employees and the self employed and 93/96 on the residence rights for students are subject to conditions that are not imposed on workers: The beneficiaries of the rights granted by these directives must have sufficient resources to avoid becoming a burden on the social assistance systems of the host member states. They also must be in possession of valid health insurance. These conditions exclude a number of groups from effectively making use of the 'area without internal

frontiers' in which the free movement of persons is to be ensured according to the Single European Act of 1986. Unless the freedom of movement rights are extended by political will, which seems highly unlikely in the light of the upcoming enlargement round these significant groups among the EU citizens will remain to be excluded:

It is hard to imagine the [European] Court going further to extend the concept of worker to non-economic players, such as 'excluded' people (the poor, people with disabilities or people affected by structural unemployment). Moreover, the Court has already held that young people seeking their first job are not workers within the meaning of article 39 (ex 48) of the EC treaty. (Denys 2000: p.64)

To sum up these limitations in the context of this study: There is no such thing as a right to free movement and residence inside the EU for all citizens of its member states. The free movement of workers, as it exists today, does not entitle the unemployed, the poor or the first time job seekers among the EU-citizens to free movement and residence inside the EU, let alone to access to the social security systems of other member states.

[2.3] Enlarging the European Union ...

The original European Community of 6 (Belgium, France, Italy, Luxembourg, The Netherlands and West-Germany) has been enlarged four times so far: in 1970 The United Kingdom, Ireland and Denmark joined the Community, in 1981 it was joined by Greece followed by Portugal and Spain in 1986 and finally the - as it was called by then - European Union was joined by Sweden, Finland and Austria in 1995. The fifth enlargement is underway with 6 countries being seen as serious candidates for accession around the year 2004.

[2.3.1] ... to the South

The Southern enlargement of the European Community of 9 occurred in two steps: On the 1st of January 1981 Greece joined the Community according to the Accession Act concluded on May 27th 1979 (Official Journal of the EC, No. L 291, p.17ff) followed by Spain and Portugal who joined on the 1st of January 1986 based on the Accession Act concluded on June 12th 1985 (Official Journal of the EC, No. L 302, p.23ff). Greece had concluded an Association Agreement with the European

¹¹ This is one of the very few instances where, in the field of social rights, the EU legislation grants unconditional rights to non EU-nationals: According to regulation 1612/68 the spouse and children of a worker (who must indeed be a citizen of a member state) can take up work without any restrictions regardless of their nationality.

Community in 1962 and formally applied for membership in 1975. Spain and Portugal concluded Preference Agreements with the EC in 1970 and formally applied for membership in 1977.

By the time of the accession to the EC considerable amounts of emigrants from all three countries were residing in the established member states of the Community. These migrant populations largely resulted from migratory movements of the 1960s and the first half of the 1970s when the Northern European member states had actively recruited them in order to fulfill the growing demand for (primarily low- and unskilled) work in their expanding economies.

The oil crisis of 1973/74 had brought these movements to a halt, but contrary to the expectations of the receiving countries large numbers of them stayed in the North and even brought their family members to their new countries of residence. The existence of this migratory history between the new member states and the established ones and the fact that the income levels in these countries were considerably lower than those in the North gave rise to the fear that the enlargement would lead to migratory flows that would be potentially damaging for the labor markets in the established member states. In order to prevent such flows, transitional periods regulating the free movement of workers were introduced into accession agreements between the three South-European candidate countries and the EC:

Free access to the labor market: In the case of Greece the right of free access to the labor market of the other member states was suspended for a period of 7 years. The other member states were allowed to maintain their national regulations concerning the access of Greek nationals to their labor markets for the same period.

In the case of Portugal and Spain the 7-year suspension of the right of free access was designed the same way. However, there were two important differences: First, the accession act also contained a clause that mandated the Council to evaluate the results of the suspension of the free access to the labor market for the nationals of the new member states after being in force for 5 years. This had to happen on basis of a report from the Commission and the Council was given the possibility to modify the transitional regulation in unanimity. The Council made use of this possibility, reducing the length of the transitional period to 6 years so that it ended on 31.12.1991.

And second, in the relation between Luxembourg and the two new member states the duration of the suspension was extended to ten years due to the high percentage of Spanish nationals that were residing in Luxembourg at the time of the accession. Following the evaluation of the measures the

council also reduced the duration of the suspension between Luxembourg and Spain and Portugal to 7 years so that it ended on the 31.12.1992.

Equal treatment of workers: In this area there were no transitional regulations. This meant that Greek and later Spanish and Portuguese workers that were already employed in other EC-member states at the moment of accession enjoyed the same rights in terms of social protection and anti-discrimination regulations as the citizens of other member states.

Family unification: The right of relatives of workers already present in a member state to direct access to the labor market in the host country were suspended for a period of 5 years. After 3 years of residence in the host country access to the labor market was to be granted. In the case of Spain and Portugal family members that were already residing in the host country at the moment of accession were excluded from these limitations.

After the accession of Spain and Portugal the French government raised the question whether or not the protection clauses mentioned above were also covering *contract-workers*. The French government insisted that these transitional regulations were applicable to these 'imported' workers, but the Court of Justice ruled otherwise, clarifying that contract workers were not subjected to the protection clauses concerning the free movement of workers. According to the Court, the protection clauses aimed at preventing possible disruptions of the labor markets due to possible massive immigration of workers from the new member states. The danger of such disruptions did not exist in the case of *contract-workers* because these return to their county of origin after the completion of their task and do not enter the labor market of the host country at any time.

Apart from these detailed transitional regulations the accession acts between the EC and the new member states also contained a joint declaration on the freedom of movement of workers that stated that:

The enlargement of the Community could give rise to certain difficulties for the social situation in one or more Member States as regards the application of the provisions relating to the free movement of workers. The Member States declare that they reserve the right, should difficulties of that nature arise, to bring the matter before the institutions of the Community in order to obtain a solution to this problem in accordance with the Treaties establishing the European Communities and the provisions adopted in application thereof. (Official Journal of the European Community, OJ L302/1985, p.480)

No use has been made of the mechanisms laid down in the joint declaration and it is highly disputed if this joint declaration had any legal relevance (cf. Becker, 1999, p.18). The content and the existence of this declaration do, however, illustrate the fears that existed towards possible migratory movements from the new member states.

In the context of my research question these transitional regulations must be regarded as possible precedents for regulations that might be taken together with the EU's upcoming eastern enlargement. Therefore the following instruments are likely to resurface in the discussion about transitional regulations in the case of the next accessions:

- The general suspension of the right of access of workers and to a lesser extent of relatives of workers already present.
- An evaluation procedure to control the effectiveness of the protection clauses that functions as a safeguard against unwanted effects at the same time.
- Special regulations for countries whose labor market is seen to be especially endangered.

[2.3.2] ...to the East

The upcoming eastern enlargement of the European Union has its roots in the collapse of the Soviet Union-lead socialist block at the end of the 1980s. After the fall of the iron curtain the Central and Eastern European (CEE) countries¹² directed their foreign policy orientation towards the West. This was followed by the reorientation of their economic structures.

This change of orientation led to the application for membership in - among other institutions - the European Union setting a long process of pre-accession negotiations in motion:

The Copenhagen European Council in 1993 confirmed the legitimacy of Central and Eastern European applications for membership. This marked the start of one of the most ambitious projects in the EU's history. In 1997 the Amsterdam European Council called for accession negotiations to begin in 1998. The Luxembourg European Council received applications from ten countries and negotiations got under way in 1998 with the first wave of six countries: Cyprus, the Czech Republic, Estonia, Hungary, Poland and Slovenia. These have been to be followed by another wave of five countries: Bulgaria, Latvia, Lithuania, Romania and Slovakia.

The basis for the accession negotiations is formed by the Association Agreements (also known as 'Europe Agreements'). Their objective is to provide an appropriate framework for the applicant

¹² Albania and a number of successor states of the former Yugoslavia being the only exemptions.

countries' gradual integration into the Union. Europe Agreements have been concluded between the EU and Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia.

In this paper I limit my studies to the three biggest East Central European countries of the first wave of candidates that share land borders with the existing member states: Poland, Hungary and the Czech Republic. The main motivation for excluding the other candidate countries from this study lies in the fact that the chosen countries are seen, because of their size and geographical position, as the most problematic ones in terms of possible migratory movements¹³. Together these three countries make up for 94.5% of the population of the five East European accession candidates. Further the migration statistics over the last decade give no reason to expect that the willingness to migrate is significantly higher in the excluded countries than in the included ones. Because of these factors and because of my limited resources I have opted to exclude the two smaller countries from this thesis

The negotiations on the accession of the countries in question are under way since March 1998. There are individual negotiations with all six applicant-countries of the first round. To qualify for accession to the European Union the applicant countries have to implement the *acquis communautaire* into their national juridical and political systems. The negotiations are split into 29 chapters that are individually negotiated. After four negotiation rounds a number of these chapters has been provisionally put aside in all three ECE-applicant countries in question¹⁴, which means that these chapters do not, at this stage, require further negotiation. The chapters that are relevant to free movement of persons inside the EU (chapter 2: free movement of persons) and the abolition of border controls inside the EU (chapter 24: cooperation on justice and home affairs) have only been partly included in the negotiations and are likely among the more difficult ones to conclude (for the latest progress reports on the negotiations see European Union 2001a, b and c).

¹³ Slovenia has a population of only 1.986.000 and its GDP per capita is almost twice as high as that in the Czech Republic that has the highest of the countries in question (European Commission 2000d p. 94) both factors that reduce the probability of mass emigration to the European Union. Estonia has a population of 1.442.000. The gross national product per Capita is slightly lower than that of Poland that has the lowest of the countries that are under study (European Commission 2000e p.97). Among the first wave of eastern European accession candidates, Estonia is the only one that does not share a land border with the EU.

¹⁴ As of 20 December 2001 in the negotiations with Poland 20 of 29 chapters have been provisionally put aside, in the case of Hungary 24 of 29 chapters have been provisionally put aside and the negotiations with the Czech republic have lead to 24 of the 29 chapters being provisionally closed. For more detailed information see the European Commission's (2001a, b and c) progress reports on these countries (cf. European Commission DG Enlargement 2002).

Until now, the negotiations have focused on the implementation of the *acquis* in the candidate countries. With regard to the question of free movement of persons this means that the negotiations concentrate on the implementation of the rules and institutions that enable the extension of the free movement of EU nationals into the applicant countries after the accession. Furthermore the negotiations cover questions of upgrading the border control systems on the Eastern and Southern borders of the candidate countries to EU standards as well as bringing the visa obligations for third country nationals entering the applicant-countries in line with those applied in the EU. According to the logic of the Schengen system these measures are necessary preconditions in order to establish a 'Europe without Borders' encompassing the new member states.

The question of the free movement of the citizens of the new member countries is not subject to the negotiations. As a fundamental right of that the EU membership grants to the citizens of its member countries it cannot be negotiated. There is however the possibility of a transitional regulation in this field, which would temporarily restrict the right of free movement for citizens of the new member states. The question of eventual transitional period regarding the right to free movement of the citizens of the new EU member states is part of the negotiations process. So far preliminary agreements have been reached with the Czech Republic and Hungary.

The way ahead

The unfinished state of the negotiations makes the future temporal framework of the enlargement process difficult to assess. Unresolved political issues but also the fact that there has been considerable delay in the reforms of both the institutional structure and the agricultural policies of the EU that are regarded as necessary preconditions for the enlargement make it unlikely that the official schedule for the enlargement-process will be met.

While the official endorsed *Agenda 2000 Blueprint for Enlargement* (European Commission 1997) sets the date for the accession of the first group of countries for the year 2003, I will assume that the accession of the Czech Republic, Hungary and Poland will take place at the beginning of 2004, as the European Council of Gothenburg in June 2001 has effectively committed itself to realize the accession of the first candidate countries by the 1st of January 2004 (cf. Gothenburg European Council: Presidency Conclusions).

[3] Theoretical frame - Why do people stay and why do people go?

In this chapter I will leave the specific cases on which this thesis is based and concentrate on the theoretical assumptions and concepts my argumentation is based on. I will first make a few remarks on the concepts and uses of comparative migration research. The second part of this chapter focuses on my conceptual understanding of migration processes that concentrates on two basic questions: 'Why do people stay?' and 'Why do people go (migrate)?'

[3.1] Comparative Migration Policy Analysis

Comparative political studies have become a common instrument to analyze political processes. The comparative method of political science draws its strength from the fact that by comparing different cases of specific political processes more insights in their central characteristics can be won than when these processes are studied isolated from each other. (Hague, Harrop and Breslin, 1998, p.12) The most common research design in the field of comparative political science is to study a variable or a phenomenon in a number of different cases in order to gain insight into the factors (variables) influencing the research object. In the majority of comparative studies the cases are nation states or other territorially defined political entities such as municipalities or states in a federal system.

By definition, international migration occurs between different nation states, but this fact does not make the study of international migration movements or the policies regulating them comparative studies. An archetypal comparative migration policy research compares different instances of migrations. A typical example is the Study of Muus and van Dam (1998) that compares migration from the Maghreb and Turkey to the European Union to migration from Mexico, Guatemala and San Salvador to the United States. The purpose of this study was to learn more about the causes that induce migratory movements between regionally dominant developed economies of the core and their southern neighbors.

From the preceding chapters of this study it has become clear that neither the research question nor the cases selected to answer it allow such a research design. However, the setup of my research both shows considerable variation from the 'typical' comparative setup and structural parallels that make it well grounded in the comparative 'family of methods' (Hague, Harrop and Breslin, 1998, p.272).

The research setup structuring this paper, comparing migratory movements and migration policies that accompanied the Southern enlargement of the European Community in the 1980s with the migratory movements and policies that are present (or visible) in the wake of the Eastern enlargement of the European Union in order to assess the usefulness of possible suspensions of the right of free movement of the workers of the new member states for a transitional period, has one firm connection to the typical comparative research setup mentioned above: I am comparing groups of nation states in order to learn more about a specific political phenomenon (migration policy and migratory movements). My cases of this 'focused comparison' (idem, p.280) are the two *migration systems* researched here: From Southern Europe to Northwestern Europe and from East Central Europe to Western Europe. The fact that the sending countries in these two migration systems share some important demographic characteristics (in both cases there is one big country with about 37mio inhabitants and 2 smaller ones with about 10mio inhabitants¹⁵) has not been of any consideration when I selected my cases. It is important to notice that I am *comparing migration systems* that are made up of individual actors (nation states, the EU/EC, migrants) and not nation states as such.

The most important difference from the typical comparative research constellation lies in the fact that I am comparing a finished process to an ongoing one¹⁶. This different research setup is a consequence of the research question. I am not primarily interested in the characteristics of the migration systems that are object of my research or in the question if the two systems do belong to the same category. The central question is whether there have been mechanisms, policy alternatives or mistakes in the earlier case (Southern enlargement) whose existence can be used to better understand and deal with the second case (Eastern enlargement).

It is thus not the need to isolate variables or test a hypothesis that lies at the heart of my comparative approach to the research object. The reason for comparing the Southern enlargement to the Eastern enlargement lies in the hypothesis that the enlargement processes and the migration systems connected to them share enough structural parallels that make it possible *to learn* from the first one how to better deal with the associated political problems in the second case.

¹⁵ Even if the two groups of accession states show these similarities, it has to be seen that on the receiving side, as a result of the successive enlargements, the population of the European Union has grown from 260mio [EC9 in 1980] to 360mio [EU15 in 2000]

¹⁶ Or rather a finished period in the history of one migration system to a developing process that will eventually be seen as a period in another migration system.

In order to assess whether it is possible to transfer experiences that were made in the case of the Southern enlargement into policy alternatives for the Eastern enlargement it is necessary to compare the situations in which these two events are taking place. Only if they show sufficient structural parallels, it is legitimate to base recommendations for the future on the lessons learnt in the past.

In this sense I am using the comparative method as an instrument in order to assess the legitimacy of information transfer on migration policies between two cases of territorial extension of the freedom of movement of workers in the European Union.

My research design is thus based on two basic theoretical assumptions: First, that by comparing different situations it is possible to decide whether information transfer between these two independent situations is legitimate. And second, that choices between different policy options are best made on basis of information transfers from other situations that exhibit structural parallels with the situation in need of political regulation. In other words, this approach is based on...

... the fundamental principle that information transfer and lesson drawing should be handled in policy making within and around a systematic process of analysis and alternative policy selection. As problems of immigrant absorption range universally over the same topical spectrum, what "has worked", what is feasible and what may be adapted are highly relevant. [...] Transfer lesson drawing borrowing, pinching, and adoption of feasible policy alternatives from other immigration contexts serve to cope with these challenges. In fact, drawing comparative lessons implies avoidance of foreclosed search, recognition of fundamental problems, and discontinuance of ineffective policies and precluded options [...]. (Geva-May 2000, p.4)

[3.2] On the motivations of migration flows

There are two distinct theoretical approaches that enjoy popularity in studies on international migrations: a structuralist interpretation of migration flows and a functionalist one.

The so-called (*macro*) *structural perspective* regards migrations as population flows that are generated and sustained by structural inequalities in the economic development of different world regions. These structural inequalities that manifest themselves in the material conditions of life of the affected populations and their chances to positively influence their socio-economic positions, determine the size and direction of migratory movements. In some cases these economic

mechanisms are accompanied by political mechanisms that can cause or alter population movements.

The second perspective, the *functionalist* or *individualistic approach* treats migration as the aggregate result of individual (micro level) decisions, which respond to the economic opportunities (this also includes opportunities that are perceived to exist) and migrate in order to positively influence their socio-economic status. These two approaches do not necessarily exclude each other and can be combined in order to develop a more flexible conceptualization of migration:

Whereas the configuration and pressures of forces at the upper structural layers [macro-structure] set the limits of the possible and impossible within which people move, it is at the level of the more proximate surroundings that individuals and groups evaluate their situations, define their purposes and undertake actions the consequences of which, in turn affect over time these larger-scope phenomena. (Morawska, 1998, p.3)

[3.2.1] Why do people migrate?

Which factors influence the decision of an individual or a group of individuals to leave their present location and move to another one? Which factors influence the choice of the destination? What are the factors that give form to migration systems? There has been extensive research in various disciplines (geography, economics, sociology, political science...) that I will summarize in the following section in order to develop my own conceptualization of the migration process.

The first theoretical model of the decision to migrate are Ravenstein's (1889) 'laws of migration' that are seen as the basis for what is known as the neoclassical approach. In this model the decision to migrate is seen as depending upon one main factor, the difference in wage between regions (or countries for that matter). According to Ravenstein's laws of migration people who live and have to secure their income in low-income regions will tend to migrate to high-income regions. The bigger the income difference between two regions the higher the migration flows between them. The only other determinant for migration that exists in Ravenstein's model is the cost of migration. The cost of migration in the neoclassical concept is the cost of transport from the region of origin to the region of destination. The higher the distance or the more complex and burdensome the route between the two regions the higher the cost of migration. A higher cost of migration has a negative influence on the amount of migration between the two areas.

Empirical findings have shown to be consistent with this model: Income differential and distance have shown to be important determinants of migratory movements in a number of studies undertaken to quantify their importance (see for example: Molle and van Mourik, 1988).

It is obvious that this, very basic model of migration does not contain all the 'laws' that contribute to the formation of migration systems as it cannot account for the characteristics of migratory patterns observed in today's world:

According to the neoclassical explanations, the percentage of migrants of the total population, had to be much higher than what is observed today, given the existing global inequalities in welfare distribution and the resulting differences in income levels. The percentage of persons who are considered to be migrants among the world's population is about 2 percent (Hammar and Tamas, 1997, p.1). This means that 98% of the world's population have not engaged in migration so far and are given the long history of the existing inequalities of welfare distribution not likely to do so in much greater numbers in the future. There are a number of other observations that show that the neoclassical approach is unable to explain all migratory movements. Malmberg (1997, p.22) distinguishes three important observations that contradict these theories:

- Migration from poor to rich countries is not as frequent it might be expected, given the differences in income.
- Economic growth in countries of the South does not seem to reduce emigration.
- Emigrations rates vary considerably between countries and regions on the same economic level and it seems as if, once started, migration tends to continue, partly independent of changing economic conditions.

According to the neoclassical approach international migration should result in a limited number of possible global situations: (1) a world with migration that is caused by (still) existing income differences. (2) a world without migration as a result of the non-existence of income differences and (3) acknowledging the impact of political processes on migration movements a world without migration that knows wage differences, but has effective control of migration in place (Fischer et al. 1997, p.56). As none of these scenarios fits today's global migration patterns, and because this basic economic approach is not able to account for the large amounts of persons who do not migrate the model has to be modified in order to be able to account for today's migratory patterns.

These modifications of the model take place at the micro level. The neoclassical approach, that has been outlined above carries in it a number of important preconditions in order to be able to explain the actions of individual actors:

- All actors (potential migrants) constantly perceive their options and possibilities (in the realm of migrations). The actors are informed about all their options as well as the conditions in all possible destinations.
- On this basis the actors make informed assessments about the most beneficial possibilities (stay or go) and the most favorable destinations.
- As all actors are similarly willing to migrate in the case of a beneficial economic affect of such a decision, everybody acts according to these assessments.

These preconditions are necessary for the model to work, but as I will show, not in line with general empirical observations. Fischer et al. (1997) have gathered a number of implicit assumptions that result from the above preconditions. The following assumptions are, according to them, responsible for the models failure to account for current characteristics of migratory movements in the world:

(1) Migration is cost free (2) Migration is risk free (3) Potential migrants are a homogenous group of people (4) Potential migrants have perfect and costless information (5) Potential migrants behave in an unconditionally rational manner (6) The potential migrant is an autonomous human being with no social context." (Fischer et al., 1997, p.57)

In the following I will have a closer look at these assumptions. What are the consequences for the theoretical conceptions of migration when these assumptions are not valid?

The influence of (economic) uncertainty

It is obvious that the costs and risks that are connected to a decision to migrate are bigger than the pure travel costs that are included in the neoclassical model. One factor that is of great importance in labor related migration movements that are studied here is the chance of finding employment in the destination country. The higher income in the destination country can only be realized when one is employed there. Harris and Todaro (1970) recognized this and extended the neoclassical model by including the probability of finding employment in the destination region as an additional factor that influences the decision to migrate: "...migrants care not only about the level of achievable income, but also about the probability of realizing it. They [Todaro and Harris] approximated the

likelihood of realizing the expected income by the likelihood of being employed minus the unemployment rate" (Fischer et al. 1997, p.58).

Unemployment is not the only risk that potential migrants face. Other risks come in the form of denial of entry or expulsions from the country of destination in case of 'undocumented' sojourns. There are also a number of other costs apart from the travel costs. Obvious are the costs of living (housing, food, healthcare) in the destination country. But there are also non-pecuniary costs (and benefits) that can arise from migration: Adaptation to new and often unknown socio-cultural, political and ecological conditions as well as the separation from the known conditions can put considerable stress on the migrants.¹⁷ These factors are likely to gain in importance with an increase in the geographical distance between the regions of origin and destination, but they should be treated apart from the travel costs of the original neoclassical approach.

The migrant as an 'individual utility maximizer' (idem, p.53) has to include all these costs and risks into his assessment of the positive or negative returns of a decision to migrate. There are, however, a number of ways to minimize the risks and costs of migration:

While the implicit assumption that all migrants have perfect and costless information about all factors of importance for their decision to migrate on which the neoclassical approach is partially based is clearly not in line with the empirical situation, information gathering is an important strategy in order to minimize the risks: The more the potential migrant knows about the situation in a destination region, the more accurate his or her calculations on the expected effects of the decision to migrate will be. Information is, however, another cost-factor in the migration process. To obtain information about the relevant situation the destination region the potential migrant has to invest time and other resources. It is likely that the cost of information is also dependent on the distance between the country of origin and the country of destination so that migration decision to nearby regions are more likely to be based on 'good' information.¹⁸

The network effect

¹⁷ Obviously these factors can also be received as positive as it is in the case of persons fleeing from certain cultural or political conditions or persons who migrate in order to 'expand their horizons'.

¹⁸ The recent advances in telecommunications and here most notably the Internet have Already made the access to information much easier for potential migrants. All immigration countries of the north have information about regulations and policies concerning immigration and employment available on the internet (see for example: <http://arbeitsamt.de/international> or <http://www.ins.gov>), there are multiple possibilities to look for employment on the internet and the migrant communities in the different host countries often have a web-presence (see for example: <http://www.maroc.nl>). Access to the internet and [in most cases] the knowledge of English or the official language in the country of destination are thus factors that can reduce the cost of information about the destination region significantly. They also make the cost of information less distance-dependent.

In order to gather information potential migrants can in many cases rely on their social network. Contrary to the assumption that migrants are autonomous human beings without a social context, the social context of the migrants can function as a valuable asset in order to reduce the risks of a planned migration: Introduced by Massey (1990) the *network effect* can both reduce the risks of decisions to migrate as well as give form to migration flows on a larger scale:

Due to a lack of information about the labor market in the destination region, the first person who migrates is faced with high costs and risks. After the migration of the first individual, the monetary and psychological costs of migration are substantially lowered for relatives and friends of this individual from the original location. Furthermore, existing network ties lower the risks associated with migration to a foreign region because individuals can expect help from previously migrated people to find a job in the destination country. This reduction in costs and risks leads to a higher net return of mobility and therefore a higher migration probability. (Bauer and Zimmermann, 1995, p.99)

In combination with the presence of pioneer migrants from one region of origin in a specific region of destination the *network effect* can shape the migration patterns. The costs of migration to the region where the pioneer migrants are present reduces the costs of migration to this region vis-à-vis other regions without a population of migrants from the specific region of origin.

Dropping the assumption that migrants are autonomous individuals also has another important consequence: The social reference group of the potential migrants (household, family, friends) also influences the decision to go or to stay. There are two, rival, consequences of the embeddedness of potential migrants into a social context. On the one hand family and other ties can act as a restraint on the willingness to migrate, as the change of location will put considerable strains on these relations. This effect is mainly visible for potential movements of migrants inside the core regions, while the second effect is a characteristic of many periphery to core movements (Fischer et al., 1997, p.71): Here the decision to migrate is often not based on the personal utility considerations of the individual migrant alone, but an act of diversifying risks in the context of the social reference group. In this case the risks and costs for one individual are weighted against the benefits for the whole group. This can significantly increase the utility, and thereby the probability, of a possible migration decision.

Non-economic considerations

The neoclassical approach, even with all the adjustments that it has undergone since it first came up that have been mentioned above, has one more strategic weakness. It regards the potential migrants as one homogenous group whose identical members are exposed to the economic forces in the same manner and to the same extent. This weakness has been addressed by what is known as the human capital approach to migration (cf. Fischer et al., 1997, p.60). This micro-economic migration theory takes into account interpersonal differences in time-horizons (age) and conception of the present situation (due to age, wealth, position inside a social security system or cultural preferences). In a second step migration is seen as an investment into the 'human capital' of the migrant. This means that the decision to migrate is not seen as a decision based on the situation at a particular point in time. Migrants incorporate the expected development of the potential future returns both in their present location and in the potential host region into their calculations in order to make their decision. This means that: (1) migrants can be willing to accept less favorable conditions (high costs) in a potential destination region for a period of time, when this creates the possibility of faster or more sustainable improvement in of their situation later. And (2) that younger people are more likely to migrate than older ones because of their longer 'investment horizon'. According to the human capital approach the decision process looks like this:

The value of an individually weighted and discounted expected quality of life at a macro-level unit 'abroad' compared to the corresponding value 'at home' would thus determine the migration decision from the point of view of the micro economic- behavioural model. (Fischer et al., 1997, p.61)

[3.2.2] Why do people stay?

Micro economic migration theory based on the neoclassical approach and modified as described above is still fails to answer the question why the majority of persons stays immobile in a world with growing income differentials that, according to this theory, should trigger massive migration movements. There are a number of different explanations in order to explain the predominance of immobility:

Economic theory is regards flows of goods (labor, capital, consumer goods...) as mechanisms that positively adjust the status quo. Flows are a reaction to imperfect distribution and lead towards less imperfect distribution. The value of migration, expressed in the mobility of labor, lies, according to

macro-economic theory, in the fact that it corrects the imperfect the distribution of labor in face of global labor markets. Immobility has no corresponding macro-economic value in itself.

Immobility has therefore gained very little theoretical attention in migration research so far. However, with immobility being the characteristic behavior of the majority of people it is necessary to look for the possible 'value of immobility' as a possible explanation of the predominance of immobility in today's world:

Under the conventional static view the micro-level decision maker compares her/his present and future level or utility in different macro-level units on the basis of her/his present stock of assets and abilities. In most cases this is not a realistic judgment because a certain part of the abilities and assets of every human being are location-specific, in other words they can only be used (or are only existent) in a specific macro-level unit and are not transferable to other places of work and residence. An important part of these abilities has to be obtained within a location-specific learning process, which requires time, information and temporary immobility. Mobility turns such investments into lost sunk costs, i.e. costs which are tied to a specific project or - in this case - a specific location and lost in the case of emigration. (Fischer et al., 1997a: 75)

The (micro) economic value of immobility lies in the fact that it enables individuals to create and profit from location specific advantages. Probably the most obvious example of a location specific advantage is the knowledge of a specific language. It is only useful in a setting where other people have knowledge of the same language. When one moves to another country this advantage is lost in most cases. It is necessary to learn another language in order to be able to communicate with the new surroundings to the same extend as before. Therefore immobility makes sense to a majority of potential migrants because the loss of location specific assets and advantages induced by migration is perceived more severe than the loss of potential economic gains that would have come with the decision to migrate.

The economic advantages of location specific assets can come in various forms: *Work related* gains from staying immobile can come from an improved position on the regional labor market. This can be due to specific local knowledge and/or abilities as well as social and political relations and activities that improve the chances of finding employment or improving the employment position. These insider advantages are likely to lead to higher revenues for the individual in the form of wages or other income.

Social advantages from staying immobile range from knowledge of certain distribution mechanisms or market functions (e.g. in order to obtain good housing), the existence of a network of friends, to

memberships in clubs or political parties that need a certain amount of involvement in order to generate advantages in the form of 'social capital' and or influence in political decision making.

With the introduction of the idea of location specific assets the group of persons that are likely to gain most from migration must be seen as those, who are most adaptable, because their skills are broadly defined and more readily transferable. According to this assumption young, highly educated persons are those who will profit most from migration and who are therefore most likely to move. The extend of the loss of insider advantages is also likely to increase with the distance between the places of origin and destination, both in terms of geography and culture.

A second important explanation for the high number of 'stay' decisions is based on the general assumption that most people react with strong aversion against the idea of taking risks.

While one of the key assumptions of the micro-economic models of migration decision making is that of risk neutrality of the involved actors this assumption seems to be out of touch with reality: Risk neutrality implies that an actors, if faced with an opportunity to either gain €10.000 abroad with the probability of 0.5 or to loose €1.000 the same probability he or she will prefer this opportunity to another one that promises a sure gain of less than €4.500 ($0,5 \cdot 10.000 + 0,5 \cdot -1.000$) while remaining at home.

In this situation the assumption that people are risk-averse seems to be more in line with reality. A risk-averse actor would in the same situation choose for the secure outcome.

This means that in many cases the hope of increasing their standard of living through migration to another region can be very well grounded, but because the potential migrants cannot be sure if theses advantages will materialize the decide against migration. The existence of the possibility of a negative outcome of the migration decision alone works as a strong deterrent to those actors faced with the decision whether to migrate or not.

Another approach that aims to explain why potential migrants may prefer to stay at home has been developed by Burda (1995). Even if persons are risk-neutral it can be beneficial for them to delay their migration decision. The time won by delaying the migration decision is used in order to gather more information, and/or take more preparations so that the uncertainties (risks) that accompany the decision to migrate can be reduced. This effect is called the 'option value of waiting'. In order for the option value of waiting to be positive a number of preconditions must be given: The income

differences between origin and destination are not increasing and the opportunity costs for the actual migration are not increasing either.

These presumptions imply two important consequences: (1) if the macroeconomic situation is expected to change significantly in a negative fashion in the region of origin (or positively in the region of destination for that matter) the option value of waiting will be negative and it becomes reasonable to migrate immediately. (2) The same mechanism is at work concerning the opportunity costs of migration as expressed in the immigration policies of the destination countries:

If [...] a more restrictive immigration policy of the host country is imminent and the potential migrant must consider the possibility that future migration will become considerably more difficult or even impossible, the value of waiting option may be reversed and it may become rational to migrate immediately. (Kraus and Schwager, 2000, p.3)

As long as these two preconditions are in place the option value of waiting offers a reasonable explanation why people do not migrate: according to this model they don't choose not to migrate, but postpone their decision in order to gain more information or until their situation becomes unbearable. The absence of migration is thus explained as the continuing delay of migration decision, sustained by the knowledge that the actual opportunity to migrate will not disappear.

Migration control

Migration control comes in two different forms. The 'traditional' form of entry control that is closely linked to the enforcement of physical borders and the less visible form of controlling access to all kinds of social transfer systems and political and social rights inside the destination countries. The territorial exclusion of potential immigrants has become more and more difficult over time. With the economic system being based on the free movement across borders of all kinds of goods and services, an all-encompassing control of the movement of persons is paired with enormous costs as well as a limitation of the free movement of goods and services. These difficulties of immigration control at the borders have caused a shift to the internal forms of exclusion:

As policy makers, for politico-economic reasons, are unwilling to accept would-be migrants, they can and will try to curb migration by means of controls. [...] Nevertheless it would be prohibitively expensive in terms of economic and frequently also political - costs to eliminate undesired in-migration completely (Freeman 1993, Straubhaar 1993). At least for a country with large land frontiers, intense border control is, for instance, bound to create significant problems for trade and non-migration travel. The outcome is therefore more likely a two-tier

society with legal immigrants as 'first division' and illegal as 'second'. (Fischer et al., 1997, p.81)

With the undocumented immigrants being excluded from political and social rights one hopes to limit their impact on the distribution of welfare inside the host society. This mechanism does, however, only work as long as all economic activity inside the host country takes place inside the officially regulated sphere.

From an economic perspective these mechanisms mean that the costs and risks of undocumented migration are much higher than those of documented migration. This should make undocumented migration only viable in cases of high macro-level differences. On the other hand the risks of undocumented migration decrease with geographic proximity between the region of origin and destination as the initial expenses (travel costs) are less significant and can be recuperated faster. Also the existence of regional tourism flows between neighboring states makes it much easier for potential undocumented migrants to enter the country of destination.

Undocumented migration as a consequence of anti-immigration policies of the destination countries is thus most viable inside regions with tight economic integration where there are substantial macro-level differences in welfare distribution.

[3.2.3] Alternatives to migration

Until here I have tried to conceptualize migration in a bipolar fashion: There are two different options, either one stays or one migrates. Migration is seen as a reaction to sub-optimal conditions. As soon as a certain level of economic deprivation is present people will migrate in order to improve their situation. All the adjustments of the basic theoretical model that have been made above have been essentially explanations for the observation that the actual level of deprivation that leads to a migration decision is much higher than one might expect if one conceptualizes migration in purely economic terms.

There are however other possible reactions to socio-economic deprivation than international migration:

To emigrate is only one possible response to changing conditions, and immigration is only one of many kinds of spatial mobility. The alternative to migration - to remain in the area of origin - also includes different forms of mobility in time and space. To many people in third world countries, the temporary spatial mobility over a day, a week, a month or a year is an important

part of the economic and social organization of that society, and a possible response to what we frequently regard as migration determinants. (Malmberg, 1997, p.23)

Apart from migration there are other strategies in order to influence one's position inside the macro-economic unit, such as education or change of vocation. These strategies have in common that they are directed towards the improvement of the individual (micro-level) situation but there are also strategies that are directed at improving the overall macro-level situation: In place of leaving, people stay in order to be able to influence the macro level realities. The choice for these strategies of 'Voice' in place of 'Exit' is based on loyalty or support for the macro-level system (state, political system), socialization and the influence of the construction of nationhood on their existence (cf. Ahmed, 1997, p.174ff).

These same motivations do not even have to contribute to acts of 'Voice' (protest against or activities in order to improve the present situation) but can also lead towards lethargy in face of political, social and economic conditions, have above been analyzed as commending exit.

[3.3] Two forms of migration

Above I defined migration as all movements across international borders that are not explicitly devoted to tourism and/or shopping for the own personal use. In the context of this study, however, it is important to differentiate between two different forms of labor related migration: *Speculative* and *contracted* migration. Under the present circumstances the former is usually labeled as illegal or unwanted migration whereas the latter is labeled as legal or beneficial. It is important to recognize that these labels are a consequence of the current political attitude towards migration and not inherent characteristics of migratory movements.

Speculative migration is migration that takes place *in order to find employment abroad*. In this case the above-mentioned risks of the decision to migrate are real and are to be integrated in the assessment of the benefits of a possible decision to migrate by the potential migrants. It is this form of migration that raises fears of mass immigration in the more developed countries of the northwestern core and regulations and policies that concerning migration are usually aimed at making the costs of this form of migration higher so that potential migrants decide to stay in their countries of origin on basis of their 'own' economic interests.

The second form of labor related migration is *contracted migration* in this case the migrants have already secured an employment prior to moving to the country of destination. In this case the risks of migration (apart from those in the personal sphere) equal zero. This form of migration is tolerated or even encouraged by a number of countries in the EU and comes in the form of *contract-*

worker arrangements, special programs for ‘experts’ and officially endorsed seasonal labor programs for migrants¹⁹.

In general, migration should be regarded as one possible strategy for people in less developed regions of the world to improve their socio-economic situation. Both micro and macro economic theories suggest that by migrating large amounts of the worlds population could increase their present situation. I have shown that there are a number of mechanisms that limit the individual benefits of migration for large parts of the potential migrants.

To sum up these theoretical considerations I will give a short outline of my conceptualization of the migration process in the light of my research object:

- It is speculative migration that is perceived as threatening in the destination countries. The immigration regulations of these countries are designed to make this form of immigration unattractive, making documented speculative immigration almost impossible.
- The main reason for labor-related migration movements lies in economic inequality between countries or regions. Distance has a negative influence on the size of migration movements between regions, not only as a consequence of high travel costs, but also as a result of social, political and cultural differences that increase with distance.
- On the level of the individual the most important incentives for migration are the availability of employment opportunities and of a network in the envisaged country of destination. On the macro level, the existence of employment opportunities for migrants and connections between the countries of origin and destination in the form of migrant networks determine the amount of migration between these countries.
- As people are risk averse and attach much importance to location specific assets such as their social networks and their position in a social security system emigration must be seen as the least likely reaction to economic deprivation. As long as the situation is not likely to worsen in the future or the opportunity of migration is not likely to disappear people are likely to constantly delay their migration decisions.
- Of all potential migrants, young people with a high level of education are the most likely ones to migrate.

¹⁹ Of course contracted migration can also appear as undocumented migration. It is quite common that undocumented migrants secure employment opportunities *before* their actual sojourns.

- If documented immigration is impossible potential migrants will resort to undocumented immigration and employment.

[4] Comparison of the situations [Southern enlargement vs. Eastern enlargement]

In order to be able to compare the migration flows that accompanied the Southern enlargement to those, that are relevant in the context of the Eastern enlargement, it is necessary to break up these systems into smaller parts that can then be compared individually. This ‘breaking up’ of the migration systems will be conducted both in terms of time (into specific periods) and processes (into different aspects). The following chapter is structured along the resulting individual elements of comparison.

As I have shown in chapter 2 the limitation of the freedom of movement of workers that accompanied the Southern enlargements of the European Community in the 1980s (and that is widely regarded as a model for similar regulations in the context of the Eastern enlargement) can only be a temporary measure. Before the accession, freedom of movement is either non-existing or a consequence of intergovernmental contracts between individual states and after the end of a possible transitional period the EU treaties mandate full freedom of movement of workers for all EU-citizens.

It is therefore useful to divide the two migratory systems that are to be compared here into three distinct periods: (1) the period before the accession, where the free movement of workers is not yet established, (2) the transitional period marked by the existence of protection clauses concerning the free movement of workers, and (3) the period of unlimited freedom of movement after the end of these clauses.

As mentioned above I will not only break up the migration systems by period but also by topic. Derived from the theoretical considerations of the last chapter there I have identified four different elements that will be compared in order to be able to make grounded predictions about future developments:

- *Economic situation* - The differences in the economic situation between the new and the established member states. As I have shown in the preceding chapter, the difference in economic situations is generally regarded as the most important determinant for migratory movements throughout the different theoretical approaches. It is the perceived difference in economic situation between the new and the established member states, that lies at the heart of the fears concerning mass immigration that have sprung up in face of both enlargement processes.

- *Migratory movements* - Migratory movements between the new and the established member states of the European Union. Existing migration movements are the real life examples that can act as guidelines for potential migrants that are faced with the decision whether they should migrate or stay at home. Therefore these movements do not only show current migration patterns, but can serve as indicators for future movements.
- *Migrant stocks* - The stock of migrants from the new member states present in the established member states. As I have stated above that the *network effect* is regarded as one of the most important factors influencing individual migration decisions. Migrant stocks present in a particular region of destination form the material basis of migrant networks that can reduce the costs of a decision to migrate to that area.
- *Possibilities to migrate* - The possibilities available to potential migrants to enter the territories of the established member states, both documented and undocumented. This factor is different from the other three, because this factor can be directly influenced by political actors involved in the process of setting the conditions of the accession of new member states. Thus this element does not only have an explanatory value, but also is the one that can be designed according to earlier experiences and expected circumstances.

[4.1] Economic situation ...

Comparing the economic situations that form the context of the two accession rounds that are discussed here is a complex operation. There are a large number of economic indicators that can be linked to the formulation of migration decisions or made responsible for influencing the directions and characteristics of the individual migration flows. Comparing all of them would change both the scope and the character of this study. I will therefore concentrate on two economic indicators. I will compare the two groups of countries in terms of the relative (compared to the EC9/EU15 average) GDP per capita levels and I will take a look at the unemployment rates in the respective countries of origin and destination.

According to modern migration theory the main cause of migration flows are the economic differences between the sending and receiving countries resulting in wage differences. GDP per capita figures can act as a rough indication of these diverging economic positions of the countries in question, especially when they are made comparable using Purchasing Power Parities.²⁰ This

²⁰ A comparison on the basis of exchange-rate converted national GDPs per capita would result in much higher economic differences between the candidate countries and the EU15 member states. This is however not an adequate representation of the situation faced by potential migrants.

ensures that the diverging price levels of the different countries are accounted for (cf. Fertig and Schmidt, 2000, p.6).

Unemployment is considered to be related to migration movements in a bipolar fashion: On the one side high unemployment figures in the sending countries can act as an additional motivation for migration while low ones will reduce the number of those willing to migrate. On the other side high unemployment levels in the destination countries are considered to be a major deterrent to labor migration, while low unemployment levels signal a demand for labor and are thus considered to stimulate labor migration.

[4.1.1] ... during the 1980s

The economic situations of the Southern European Candidate Countries (SECC) at the point of accession to the Community differ. (See table 4.1.1) Among the three candidate countries are two (Portugal and Greece) that display unemployment rates that are slightly lower than the EC9 average while Spain displays significantly higher unemployment levels. While the high unemployment levels in the Spain can certainly be considered to be a push factor for potential migrants, the corresponding figures for the EC9 countries signal that there was no shortage of labor on the labor markets of the EC9 countries.

Table 4.1.1 main economic indicators of the SECC compared to the EC9 average in the year of accession				
	Greece (1981)	Port. (1986)	Spain (1986)	EC9
GDP per capita in PPP in % of EC9 average	65%	50%	70%	100%
Unemployment Rate	7.5%	8.7%	21.6%	8,6% (1981) 11,1% (1986)

Source: GDP figures from Boeri and Brückner 2000; Unemployment figures from OECD Labor force statistics 1988

The relative GDP per capita levels of the three accession candidates range from 50% of the EC9 average in the case of Portugal to 70% in the case of Spain. These differences must, together with the tradition of South to North labor migration, be regarded as the main justification of the perception that the extension of the right of free movement of workers to the nationals of the SECCs could potentially lead to massive South to North migration flows.

After the accession the economic difference between the new and the established member states developed differently: While in the case of Greece the GDP per Capita level fell slightly to 64% of the EC9 average in 1996, there was some convergence of these levels in both the cases of Portugal and Spain: In 1996 the Spanish level was 75% and the Portuguese GDP per capita accounted for 63% of the EC9 average (cf. Boeri and Brückner, 2000, p.173f).

[4.1.2] ... in the wake of the eastern enlargement

Today's economic situation of the three Eastern European candidate countries (CC3) compared to the EU15 average displays a similar pattern. (See Table 4.1.2) The unemployment levels in the candidate countries are in the range of those in the EU15 member states.²¹ Only Poland shows unemployment figures that are well above the EU15 average. Poland also shows the lowest GDP per capita level:

	Czech Rep.	Hungary	Poland	EU15
GDP per capita in PPP in % of EU15 average	60%	52%	39%	100%
Unemployment Rate	8.8%	6.4%	16.1%	8.1%

Source: European Commission 2001b,c,d; Eurostat

While both the Czech Republic and Hungary reach levels comparable to those of the weaker SECCs in the 1980s, Poland does not even reach half of the EU15 average. Seen in the light of the experiences made during the Southern enlargement this means, that while the economic situation of the Czech Republic and Hungary can be compared to that of the Southern European candidate countries and thus be expected not to lead to dramatically different consequences in the area of labor migration, the situation of Poland is less reassuring. GDP per Capita levels of only 40% of the average of the established Member States have not been recorded during earlier enlargements. This fact, combined with the relatively high Polish unemployment rate leads to the conclusion, that in the case of Poland the economic push factors are more important than in all the other cases discussed here.

This very limited comparison of the economic situations does show that the economic difference between the current candidate countries and the member states is bigger than the difference between the SECC and the EC9 member states at the time of the Southern enlargement. This difference is especially significant in the case of Poland as the GDP levels displayed in this case only reach 40% of the EU15 average. This observation undermines the assumption that Poland must be considered the most important origin for eventual post-accession labor migration, not only because of its size but also of the extent of its economic deprivation vis-à-vis the EU member states.

²¹ There is, however, considerably more variation among the EU15 member states. While the unemployment figures were relatively homogenous among the EC9 member states in 1986, today's figures (Eurostat unemployment figures for August 2001) range from 2.2% in the Netherlands to 13% in Spain.

[4.2] Migration flows

As I have noted above it is important to conceptualize migration flows as a two-way movement. The discourse on immigration in the member countries of the European Union that labels (most forms of) immigration as negative and damaging for the receiving societies exaggerates the impact of immigration to the North-Western core countries by focusing exclusively on *immigration* figures. Migration however is a much more complex phenomenon than just the movement of a specific group of persons from one country to another. While these *immigration*-movements are part of the overall migration system it is not possible to get a comprehensive picture of the migration system without taking in account *remigration* (the return migration of former immigrants to their old countries of destination) and *emigration* (the migration of persons leaving the country in question). As I have indicated above (see chapter 2) this is especially important in the case of the two migration systems that are studied here, as both of them contain significant shares of non-permanent migration. In the following I will take a closer look at the development of migration flows in the two cases and compare their main features.

[4.2.1] South to North

The quantification of the migration movements that took place between the Southern European Candidate Countries and the EC9 is, to a certain extent, hindered by the quality and quantity of the available data. In particular it proved to be difficult to obtain migration data of comparable detail for all three countries of origin (with data on migration from Greece being the most evasive) and from all 9 countries of destination (with Italy, Denmark, the UK and Ireland being the most difficult cases to obtain data from). While these shortages of data on migration movements certainly pose some restrictions on the level of detail²² of conclusions about the population-movements between the SECC and the 9 member countries, the data that is available gives enough insight into the situation in order to establish structural patterns and to compare it with the present day migration patterns from the East European candidate countries to the European Union of 15. This is possible largely

²² The data available on the south European countries are mostly immigration and emigration statistics for the three individual countries that does not separately quantify the migration to/from the European Community. This is however not really problematic because it is known that the distribution of emigration and immigration flows has remained essentially unchanged over the period of time that is relevant to our study. The only significant change in the distribution is the fact that the share of migrants going to the non EC-member country of Switzerland has increased somewhat after 1974. This is attributed to the less restrictive reaction of the Swiss immigration policies after the 1973/74 crisis (cf. Tuchtfeldt, 1982 p.145)

because data on migration movements is missing primarily for those countries of destination where these movements did not occur in significant numbers.²³

Pre-accession Period: The migration flows from the South European countries to the countries of the Northwestern core that took place in-between the end of the 1950s and the Southern enlargement of the EC can be divided into two distinct periods. This differentiation is found both in the numbers and directions of the migrants as well as in the legal means on which their migration was based:

From the begin of the 1960 till the year 1973 net migration (migration min remigration) from the three SECCs to Europe is positive with significant numbers of nationals migrating to the Northwestern parts of Europe (apart from the EC member states, Switzerland and Sweden where important countries destination for an exact distribution see: Tuchtfeldt, 1982, p.144). Beginning with the year 1974 the direction of the migration flows changes: From 1974 on the net migration from the SECCs to the North is negative. Table 4.2 demonstrates this for the Spanish case, but figures are comparable for migration movements from Greece and Portugal (cf. Wedell, 1980, p52f).

	emigration	re-migration	net-migration
1959	20.600	22.200	-1.600
1963	193.000	99.000	94.000
1967	75.300	99.900	-24.600
1969	165.300	99.500	65.800
1970	122.000	66.200	55.800
1971	136.400	88.100	48.300
1972	114.500	80.200	34.300
1973	100.900	73.900	27.000
1974	53.200	88.000	-34.800
1975	20.600	110.200	-89.600
1979	13.000	39.000	-26.000

Source: Tuchtfeldt, 1982, p.142

The table also shows that the movements of Spaniards to Northwestern Europe have not been one-directional during the periods that are I have described as either periods of immigration (1960-73) or remigration (1973-1986). All the time there have been considerable (varying from 19% of the volume of the main direction migration flows in 1975 to 75% in 1967) movements in the opposite

²³ While Denmark, Ireland and Italy were not confronted with large-scale immigration during this period, Immigration to the United Kingdom originated mainly from its former colonies. Therefore there has been no significant labor

direction as well. Until 1973 these movements have steadily increased the population of nationals from the Southern European candidate countries in the EC9 member states. After 1973 these populations have started to decrease.

The abrupt change in migration patterns in 1973/74 can be attributed the economic crisis in the countries of destination, which lead to a sudden stop of recruitment of labor from abroad. This resulted in a situation, where these countries became less attractive for potential migrants from the Southern European countries, as it became much more difficult to obtain employment there.

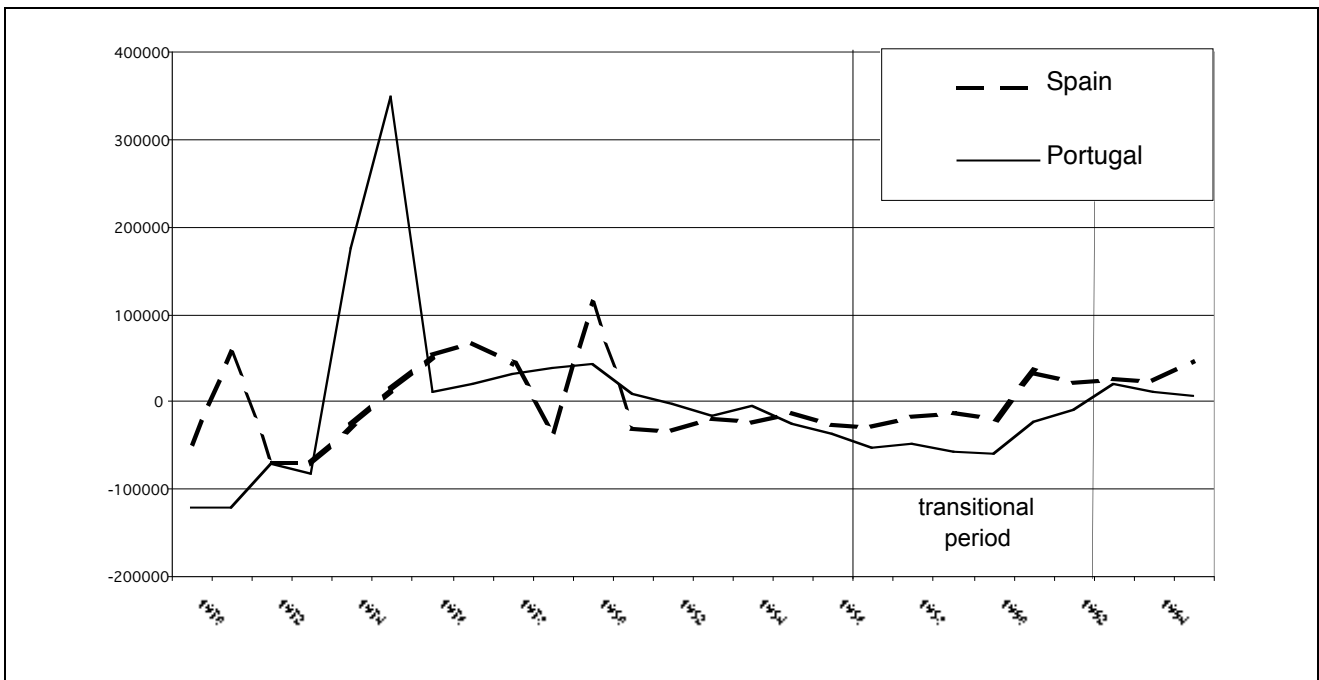
Migration from the Southern European countries into the EC9, that, until 1973, had been encouraged by both the receiving and the sending countries governments, was not possible in this form after that point in time. The receiving countries did not issue work and residence permits to labor migrants from the South anymore. The fact that a certain amount of immigration from the Southern European countries remained after the 1973/74 change in immigration policies is a result of the fact that earlier migrants who intended to stay (even in the face of policies that tried to stimulate return migration) arranged the coming of family members into their new countries of residence.

Transitional Period: As I have laid out in Chapter two, the accession of Greece, Spain and Portugal to the EC in did not immediately change this situation for nationals from the new member states. The transitional regulations that were implemented did not change possibilities for potential migrants and thus the size of the migration movements between the SECC and the EC9 remained essentially unchanged compared to the migration patterns observed in the years directly before the accession to the EC:

During the transitional period, when work permits were still required, about 1.000 Spanish workers and 6.000 Portuguese workers received permits in other member states every year (including renewals of existing ones). Refusals of requests for a permit represent only a fraction of these numbers. (European Commission, 2001, p.16)

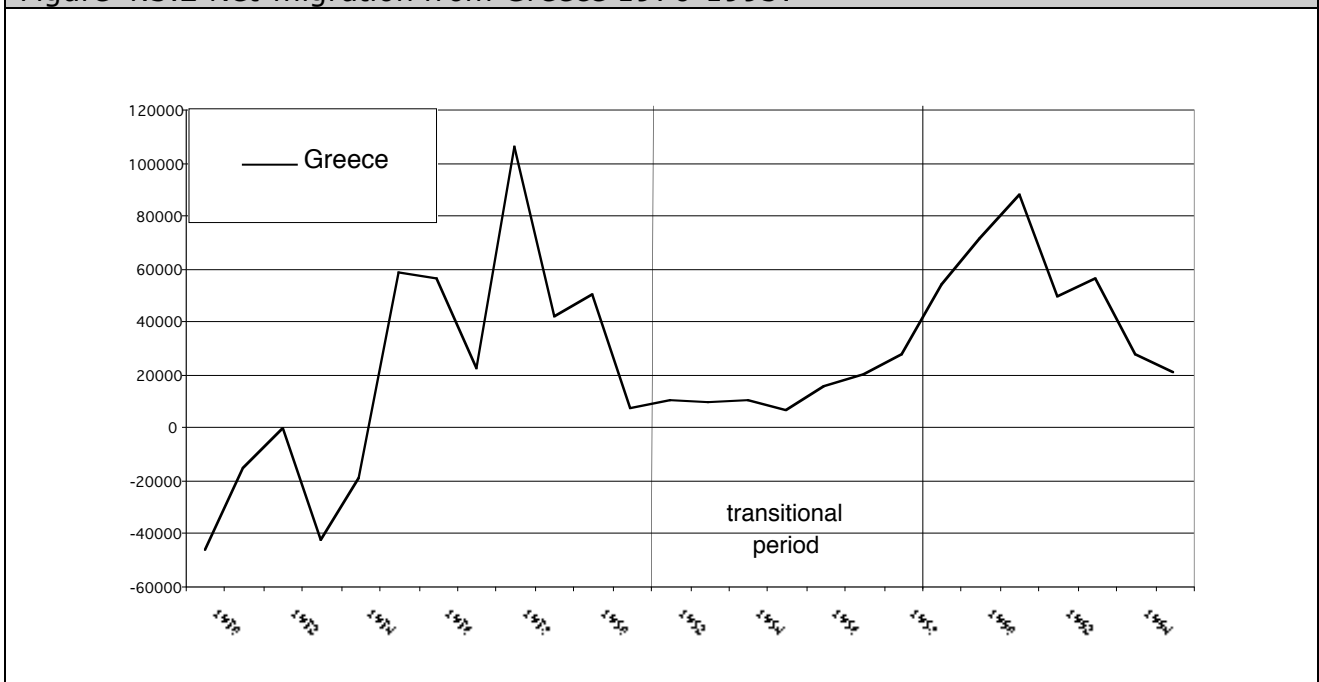
Figure 4.3.1 Net-migration from Spain and Portugal 1970-1995:

migration from Spain, Portugal and Greece to the United Kingdom.



Source: data compiled from OECD 1999 and Kraus and Schwager 2000

Figure 4.3.2 Net-migration from Greece 1970-1995:



Source: data compiled from OECD 1999 and Kraus and Schwager 2000

Post transitional Period: Migration flows from all three new member states did not change significantly after the abolition of the transitional regimes on the free movement of workers. In fact the less than expected pressure to emigrate from Spain and Portugal after the accession to the EC formed the main reason to shorten the transitional regime that was imposed on workers from these two countries (cf. European Commission 1991). While the available data does not enable detailed

descriptions of the migration movements between the three Southern European countries apart and the EC9 member states the data presented in figures 4.3.1 and 4.3.2 shows, that after the end of the transitional regimes emigration has decreased and immigration to the new member states has increased: Spain and Portugal have become countries with net immigration for a consistent period of time for the first time since the end of WWII and in Greece the migration balance has moved further towards net immigration²⁴ after the end of the transitional Period. A recent Commission communication notes on the effect of the end of the transitional regulations, that:

The expiry of the transitional periods in the early 1990s did not produce a break in the trends. Flows from Spain and Portugal have remained small. Spanish emigration into the other member states has remained stable and that of Portugal continued to increase somewhat, to reach an annual level in the order of 30.000 taken together. [this includes non-labor related migration as well; P.K.] [...] When taking into account also reverse migration, by 1995 the numbers of Portuguese and Spanish in other member states was actually reduced by about 110.000 and 100.000 (1.1% and 0.3% of the population), respectively. The number of Greek nationals abroad in the EU did rise after the expiry of its transitional period in 1987, to reach net emigration of 135000 by 1995 (1.3%) of the population. However the growth of Greek communities in the other member states was generally similar to the growth in the presence of other EU nationals and smaller than the growth of the foreign population of non-EU origin. (European Commission, 2001, p. 16)

This leads to the conclusion, that the migration flows from the SECCs were not primarily dependent on the migration policies pursued by the member states of the European Community towards the SECC. The differentiation into three periods of time according to the applicability of the free movement of workers to nationals from these countries is not echoed by the actual migration patterns. The principal changes in the migration flows from the countries in question did not happen simultaneously with the changes in applicability of the free movement of workers to their citizens. While the main change in migration flows, the abrupt stop of South to North migration in 1973/74, must be seen in connection to the recruitment stop (and thus as a result of changed immigration policies in the North European core countries) it would be premature to attribute the stop of large scale immigration to the North to this change of policy, as the change of policy was motivated by the changed economic situation in the destination countries. It is by no means certain, that, against

²⁴ The increase of immigration to Greece in the 1990s is partially attributed (cf. Gabriella Lazaridis, (1996), 'Immigration to Greece: a critical evaluation of Greek policy' in *New Community* Vol.22 No.2) to the immigration of

the background of economic crisis and high unemployment in the destination countries, immigration would have continued on the same level without this change of policy.

Overall the observed migration patterns from Greece, Spain and Portugal to the European Community lead to two important observations: There is no observable connection between the applicability of the free movement of workers and the amount of migration from the new member states to the established ones and, secondly, contrary to expectations the accession of these countries has not led to more migration from these three countries to the other EC member states.

[4.2.2] East to West

Pre-accession period: As with the South to North migration, the pre-accession migration movements from the three East European Countries (CC3) can be clearly divided in two distinct periods of time: The first covers the post WWII period until the fall of the regimes of the Soviet Union-led socialist block in 1989. The second period encompasses the time from 1990 until upcoming accession of these countries to the European Union.

With regards to migration from the East European candidate countries to the West European EU-member states the events of 1989 triggered changes on three different levels: (1) the reasons for migration (2) the possibilities for migration and (3) the attitudes towards the resulting migration flows:

Before the events in 1989 the main reason for emigration from the countries in question was disapproval of the political situation, oppression and or deportation by state authorities and/or unhappiness with economic situation/perspectives. While the economic motive has certainly remained a substantial part of the motivation for today's migrants from these countries the political changes that have taken part after 1989 have brought politically motivated emigration to a halt²⁵.

On the next level the possibilities from migration have changed drastically. Generally emigration was not wanted and therefore not allowed in the pre-1989 area. While this did not mean that emigration was impossible it gave the decision to emigrate a permanent character. People who left the EECC countries to settle elsewhere were generally not allowed back into their countries of origin. After 1989 the former emigrants regained their right to remigration to their countries of origin, so that emigration decisions lost its forced, permanent character.

ethnic Greeks from the former East block countries

²⁵ While this may be true in general terms, the post-1989 period has seen its share of politically motivated emigration from these countries most notably of discriminated against ethnic minorities that have sought refuge in Western Europe from often hostile environments in their countries of origin. At the moment of writing this form of politically motivated migration does not take place on a relevant scale anymore.

On the third level - the attitudes towards migration - the most important changes have taken place in the countries of destination. After 1989 the Western European countries started adopting a more reserved stand towards migrants from the Eastern European countries. They were no longer seen as refugees from 'communist regimes' that were entitled to protection, but as 'regular' immigrants that were trying to enter strained domestic labor markets, trying to profit from the highly developed social security systems in the West, or simply as (potential) criminals. The treatment of potential immigrants from the Central and Eastern European Countries (CEEC) was brought in line with those that applied to potential labor migrants from other countries of origin.

These changes have had major implications on the size and form of migration flows from the Eastern European candidate countries in the post 1989 period. In the following I will describe them in more detail:

With regard to the destination of the migration flows studies have shown a decrease in importance of overseas destinations and an increase of importance of the less distant European countries of destination²⁶ after the events of 1989. Especially in Poland, the only one of the three countries under study here with a long tradition of mass emigration, the destinations have changed:

The majority of the Polish migrants, from the communities in northeast Poland in the 1970s and 1980s, continued a pre-war tradition of migrating to the USA, however, by the 1990s over 80 per cent from the rural community in this region went to Belgium and over 40 per cent of the migrants from the urban community to Belgium and Germany. Two-thirds of the migrants from the urban community in Silesia in the 1970s went to other communist countries; by the early 1990s the overwhelming majority of migrants from both the urban and rural community went to Germany." (Frejka et al., 1998, p. xxi)

The concentration of emigration from the CEECs on Western European destinations has also brought with it a change in the character of the individual sojourns.

The forms of East -West migration that have developed during the last decade are however difficult to encompass with statistical instruments. The 'guestworker' type migrants that came to North-

²⁶ This does however not mean that the interest in migrating to overseas destination has vanished among Polish nationals: The 'green card lotteries' that entitle the winners to a permanent residence permit for the United States of America have been dominated by Polish nationals in the early 1990s. Considering the fact that these lotteries give equal chances for all nationals (except Irish nationals who receive a fixed quota of 40% of all permits) the high shares of Polish winners indicate that there is enormous interest in emigrating to the USA in Poland (50,000 persons received a green card per year in the early 1990s. In 1992, there were 12,060 successful Poles among them - accounting for 24 per

Western Europe from Spain, Portugal and Greece where officially registered and counted during their recruitment process and when their periods of employment and/or residence ended. Most of today's migrants from the CEECs do not appear in the official migration statistics. Those who are officially registered as migrants, make up only a small fraction of the persons that are considered to be labor migrants in the frame of this study. Table 4.2.2 shows the officially registered net-migration between the CEECs and the European Union member states²⁷, which can hardly justify the concern attributed to the question of immigration in the context of the enlargement process. The only country that does receive considerable numbers of immigrants from the CEECs, Germany, does so primarily because its constitutional commitment to accept persons of German-descent as Germans. A large share of the persons listed as immigrants in Table 4.2.2 does in fact belong to this group (cf. Frejka et. al., 1998, p.150).

Table 4.2.2: Net-migration from Central and Eastern Europe to selected EU member countries in 1995

	B	DK	D	L	NL	FIN	S	UK
Net migration from CEEC	1682	844	72776	352	3546	2813	2642	4000
Total net migration	28320	28557	397935	4610	32778	3265	11903	53000
% of total migration volume	5,9	3,0	18,3	7,6	10,8	86,2	22,2	7,5

Source: Eurostat 1997 (Demographic Statistics 1997) Luxembourg 1997

Looking at the officially registered net-migration from the CC3 to the two most popular countries of destination among the EU 15 member states the numbers are even smaller (See table 4.2.3).

Table 4.2.3: Net Migration from Poland, the Czech Republic and Hungary to Germany and Austria

	to Aus 1998	to Aus 1999	to Ger 1996	to Ger 1997
Poland	207	291	5.700	1.000
Czech Republic	63	303
Hungary	214	553

Source: Austrian Federal Statistical Office, OECD 2001a

This, however, does not mean that there is almost no actual migration taking place between the CC3 and the EU15. Most of the migration movements simply escape the official migration statistics, because they take place in the form of movements that are not regarded as immigration by the countries of destination ('undetected migration') or take place undocumented.

cent of all 'winners' - in 1993 and 1994 the share of Polish green card 'winners' rose to 47 per cent). (Compare Frejka et al.1998, p.24).

²⁷ Member states that are not listed have either not supplied emigration data (such as France that recorded an inflow of 2312 persons from the CEECs) or the numbers are insignificantly small.

'Undetected' Migration is primarily directed towards Germany and consists of two entirely different groups. The first group, which is rapidly losing importance, consists of so-called 'Spätaussiedlern' to Germany. These are persons of ethnic German descent that have been residing in the former Soviet Union and a number of other CEECs and who are entitled to German citizenship.

While the 'Spätaussiedler' from the former Soviet Union and other Eastern European Countries have generally migrated to Germany and established themselves there with their families, a different behavior can be observed among Poles who were entitled to German citizenship: Many of them have formally obtained the German nationality along with their Polish one. The resulting double nationality is used as a 'practical convenience' in order to be able to work in Germany²⁸ and reside in Poland legally (cf. Frejka et al., 1998 p.150).

The second group of migrants engaged in 'undetected' movements are those persons that make use of the various exceptions that are built into immigration regulations of the EU-member states. These include short-term temporary work permits and contract worker arrangements. While migration via these channels is not included in the migration statistics of the EU or its member states the labor market statistics can be used in order to identify the size of these groups: The total size of this group is about 300.000 persons annually (European Commission, 2001, p. 29).

The biggest portion of migrants from the candidate countries to the EU member states cannot be found in official statistics at all. This is due to the undocumented nature of the sojourns of the 'tourist-workers' and 'tourist-traders':

This makes it difficult to assess the magnitude of the migration movements. Recent estimates of the number of 'tourist-workers' from the EEECs that are active in the European Union range from 600.000 to 700.000 per year (Morawska, 2000, p.7; Okolski, 2000, p.63). The average time spent in the EU-member states by these tourist-workers is 2.5-3 months per time while there is often more than one instance of migration per year per individual migrant (cf. Frejka et al., 1998 p.147). It is estimated that 75% of the total tourist worker and almost all of the tourist trader migration is directed towards Austria and Germany (European Commission, 2001a, p.29). The total size of the migration flows from the CC3 to the EU member states is difficult to quantify as the figures

²⁸ In fact it is reported that Polish citizens who have obtained the German Nationality use the rights associated with it to legally access the labor markets of other EU-member states, where they mainly engage in seasonal labor type activities: In a radio feature on Polish seasonal laborers in the Netherlands (Aired on Radio1's 'buitenland hour' of 'de ochtenden' on 22.05.01) one Polish worker holding this status estimated that 20% of all Polish seasonal laborers active in the asparagus-harvest in the Netherlands at that time, did so legally on grounds of their German nationality with the rest of the workers being 'undocumented'. Even among this group [which in terms of the rights enjoyed, is prototypical for Polish workers with full freedom of movement of workers rights] there is no tendency to give up their primary residence in Poland according to the persons interviewed for the radio feature.

available for ‘undetected’ and the estimates about the scale of undocumented migration are based on migration from all Eastern European candidate countries. Based on the figures above, the overall size of migration flows from the CC3 to the EU can only be roughly estimated to be around 500.000 movements pr year²⁹ at the end of the 1990s. It should be borne in mind though, that the biggest part of these migration movements has a temporary character.

[4.2.3] Pendular movements in place of traditional migration

There is, however, a striking feature in which these migration flows differ from the more ‘traditional’ ones that occurred from Southern Europe to the EC member states. Large parts of the flows escape the traditional conception of migration where migrants leave one country in order to settle in another one. Most of the ‘tourist-workers/traders’ and of the ‘undetected’ migrants do not intend to establish themselves in the countries of destination (cf. Frejka et al., 1998 p.145ff). They migrate in order to sustain or increase their economic situation in their countries of residence. In their lives migration is not a finite period that either leads to settlement in a new place or re-migration, but a reoccurring strategy that is used to fulfill the desire to uphold/increase a certain standard of living in their places of origin. In the academic literature this has been called ‘unfinished’ or ‘pendular’ migration.

There are a number of differences among those engaged in pendular migration to the EU member states. The main difference lies in the length of the sojourns: Generally speaking the periods of working inside the EU become longer the further the places of employment are away from the places of origin/residence. It is furthermore observable that specific regions of origin are often linked to specific places and/or forms of employment inside the EU15. In their study of migration patterns from Poland to the West Frejka et al (1998) give a number of examples how working in the EU15 and residing in Poland is combined. A typical example that is characterized by relatively long-distance between the places of origin and employment and long periods of employment is that of (the generally undocumented) migrations from the region of Perlejewo (Eastern Poland) to Brussels:

...such migration is characterized by a pendular, back and fourth motion, the stay in Brussels usually lasts a few month at most. Migrants working as cleaning women exchange places every few month and thereby hold on to a steady job, while giving somebody else – perhaps a

²⁹ This figure, that can only be understood as an indication of the overall size, has been arrived at by simply assuming that half of all migration movements originating from the CC10 are movements of CC3 nationals. Therefore this figure

daughter – the chance to add to their families income. If therefore the net income amounts to 3.500 to 4.000 zloty per month, the amount earned within only a few months supplements the family budget throughout the year. [...] A trip from Perlejewo to Brussels and back costs approximately 80 dollars, and the increased competition among coach companies is reducing the cost of such fares even further. The trip lasts approximately 24 hours, and there are even ‘door to door’ transport services. (Frejka et al., 1998 p.147)

Another typical example, characterized by relatively short distance and short periods of employment is that of Migrant L1, who works legally employed (on basis of his German citizenship) in Berlin but returns every weekend to his home in Silesia, where the rest of his family lives:

Migrant L1 works in urban landscaping in the western part of Berlin earning approximately DM 2.100 net monthly. Living expenses amount to approximately DM 800 (including a rented room with a shared kitchen for DM 300). This leaves him with DM 1.400 [...] which is used for living expenses in Silesia (to support his wife, household, help out his children, etc.) and travel expenses. In Germany DM 2.100 per month is not enough to support even a two-person household at the same standard of living that is possible for those working in Germany but living in [Silesia]. (Frejka et al., 1998 p.150)

There are two more important points that characterize these pendular movements: While there is a certain relationship between the places of origin and legal status of the potential migrants on the one side and the places of destination and forms of employment on the other side, this does not necessarily mean that the migration patterns are predetermined by the legal status of the potential migrants (cf. Frejka et al. 1998 p.153ff.). There are numerous examples³⁰ where documented and undocumented migrants from the same area of origin engage in the same activities.

Secondly, it is important to realize that the pendular character of their movements is not ‘forced’ on those participating in them. In their abovementioned study Frejka et al. (1998) come to the conclusion that...

should be understood as a maximum figure rather as a numerical representation of the actual size of the associated flows that can be used for further predictions.

³⁰ For example asparagus harvesting in the Netherlands is performed by both ‘legal’ (in this case mostly persons that have German citizenship) and ‘illegal’ persons (mainly persons that have entered the Union as tourists, without being in possession of work permits) from Poland at the same time. (Based on accounts of polish laborers interviewed for a radio show – see footnote no.8)

...clearly the limited chances of obtaining residence permits, work permits, not to mention citizenship in [the countries of destination] also induce return to the homeland. However, a much more significant factor is the desire to live and settle down 'here' [Poland] and not 'there' [destination countries]. (idem, p.148)

From what I have shown above it is obvious that the migration flows that are associated with the Southern enlargement of the European Union and those that are associated with the upcoming Eastern enlargement differ widely in both character and size.

Migration between the candidate countries of the Southern enlargement and the EC member states of that time had a much more formalized character. Before the economic crisis of 1973/74 labor migrants from the later candidate countries were entering the labor markets of most member states on the basis of formal contracts, equipped with all necessary permits and in the frame of clear policies directed at reducing labor market over-saturation in the countries of origin and labor market shortages in the countries of destination. Gradually this has led to the creation of sizable migrant communities in the countries of destination (see next section) that have been the source of continued migration between the Southern European candidate countries and the EC member states after the 1973/74 change in immigration policies. Over time these migration movements have leveled out towards what can be described as stable equilibrium's. The successive changes of the legal possibilities for labor migration between the SECCs and the EC9 have shown not to influence migration patterns between these countries in a significant way; the extension of the freedom of movement of workers to the nationals of the new member states has not led towards an increase of the actual movement of those entitled to it.

The migration patterns between the Czech republic, Hungary and Poland and the EU15 member states are completely different. Regular long-term migration is responsible only for a minority of the total migration volume. The bulk of recent East to West migration can be attributed to two groups of migrants: First, there are about 300.000 migrants each year that make use of bilateral contract-worker and seasonal-labor-agreements and second, there are an estimated 600.000-700.000 undocumented migrants annually that can be classified as 'tourist-worker' or 'tourist-traders'. Compared to the pre-accession migrants from the SECC, the Eastern Europeans engaging in these forms of pendular migration are different in two main characteristics: They stay abroad for much shorter periods and their migration is much more focused on the employment aspect of the migration process. They usually do not establish themselves in the countries of destination to an extent that exceeds the necessary efforts in order to be able to take up work and there is little

evidence of inclusion of economically non-active family members in the migration process. Both their families and the primary place of residence stay firmly rooted in the countries of origin.

[4.3] Migrant populations

[4.3.1] From the South

Pre-accession period: Towards the end of the 1960s sizable colonies of migrants from the three Southern European candidate countries were present in the main destination countries of the 'guestworker' migration systems (see table 4.3.1). In general these colonies grew as a result of the ongoing labor migration that took place until 1973/74³¹. While most of the migrants from the SECC did return to their countries of origin after a period of time, a number of them extended their stays or even intended to stay permanently in the countries of destination. This group that did not return into their countries of origin (often against their own plans and the expectations of the host countries' population and public policy makers) led to a steady increase in the population of SECC nationals in the countries of destination. After 1974 the populations started to decline again as a result of two factors: On the one hand further immigration was restricted to family members of migrants already present and on the other hand the countries of destination tried to encourage return migration in a number of ways. This has led to a steady reduction of the population of SECC nationals in the EC9 countries.

By 1980³² the combined population of SECC-nationals in the EC9 countries amounted to only a third of a percent of the total population of the EC9 countries. Even in the two countries that hosted the biggest numbers of SECC nationals - France and West Germany - the share of the total population did not exceed 1% (0.9 and 0.5 per cent respectively). While this means that from the viewpoint of most countries of destination the SECC clearly do not account for significant shares of the total population that would have justified the fear of mass immigration after accession, the situation presents itself more differentiated when regarded from the side of the SECC themselves: While the Spanish nationals present in the EC9 countries did only account for 0.71% of the total Spanish population, both Greece and Portugal had significant shares of their population living in the EC9 countries in 1980: 5.17% of the Portuguese and 1.59% of the Greek population were living in one of the member states of the European Community. Especially in the case of Portugal, were

³¹ The pre 1974 peaks in the cases of Greece and of Spaniards in France are the results of political changes in the country of Origin (dictatorship in the countries of origin).

³² The data of 1980 is roughly comparable with the latest available data on migrant stocks from the CC3 countries with regards to the (probable) time-span that will pass until the actual accession from that point in time onwards.

roughly one in 20 Portuguese nationals was residing inside the EC9 this means that emigration to one of the EC9 member states was a widespread behavior. Taking into account that in the period from 1950 to 1973 21.8% of the Portuguese population had emigrated from their country of origin³³ this means that at least in the Portuguese case emigration (to Europe) must be regarded as an important strategy in order to improve ones social and/or economic situation and that there were considerable network resources available (in the form of compatriots living in these countries) in order to facilitate the migration process.

Table 4.3.1: Migrant stock from the South European candidate countries in selected EC member states.

	in BEL	in F	in GER	in NL	Total
from Greece 1969	14.000	11.000	271.000	2.000	298.000
1974	6.000	5.000	233.000	2.000	246.000
1980	5.000	...	136.000	2.000	143.000
% of pop in 1980		...	0,23		0,06
from Portugal 1969	4.000	367.000	38.000	3.000	412.000
1974	4.000	475.000	81.000	4.000	564.000
1980	4.000	398.000	59.000	4.000	465.000
% of pop in 1980		0,69	0,1		0,18
from Spain 1969	48.000	668.000	207.000	18.000	941.000
1974	34.000	265.000	160.000	19.000	478.000
1980	17.000	147.000	88.000	11.000	263.000
% of pop in 1980		0,25	0,15		0,1

Source: Molle and van Mourik, (1988)

Post-accession period: Contrary to the fears of large amounts of SECC nationals migrating to the established member states of the Community after the accession and especially after the end of the transitional regulation this period saw a reduction of numbers of SECC nationals residing in the other EC member states:

In 1994 about 1.2% of the Spanish, 4.1% of the Greek and 8.5% of the Portuguese population lived in the EU (0.3 of the Spanish population in Germany and 0.6% in France. Of the Greek population 3.3% lived in Germany alone and of the Portuguese population 6.1% lived in France). Looking at the developments of the stocks of foreign population since the end of the [transitional periods] 135.200 Greeks (1.3% of the population) moved to the EU, and the

³³ The biggest amount of these flows was, however, directed towards the Portuguese colonies and almost all of the former emigrants to the colonies returned to Portugal after the liberation of the Portuguese colonies in 1974.

Number of Portuguese and Spanish in other member states of the EU reduced by 108.200 and 99.800 (1.1% and 0.3%) respectively. (Alecke et al., 2001 p.68)

[4.3.2] From the East

The fact that large portions of the labor migrants from the Eastern European Candidate Countries come to the EU member states undocumented makes it impossible to give precise figures about the size of the migrant colonies of CC3 nationals inside the EU15. Furthermore the predominately temporary, recurring (pendular) character of the biggest part of migratory movements from the CC3 countries to the EU implies that the size and structure of the migrant populations from these countries is much less important, when trying to conceptualize the current East to West migratory system. Data on CC3 nationals present in the member states of the European Union can, however give indications on their distribution among the 15 member states:

	AUS	B	DK	FIN	F	GER	IT	NL	UK	SW	EU-15
HUN	10.600 ¹	1.000	300 ²	500	2.900	52.000	5.000 ²	1.300	3.000 ²	2.900	71.200
CZ	11.300 ¹	800	400 ²	200 ²	2.000	27.000	4.800 ²	500	3.000 ²	1.700 ²	41.600
POL	18.300 ¹	6.000	5.500	700	46.300	283.000	31.300	5.700	21.000 ²	15.800	412.600

¹ in 1991; ² in 1993; Sources: OECD 1999; Eurostat 1997

The most important observation that can be made based on these figures is the uneven distribution of the CC3 nationals over the 15 EU member states. In the case of Hungary 87.9% of all Hungarian nationals that reside inside the EU15 legally do so in Germany (70.3%) and Austria (14.9%). For Czech citizens these numbers are even higher: Together 92.1% of the total reside in Germany (64.9%) and Austria (27.2%). While in the cases of Hungary and the Czech republic no other member state is host to a population that exceeds 5.000 persons, there are considerable numbers of Polish nationals present in a number of member states. But even in the Polish case the huge majority (73.3%) of the migrant population is concentrated in Germany (68.6%) and Austria (4.4%). While these figures can be used to explain the fact that especially the Austrian and German governments have expressed fears of mass-immigration in the context of the accession of a number of Central and Eastern European Countries it is also important to put the population of migrants from these countries into the context of all third country nationals present in the EU15 (table 4.3.3)

	Labor force	Residents
Non EU nationals	5.280.000	12.000.000

	(3.1%)	(3.2%)
Of whom: Candidate country nationals	290.000 (0.2%)	830.000 (0.2%)
Of whom: CC3 nationals	191.000* (0.1%)	547.000 (0,1%)
*Calculated figure based on the assumption of same distribution of nationalities among the labor force as among the resident population; Source: European Commission 2001		

There are, however, three main categories that are not included in these official statistics on residence, while they encompass labor-migrants that are present in the EU15: Contract-workers, seasonal-workers and undocumented labor migrants. Unfortunately there is very little data available on these categories. In the case of seasonal- and contract workers the only data available comes from Germany (table 4.3.4) However, as Germany is the single EU member state that knows sizable contract-worker and seasonal-worker arrangements these figures give a fair indication of the size of the total population:

Table 4.3.4 Number of Contract workers and seasonal workers in Germany in 1998		
	Contract-workers	Seasonal-workers
Czech Republic	1.100	1.800
Hungary	5.000	2.800
Poland	16.900	182.000
Source: OECD 2001a		

Taking into account the average periods spend in the country of destination are one year in the case of contract-workers and 2 month for seasonal workers the German figures imply that there are an additional 23.000 contact-workers and 31.000 seasonal-workers³⁴ present inside the EU15 at any given moment. The current estimates about the number (600.000 to 700.000) and average duration (2.5 to 3 month) of undocumented sojourns suggest that there are another 70.000³⁵ undocumented migrants from the CC3 countries present inside the EU at any given moment.

If these rough estimates are added to the official figures the number of CC3 nationals that are present inside the EU15 at any given moment rises to 671.000 persons (0.16% of the total population) of whom 315.000 are economically active (0.16% of all economically active persons)

³⁴ This figure assumes an even distribution of seasonal workers across the year, which is highly unrealistic given the seasonal peaks induced by the nature of agricultural and tourist related employment activities that form the majority of all seasonal work. As the figures that are presented and used in this paragraph are only intended to give a very rough indication of the migrant stock, I will ignore this bias.

³⁵ This figure is calculated on basis of the assumption that half of 600.000 East Central Europeans that are estimated to migrate undocumented come from the CC3 countries. Again this figure is intended to only give a rough indication of the size of the migrant population present.

[4.3.3] Working abroad, living ‘at home’

As a result of the differences in the characteristics of the migration flows, the migrant populations from the SECC that were present inside the EC9 prior to the Southern enlargement and those from the CC3 that are present inside the EU15 now, differ in important aspects. The first aspect is the relative size of the populations: While the SECC nationals accounted for about one third of the total EC9 population, the resident labor migrants that originate from the CC3 countries does not account for more than a fifth of the population of today’s Union. The candidate country nationals are, and were, only a small fraction of all non-EU nationals present in the Union. Their presence across the Union is, however, distributed highly unevenly. More than three quarters of all CC3 nationals present in the Union reside in Austria and Germany. From this perspective the fact that these countries pay more attention to the question of free movement of workers in the context of the upcoming enlargement appears to be justified.

The most important difference between the situation around the Southern enlargement and that around the Eastern enlargement is, however, the different character of the periods of residence of the migrants. For the majority of the SECC nationals that migrated to the Community before the Southern enlargement, migration was aimed at improving their economic and/or social situation *after* the period spent abroad. While this may be the case for parts of the CC3 nationals present in the Union today, migration fulfills a different function for a substantial group among them: What I have described as pendular migration above is primarily aimed at improving the social and/or economic situation of the migrants families *while* they are active abroad (or in many cases *in-between* periods of economic activity abroad). These pendular migrants are characterized not so much by having different places of origin and destination, but by having their places of residence in their countries of origin, and being economically active abroad inside the EU15 member states.

[4.4] Possibilities to migrate

The actual migration flows and populations cannot be analyzed independently from the legal, administrative and contexts. In this section I will look at the possibilities that exist(ed) for potential migrants from the respective candidate countries in order to take up work and/or residence in the established member states. While these possibilities are mainly shaped by legal and administrative arrangements of the destination countries and among the countries of destination and origin it is important to realize that these arrangements are the result of political decisions on how to treat/control/influence immigration.

[4.4.1] Southern enlargement

Pre-accession Period: In terms of immigration regulation concerning the access of SECC nationals to the EC9 member states, the pre-accession period was divided in two distinct periods: The first one that lasted until 1974 was marked by a intergovernmentally regulated system of labor migration from the largely rural SECC countries to the industrialized economies of the Northwestern European core countries. It would exceed the scope of this study to include the exact terms that were in force between each of SECC countries and each individual EC9 member states (migration policy was then firmly in the domain of the national governments of the EC member states) furthermore this level of detail is not necessary in order to compare the situation to today's.

In these so-called 'guestworker' systems people willing to emigrate to the North were assisted in doing so by governmental agencies in both the countries of origin and destination, which provided travel arrangements and job-placement for the migrants. The whole system was based on the assumption that the 'guestworkers' would stay in the countries of destination for a limited period of time (usually 2 to 4 years) and would then return to their countries of origin.

The 'guestworker' system addressed the needs of both the sending countries, that were faced with high unemployment and could thus export 'excess' labor to the North while receiving substantial remittances and the destination countries, and the receiving countries that in the period up to 1974 were faced with a shortage of labor that manifested itself predominately in the industrial sector.

This 'guestworker' system offered to SECC nationals the chance to migrate to the Northwestern European countries as long as they met a number of requirements: First of all, the potential migrants had to be young (in between 20 and 40 years old) and of good health (the actual migration was preceded by a medical examination). As a group, women were practically excluded³⁶ from this assisted labor migration process (cf. Fertig and Schmidt, 2000, p.13).

The second period in terms of pre-accession migration possibilities for SECC nationals extended from 1974 till the end of the transitional period that followed the accession. After the economic crisis of 1973/74 the 'guestworker' migration system was discontinued, as the Northwestern European countries, now faced with substantial unemployment, did no longer conceive the need to import labor from abroad. While these countries even tried to encourage the return of the 'guestworkers' who were still present in their countries, this did not mean that there were no more

³⁶ The factual exclusion of women from this form of migration was not based on 'direct' exclusion of women from the migration process (women were not allowed to participate in the programs) but on indirect forms of exclusion: Women did not match the profiles that qualified for entry into the countries of destination and in the countries of origin women the persisting role models of women did not include migration as socially acceptable behavior.

possibilities to migrate from the former South European sending countries to the EC9 member states. While direct labor migration was not possible anymore, family members of persons that resided legally in the EC9 member states were allowed to come to stay alongside the earlier migrants. This was usually possible for both existing family members (though confined to direct relatives: parents, children and spouses) but also for new family members (the migrant marrying a person from his or her country of origin and bringing this person over).

The present migrants were required to prove that they had sufficient resources to support the family members in question and that they could provide appropriate housing for them. In many cases these terms formed a significant barrier, as the new arriving family members were usually not admitted to take up work immediately after entering the country.

The possibilities of SECC nationals to migrate to the European Community member states were thus not equally distributed among all potential migrants: Before 1974 the possibility to migrate was primarily dependent on the fact whether or not the potential migrant matched the profile that was set by the employers of the Northwest. This meant that women were practically excluded from this form of migration. After 1974 the possibilities of migration were primarily dependent on the presence of family members in the countries of destination or the possibility of entering a familiar relationship with a person already present there.

After the end of the transitional Period workers from the three new member states enjoyed full freedom of movement and thus free and equal access to the labor markets of all other member states. While this does not imply complete freedom of movement for all citizens from these countries from this moment onwards the citizens of the new member states enjoyed the exact same rights as the citizens of the EU9 member states.

[4.4.2] Eastern enlargement

At the moment there are no EU-wide regulations that grant candidate country nationals (or other third country nationals for that matter) a general right of access to the labor market of the EU member states as employed persons.

The Europe Agreements concluded with the candidate countries do not contain provisions on the free movement of labor other than the promise that during the second stage³⁷ of the accession

³⁷ The Europe agreements typically divide the period that leads towards accession into two stages. In the case of Hungary and the Czech Republic the second stage of the agreements has formally been entered.

process the Association Council shall examine the possibility of improving the free movement of workers. At the moment no such steps have been taken.

The social position of candidate country workers and their access to the labor-markets of EU-member states is thus regulated by the individual member states. This means that workers from the candidate countries are generally subject to the same immigration regimes as all other third country nationals. The immigration regimes of the member states generally prohibit immigration for the purpose of taking up labor as an employed person³⁸. There are however some exceptions to this general rule. Apart from the above mentioned 'labor-market need' clauses one can distinguish between two sorts of exceptions.

The first type of exceptions can enable candidate country nationals to enter the labor market of EU member states if they fit specific requirements. The exceptions are usually geared towards highly qualified and/or remunerated personnel (e.g. researchers, IT-specialists and engineers) or personnel in specific sectors of the labor market where labor shortages are manifest in the member countries (e.g. health care, harvesting, the 'IT-sector'). While these exceptions offer candidate country nationals access to parts of the labor market of the current member states, these exceptions are too particular in character and too limited in scope³⁹ in order to be regarded here as contributing to free movement of workers. It is also worthwhile noting that these regulations are exclusively motivated by the current labor market needs of the EU-member states in question and are therefore likely to be changed, according to the developments of the labor market situations in the member states.

Table 4.4.1: Third country nationals' labor market access in the EU15	
	Terms of access of third country nationals to the national labor-market (numbers of permits granted, where available)
Austria	Overall national Quota for all applicants, subdivided by Bundesland. Additional quotas can be issued by the individual Bundesland with regard to seasonal employment. Employer has to apply for a work permit and 'labor market need' (no EU nationals to be found) has to exist. (126.889 in 1999)
Belgium	Employer has to apply for a work permit and 'labor market need' has to exist. Access limited to nationals from countries with which bilateral work conventions are applicable. (83.500 in 1997)
Denmark	Employer has to apply for a work permit and 'labor market need' has to exist. (73.092 in 1999)
Finland	Employer has to apply for a work permit and 'labor market need' has to exist. Privileged treatment of high-qualified workers
France	Work permit, work contract and Visa have to be obtained prior to entering the country and 'labor market need' has to exist.
Germany	Third country nationals (this includes all CC3 nationals) need a work- and a

³⁸ In most cases there are exceptions that allow a position to be filled with a third country national if the employer can prove that it cannot be filled with a national of a EU member state ('labor-market need').

³⁹ For example the high profile German 'Green Card' regulation implemented in 2000 in order to attract 'IT-specialists' is limited to 10.000 work permits. Which is the biggest such program at present among the EU15

	residence-permit in order to be legally employed in Germany. Generally work permits are only issued if a specific labor-market need does exist in Germany and when the position, the migrant is applying for, cannot be filled with a German or a EU national. Some exceptions for migrants with special skills, and for nationals of countries that have signed bilateral agreements (contract-workers, seasonal labor)
Greece	Employer has to apply for a work permit and 'labor market need' has to exist. Annually fixed quotas (depend on country of origin, profession and region of settlement)
Ireland	Employer has to apply for a work permit and 'labor market need' has to exist. (2.600 excl. citizens of Pakistan, India, Canada and the United States)
Italy	Employer has to apply for a work permit. Annually fixed maximum of work permits (28.000 in 1999). Special quota for a number of countries that have signed bilateral agreements.
Luxembourg	Employer has to apply for a work permit and has to pay a bank guarantee. Differentiation of work permits according to place of birth, type of employment and place of residence. (6.800 in 1997)
Netherlands	Employer has to apply for a work permit and 'labor market need' has to exist. (20.186 in 1999)
Portugal	Work or residence Permit needed (persons holding a residence permit have free access). Special provisions for seasonal workers exist.
Spain	Employer has to apply for a work permit. Annually fixed quota (30.000 for 1999) Work permits are only granted in sectors with labor shortage. Special arrangements with Morocco on seasonal workers.
Sweden	System of bilateral decisions on the number of work permits with sending countries in place. 'Labor market need' has to exist. (4.000 in 1997)
United Kingdom	Employer has to apply for a work permit and 'labor market need' has to exist in all cases exempt high-skill jobs. (72.599 in 1999)
Source: European Commission 2001	

Some EU member states have reacted to the increased mobility of Eastern Europeans in the 1990's by signing bilateral agreements on certain forms of immigration with Central and Eastern European countries. At present, there are three countries that have signed agreements with the candidate-countries that are subject to this study (see table 4.4.2). There are three main groups of workers that can profit from these preferential access regulations:

- *Border commuters*: Austria and Germany both have signed bilateral agreements with the candidate countries bordering their territory⁴⁰ These agreements enable candidate country nationals living close to the border (generally speaking within 30km to either side) to take up work in the bordering region of the member state in question. While these arrangements are not limited to specific sectors of the labor market, they are limited in scope through quotas⁴¹.

⁴⁰ While Slovenia is excluded from this study it must be noted that there is no such agreement between Austria and Slovenia.

⁴¹ In the case of Austria these quotas come on top of the general quotas for labor immigration of third country nationals.

- *Seasonal workers*: Some EU member countries (Germany, France Austria⁴²) have concluded bilateral seasonal worker agreements with candidate countries. These agreements are characterized by a temporal limitation of the work permits (maximum periods of employment range from 3 months per year in Germany up to 8 months per year in certain situations in France (cf. OECD 1999, p.25ff)). Seasonal workers are only admitted to certain sectors of the labor-market (agriculture, tourism, catering). Over the last years extensive use has been made of these provisions (see table 4.4.2).
- *Contract-workers*: Germany is the single EU15 country that has concluded contract-worker ('Werkvertragsarbeitnehmer' in German, in the literature migrants of this type are also referred to as 'posted workers') agreements with the candidate countries that are studied here. While it can be argued⁴³ that contract workers do not enter the labor market of the destination country this group makes up a significant share (see table 4.4.2) of all labor related border crossings that are subject of this study.

	in Austria	in France	in Germany
For Czech Republic nationals	Border commuter agreement (600 in 2001)	...	Quota based agreement on trainee workers, Agreement on contract workers (1.100 permits issued in 1998), Agreement on seasonal workers (1.800 permits issued in 1998), border commuter agreement
For Hungarian nationals	Border commuter agreement (600 in 2001)	...	Quota based agreement on trainee workers, Agreement on contract workers (5.000 permits issued in 1998), agreement on seasonal workers (2.800 permits issued in 1998).
For Polish nationals	...	Quota based seasonal worker agreement.	Quota based agreement on trainee workers, Agreement on contract workers (16.900 permits issued in 1998), Agreement on seasonal workers (182.000 permits issued in 1998), border commuter agreement

Source: European Commission 2001, Boeri and Brückner 2001, OECD 2001a

To sum up the possibilities that exist for Nationals from the candidate countries in question, it can be concluded that, in general, Polish, Hungarian and Czech workers have no access to the labor market of the EU-member states. They are treated as other third country nationals. This includes the possibilities offered by family reunion and family founding migration. While there are a number of possibilities to obtain legal employment inside the EU15 these exceptions do not offer genuine access to the labor market as they are limited in length of stay, sector and sort of employment or region of residence and employment.

⁴² In Austria there is a general seasonal worker quota for each Bundesland, seasonal workers from the candidate countries fall under this general regulation rather than a specific preferential regime.

Because of this situation most labor migration that takes place between the Candidate countries and the member states takes place undocumented. In the present situation entering the European Union poses no difficulties to the nationals of the Candidate countries, as there is no visa requirement for them and they are allowed to freely enter the Union for tourism purposes. Inside the Union the undocumented migrants can take up 'illegal' employment. (I will discuss the specifics of undocumented labor migration in more detail in the next chapter).

The Right of free establishment as a potential loophole

Under the Europe Agreements that have been concluded with all the candidate countries in question, the nationals of these countries are entitled to exercise independent (self-employed) economic activities on the territory of the EU member states. The existence of this right has interesting implications. First, it offers the possibility of performing the economic activities of tourist-traders and tourist-workers on a legal basis.

In the case of tourist workers⁴⁴ the right of free establishment potentially offers a legal basis for a number of economic activities that are performed inside the EU. If the tourist workers would organize their activities as self-employed performers of services and would apply for the required permits, they should be able to regularize their, so far irregular, activities:

For instance Polish carpenters in Sweden are a category of persons about whom little is known and whose position is irregular. If those carpenters established themselves as self-employed in Sweden, they would be entitled to the protection of the Europe Agreement's right of establishment and therefore their residence and continued economic activity would be lawful. (Garnier, 2001, p.139)

This line of argumentation should be valid for a significant share of those who have been classified as tourist-workers above. Important sections of the labor market that are served by the tourist workers (construction, cleaning, care-taking...) offer good possibilities for self employed activities.

⁴³ Compare the legal battle over the status of contract workers between France and the European Commission after the accession of Spain and Portugal (see chapter 2)

⁴⁴ Regarding tourist-traders, Morawaska (1998, p.15) notes that most of them are performing their activities by and for themselves. This could mean that the right to free establishment possibly covers their economic activities inside the European Union. It is however questionable if the destination countries would consider these activities as legit economic activities as they usually draw on the exploitation of different tariffs in the bordering regions and often involve smuggling of goods.

At this moment the freedom of establishment provisions of the Europe Agreements constitute the only generally available, legal way for Candidate Country nationals of gaining access to the labor market of the EU15. In contrast to the other possibilities of documented migration that are available to Candidate Country nationals at the moment, the freedom of establishment provisions include the possibility of bringing family members and are not limited in duration or to certain sectors of the labor market. In this way these provisions are structurally close to the freedom of movement of workers whose introduction gives raise to the fear of mass immigration and unfair competition on the labor markets.

However, only extremely limited use is made of the migration possibilities that are offered by the freedom of establishment provisions. Eurostat labor-force data show that only 20.000 Candidate country nationals (that is all 10 Eastern European candidate countries) are registered in the EU member states as legally self-employed (cf. European Commission 2001, p.30). This means that the share of self-employed persons among labor market participants is even smaller for Candidate country nationals (6.9%) than among all non-EU nationals (7%). Considering that the possibility of entering the EU as a self employed person exists for all candidate country nationals but only to a privileged minority of the other third country nationals⁴⁵, the extremely limited use that is made of these possibilities offered by the accession agreements is difficult to bring in line with high levels of emigration pressure that are supposed to be present in the EECC.

On the side of the EU-member states there are a number of factors that have the potential to make access to the labor market via this route unattractive to candidate country nationals: On one hand the administrative procedures that need to be endured in order to establish oneself might have a deterrent effect on potential migrants.⁴⁶ Another closely related possible explanation would be the lack of information on the possibilities offered by the Europe Agreements. On the other hand persons who are legally established as self-employed persons might, due to their tax and social security requirements, not be able to compete against undocumented migrants who offer the same services. This would essentially render labor migration via the self-employment provision of the Europe Agreements economically uninteresting in the most cases.

⁴⁵ Generally speaking this right is applicable only to nationals of countries that have signed association agreements with the EU (a number of Mediterranean and North European countries)

⁴⁶ This is however a questionable explanation, as there are no reports in the literature on administrative burdens used as a deterrent. Further it has been observed in the context of the larger migration movements that such burdens are navigated around by middlemen from inside the established migrant population who help newcomers to meet the administrative requirements.

On the other side, the little use that is made of the freedom of establishment provisions can also be a result of the situation in the candidate countries. While most studies conducted on this subject indicate considerable emigration pressure in these countries, the apparent non-use made of the freedom of establishment provisions could indicate that the migration pressure is overestimated by these studies and subsequently by the general public and public policy makers in the 15 EU member states.

Transitional period: As I have mentioned before, the question whether and how to implement transitional regulation concerning the fundamental right of freedom of movement of workers is the object of ongoing struggles, not only between the present member states of the Union and the candidate countries, but also among the 15 present member states. This struggle centers on the question of an eventual transitional period. The present state of the accession negotiations suggests that there will be a general transitional period similar to the one that was in force after the Southern enlargement. The individual member states would, however, be free to lift any restrictions of the freedom of movement prior to the end of such a period.

In terms of actual labor market access for workers from the new member states this would mean that during the transitional period the opportunities for legal migration are likely to be dependent on the individual countries of destination, and that they could range from a more or less complete ban on entering national labor markets of some member states to complete, ‘EU-style’, freedom of movement and establishment in other member states. (I will discuss the expected effects and the limitations of transitional regulation in more detail in chapter 5.2)

[4.4.3] From collective arrangements to individual possibilities

When comparing the development of the possibilities for potential labor migrants from the respective candidate countries it becomes obvious that the situation before the Southern enlargement and the situation in the eve of the upcoming Eastern enlargement differ in many aspects.

In the case of the Southern enlargement, there are 3 distinct periods concerning the possibilities to gain access to the EC9 labor markets. The first one that lasted until 1974 offered relatively unrestricted access for those who matched the profiles (young males) of the potential employers in the North. It was followed by a period where immigration was only possible for family members of persons already residing in the EC9 countries. Despite the accession of the SECC this period lasted until the end of the respective transitional periods. After the end of the transitional periods the nationals of the new member states enjoyed the same rights as the other EU citizens.

While the current possibilities of nationals of the CC3 countries look similar to those that existed for SECC nationals during the second period (access for family members and in certain exceptions such as seasonal work and contract-work) there is one important difference:

CC3 nationals, who want to gain access to the EU15 labor markets, can easily do so without the required permits. There are much more opportunities for undocumented employment available to today's potential tourist-workers from the candidate countries than to potential migrants from the SECC before the accession of these countries to the EC.

[4.5] From 'guestworkers' to 'pendular migrants'

Comparing the two migration systems that are subject of this study leads to the conclusion that both systems differ from each other in important aspects:

While the external situation (economic gap between the candidate and the member states, the fact that labor migration from the candidate to the member states is 'discouraged') for migration from the respective candidate countries to the respective member states show important parallels, the resources available to the potential migrants and the way migration is included in their lives are fundamentally different:

	Southern Enlargement	Eastern Enlargement
Migration Flows	The period before 1974 was characterized by substantial inflows of mainly young males that were directly recruited as 'guestworkers'. While the intention of this 'guestworker' migration regime was that the migrants stayed temporarily, substantial number stayed for longer periods or even for good. The period after 1974 is characterized by migration of family members that were left behind in the initial phases of migration.	There are substantial migration flows from the Candidate countries to the EU member states. Migration is flexibly organized along a number of different possibilities to enter the EU, both documented and undocumented. Because of this it is difficult to give precise figures of the size of the flows. Generally these migration movements are characterized by their short duration and often repetitive character (pendular migration).
Migrant Stocks	Substantial numbers of migrants from the Candidate countries were present in the EC member states at the point of accession. However, as a percentage of the total EC population the migrants from the SECC constituted only a small group (0.33%). Generally the SECC migrants were both working and residing in the member states, this means that the migrant populations included economically non-active persons as well.	The number of CC3 migrants that are resident in the member states is relatively small (0.16% of the population). Most of these migrants are Polish nationals and more than 75% reside in Austria and Germany. The majority of those persons that are labeled as migrants in this study continue to have their primary place of residence in their countries of origin while they pursue economic activities in the EU member states.
Possibilities	At the time of accession, documented labor-migration to the EC member states was not possible. The only way to gain access to the labor markets of the member states was family-related immigration. There are no accounts available of large-scale undocumented immigration of SECC	There are very few possibilities of legal labor-migration to the EU15 for CC3 nationals. There are, however, a number of exceptions that are regulated by quotas and there is extensive undocumented labor-migration taking place. The existing possibilities, both documented and

	nationals before the accession	undocumented do however offer good possibilities to be economically active inside the EU to CC3-nationals.
Economic Situation	Prior to the accession, unemployment rates in the candidate countries exceeded those in the EC9 member states. The GDP per capita levels of the SEC countries reached 50-70% of the EC9 average.	Unemployment rates in the CC3 exceed those in the EU15 member states. While the GDP per Capita levels of the Czech republic and Hungary are within the range of the levels of the SECC countries at the time of accession, Poland only reaches 40% of the EU15 average.

The migration patterns observed in the two cases differ significantly in two important aspects: The first one is the way migration is included in the lives of the migrants, while the second one concerns the way the migrants make use of the possibilities for migration that are available to them.

Prior to the Southern enlargement, to migrate meant a (temporary) change of the place of work *and* residence. The migrants, usually young males, migrated to the Northwest European countries in order to accumulate resources that would enable them to improve their social and economic conditions of living once they returned to their countries of origin. In many cases (when this goal turned out to be too difficult, or would take too long to achieve) this intention was given up and one would try to establish oneself for a longer period in the countries of destination. Migration in this period can best be described as a *strategy of temporary accumulation* that was aimed at improving the situation after the actual migration period.

Today the role of migration has shifted. While there is still migration taking place that fits into the more 'traditional' description of migration outlined above, the bulk of the movements that are taking place today are motivated by a different strategy. The migrants from the Eastern European candidate countries cross the borders for relatively short periods of economic activity in the EU member states. The focus of these migration flows is on the labor aspect of the process, and the migrants generally do not establish themselves in the countries of destination to an extent that exceeds the necessary measures in order to be able to work. This form of migration serves the function of improving the social and economic position (of the family) in the countries of origin *during* and *in-between* the periods of activity abroad. In this form, migration can best be described as a *strategy of additional accumulation*.

The second main shift has occurred in the way the migrants make use of the possibilities for migration that are available to them. Before the Southern enlargement migration occurred along predetermined lines that were shaped by the legal possibilities that enabled migration movements: before 1974 the migrants from the SECCs came as 'guestworkers' in the context of the labor

migration recruitment schemes and after 1974 migration from these countries was partially continued along the lines of family-reunification or -forming migration. While I do not intend to say that this were the exclusive forms of migration they were definitely the dominant ones. In the current situation there is no form of migration that clearly dominates the other ones. Migration from the candidate countries to the member states happens along many different lines: There are a number of possibilities (tourist-worker style undocumented migration, use of seasonal or contract worker programs, use of German nationality) that are used in order to enable *additional accumulation* inside the European Union member states. This appears to happen regardless of the official function of these programs and the legal status that comes associated with them.

This flexibility in the handling of migration regulation, the division between places of work and residence and the pendular nature of contemporary East to West migration system are likely to require different approaches for dealing with its effects. Also this fundamentally changed nature of the form of migration makes it difficult to base predictions about the size of future East-West migration movements on past experiences. I will address both issues in the next section.

[5] Expectations and strategies

Based on the results of the comparison three main sets of questions concerning the upcoming Eastern enlargement can be identified:

The first set of questions centers on the issue of the size of labor migration of candidate country nationals after the upcoming accession. I will discuss a number of recent studies that have come up with estimations concerning the size of these movements. I will pay particular attention to the methodology used and the question whether in a situation that is characterized by significant amounts of undocumented migration these estimations have sufficient explanatory potential in order to be used as foundations for policies concerning the regulation of such migration movements.

The second set of questions centers on the efficacy, legality and proportionality of possible transitional regulation. I will take a closer look at the considerations on which such measures are based and I will try to assess if transitional suspension or limitation of the free movement of workers is an appropriate answer to migration related questions posed by the accession of economically less-powerful countries to the European Union.

Finally the third set of questions focuses on the instruments that are available as parts of policies that intend to regulate these migration movements. I will have a look at the different forms of transitional regulation that can be used within the legal framework of the European Union.

[5.1] Current ‘predictions’ of the size of East-West migration

As I have explained in the introduction of this thesis, it is not my intention to present a precise quantitative assessment of the migration potential from the Eastern European candidate countries based on my own research and or calculations. Rather, my analysis of the migration potential from the candidate countries to the established EU member states is based on a number of studies that have been conducted on this issue in the past years. These studies must be seen as both scientific comments on the developments in this particular field of policy-making and, at the same time, important elements of the policy making process as such:

When in the early 1990s the intention of the EU member states to enlarge the Union towards the East and the efforts of Eastern European countries to join the EU became public, the scientific community was relatively quick⁴⁷ to respond to this development with increased attention paid to

⁴⁷ The first studies on the issue of free movement of workers in the context of an eventual eastern enlargement of the EU appeared as early as 1995

the issue of free movement of persons inside the EU in the context of such an enlargement: Numerous studies have been undertaken in order to obtain some sort of ‘prediction’ of the migration movements that would occur under the conditions of an enlarged European Union. Most of these studies have come to the conclusion, that there is considerable potential for migration towards the EU15 member states in the candidate countries.

The results of these studies have in turn been used by public policy makers demanding regulation targeted to stop the ‘predicted’ migration movements.

As the public discussion in the member states that share borders with the candidate countries is characterized by fears of mass immigration from the candidate countries and subsequent unfair labor market competition from these migrants, it is extremely important to put the figures that have emerged from the various studies into perspective. This becomes even more important when one takes a look at the ‘predictability’ of the development of migratory movements between the new and the established member states in the past: To my knowledge there are no studies that actually predicted a decline in South to North intra-EC migration after the accession of Portugal, Spain and Greece⁴⁸. This again illustrates, that extreme caution should be used when basing policy decisions on scientific ‘predictions’ about future migration movements.

Table 5.1.1 shows the predictions made in five of the most recent and comprehensive studies concerning the number of migrants to enter the EU15 countries per year and the estimated number of candidate country nationals to be present in the EU after 15 years of membership:

Table 5.1.1: Estimates of the post accession migration potential from the candidate countries to the EU15 (under condition of free movement)		
	Flow per year over the first 10 years	Candidate country nationals in the EU15
Brückner and Boeri (DIW), 2000 (Cz, Hun, Pol, Slk, Slo, Est, Lat, Lit)	200.000 declining to 85.000	2.225.000 after 15 years
Sinn et al. (IFO), 2001 (Cz, Hun, Pol, Slk, Bul)	240.000 declining to 125.000	2.700.000 after 15 years
Bauer and Zimmerman (IZA), 1999 (Cz, Hun, Pol, Slo, Bul)¹	200.000	2.500.000 after 15 years
Fassmann and Hintermann (1997) (Cz, Hun, Pol, Slo)²	...	720.000 potential 'long term migrants'
Hille and Straubhaar (2000) (Cz, Hun, Pol, Slk, Slo, Est, Lat, Lit, Rom, Bul)	270.000 to 790.000	...

¹ In order to make the figures comparable they have been extrapolated to the EU15 from research results for Germany, under the assumption that the present distribution of candidate country nationals in the EU15 stays unchanged.

² According to Fassmann and Hintermann 'long term migrants' are persons that can be expected to spend long periods

⁴⁸ This impression is also expressed in numerous other publications. (Compare for example: Kraus und Schwager (2000), Straubhaar (2001) or European Commission (2001a)

The studies presented in table 5.1.1 can be grouped in two different categories. These categories are defined by the methods that were used in order to obtain the predictions. The first and more widely used approach makes use of economical calculations based on differences in various macro economical indicators in order to determine the migration potential while the second approach is based on interviews conducted among representative samples of the population in the potential countries of origin.

Gravity equations

The biggest group of the studies presented in table 5.1.1 (Brückner and Boeri (2000), Hille and Straubhaar (2000), Sinn et al. (2001)) consists of studies that are based on so-called ‘gravity equations’ (cf. Alecke et al., 2001, p.66). Based on a neo-classical economic model of migration these gravity equations focus on GDP per capita differences as the motivation behind the East-West labor migration they intend to predict. While it cannot be argued that income differences between regions are indeed a main migration-inducing factor, these predictions based on the neo-classical model rest on relatively restrictive assumptions. The models used in the abovementioned studies generally do not account for the factors that I have identified in chapter 3.2 as being responsible for the fact that people stay in their countries of origin while basic economic differences would suggest that they leave.

The non-inclusion of these factors in the gravity equations used to predict the size of future East-West migration can be attributed to the fact that their inclusion would make the application of these models much more complex and thus difficult to operationalize. While modern migration theory has identified these ‘additional’ factors as relevant elements in the genesis of migration decisions, the relative influence of the individual factors on migration decisions has remained unclear. Including the ‘additional’ factors into the models used in the studies above would require a complex process of identifying the relative weight of these factors before they could be used.⁴⁹

As the studies presented in table 5.1.1, are based on models that do not include these important factors, it seems very likely that they systematically overestimate the numbers of potential migrants. While it is not possible to see if this assumption turns out to be true prior to the actual events that these studies try to predict, there are some indications them:

⁴⁹ For a more detailed discussion of the feasibility of the inclusion of additional factors see: Alecke et al., p.70f.

In their study of the reliability of predictions about East-West migration carried out based on the assumptions of neo-classical migration theory, Alecke et al. (2001) have shown that the above mentioned studies are indeed prone to systematic overestimation of the migration potential. Alecke et al. have applied ‘simplified’ neo-classical gravity equations to historical situations, where migration has taken place under the conditions of free movement of workers. Their findings show that both in the case of intra-German migration (from the former East-Germany to the western part of the country in the period from 1991-97) and intra-EU migration (exemplified as migration from Spain to Germany in the period from 1991-97) gravity equations based on GDP per Capita differences would have significantly overestimated the actual migration levels (Alecke et al. 2001, p 69f). They conclude that:

...this underscores the relevance of our hypothesis that the large number of unobserved determinants of migration (such as demographic characteristics, network effects, etc.) would cause forecasts of East-West migration to be biased upward. Whereas the *dynamics* of migration can well be explained, the *level* cannot be forecasted. (idem, p.70)

The figures resulting from the studies based on gravity equations rely heavily on GDP per capita differences to explain labor migration should thus be treated with care, as there are both theoretical and empirical indications that suggest that these studies systematically overestimate the migration potentials.

Interview based studies

The second type of studies presented in table 5.1.1, are studies that base their predictions on interviews conducted in the candidate countries: Fassmann and Hintermann (1997) and Bauer and Zimmermann (1999)⁵⁰. Of these two, the results from Fassmann and Hintermann stand out: While they seemingly predict the smallest number of migrants (700.000, or about a fourth of the numbers predicted by the other studies) they at the same time give the most specific indication of the kind of migrants to expect (the figure refers to ‘long term migrants’). This result highlights two important points:

First the studies based on gravity equations do not indicate what kind of migrants to expect and, they just predict a number of migrants. Seen in the light of the diversity of migration strategies that

⁵⁰ While Fassmann and Hintermann base their findings on interviews conducted among representative samples of the population in the potential emigrant countries, Bauer and Zimmermann only interviewed ‘experts’ (i.e. 446 academics and administrative employees from the supposed sending countries dealing with migration issues).

characterize current migratory movements between the candidate countries and Western Europe, the undifferentiated nature of the results of the present studies does not contribute to a clear conception of what forms of migration to expect. This inability to differentiate between different types of migrants is, however, especially problematic as one cannot equate the numbers of predicted migrants with the number of persons coming to the EU in order to permanently establish themselves there. The structure of current migration movements rather suggests that big portions of the predicted migrants will engage in some sort of pendular migration movements.

Secondly the fact that Fassmann and Hintermann come up with figures for one category of migrants only, illustrates the fact that surveys on migratory intentions are extremely difficult to conduct due to a number of conceptual difficulties. The most important difficulty lies in the fact that those, who are interviewed are asked about *possible* decisions to be made in the future:

...second there is a problem of validity. Plans of migration are mostly directed to the future and the interviewed often find it hard to distinguish between concrete plans and vague wishes.

(Alecke, et. al. 2001, p.71)

Fassmann and Hintermann have tackled this problem by differentiating between a *general* migration potential (people considering to migrate), a *likely* migration potential (people who have collected information on possible destination countries) and finally the *real* migration potential (people who have taken first steps) They have found the *general* migration potential in the studied sending countries to be 20% of the population above 14 years, while the likely potential is 8% and the real migration is 1% or 700.000 persons (Fassmann and Hintermann, 1997 p. 7f).

Another conceptual difficulty lies in inclusion of different categories of migration. While query-based studies do offer the possibility to enquire about different forms of potential behavior, to my knowledge there are no comprehensive studies that try to categorize expected future migration movements according to the different forms of East-West migration that are currently observed.

As long as such studies do not exist one should use the results of other studies with caution in order to not contributing to the impression that the predicted numbers refer exclusively to persons who are planning to give up their existence in the sending countries and to establish themselves in the EU15 countries for prolonged periods of time. Rather, the character of the present migration flows from the candidate countries to the EU15 member states suggest that only a small part of the overall migration volume will fall in this category.

All studies presented in table 5.1.1 have, however, one main systematic weakness in common: The size of the potential migrant-flows is calculated primarily on the basis of push factors. The situation in the countries of destination and the (perceived or real) differences in economic development and wages are used as indicators of the migration potential. The extent towards which this potential is able to transform itself into real-life migration flows is, however, not only determined by the socio-economic developments in the countries of origin. The labor market situation in the destination countries (possibilities to find employment, the height of wages paid to migrants) are important factors that can limit the size of migration flows by offering economically attractive conditions only to a limited amount of labor migrants (cf. Demel and Profazi, 1998, p.7).

This consideration is especially important in the case of an enlargement of the European Union, as the freedom of movement of workers does not only entail the right of free movement but also mandates non-discrimination in terms of social protection and remuneration. Therefore labor migrants that make use of the free movement of workers are subject to the same standards in social protection and remuneration as the local labor force while are potentially missing certain location specific qualifications (language, knowledge of local customs and procedures, etc). Based on these considerations it is likely that labor migrants from the new member states, once they enter the labor markets documented, will lose their attractiveness to employers: Compared to undocumented labor migrants they might become too expensive, while compared to the local labor force in the countries of destination they are likely to fall short concerning location specific qualifications.

On the other hand, there are also segments of the labor markets in the EU15 states that face acceptance problems among the local population (seasonal work in agriculture, health care and care for the elderly, etc.) and that are therefore likely to benefit from the availability of migrant labor from the candidate countries. Demand for migrant labor from these sectors of the labor market can be expected to stimulate labor migration from the candidate countries.

[5.1.2] What do these numbers mean in perspective?

The figures presented in Table 5.1.1⁵¹ do, however, show a certain level of consistency even across the different methods used: If the study by Fassmann and Hintermann is not taken into account, because it focuses on a subgroup of those who are considered to be migrants by the other studies, all studies predict annual immigration levels from the candidate countries in the range of around 200.000 persons. The study by Hille and Straubhaar predicts levels that are significantly higher, but this can (at least partially) be attributed to the fact that it is the only study that takes in account

⁵¹ For more presentations of the results of other comparable studies see European Commission (2001, p 38).

immigration from Bulgaria and Romania. The stock of Candidate Country nationals to be present in the EU15 member states after 15 years is projected by all studies to amount 2.225.000 to 2.700.000 persons.⁵²

While I have argued above that, because of the methodological problems attributed to the methods used in order to obtain them, these ‘predictions’ need to be use with great care, one cannot simply ignore these figures: Regarded from an isolated perspective the results of these studies do indeed justify warnings that depict ‘millions’ of immigrants waiting in candidate countries for the borders to open up even if this makes reference to 2.5 million persons that are likely to enter a European Union of 376 million inhabitants over the next 15 years.

If compared to the size of the combined population of the EU15 member states, the projected figures are indeed rather small: Table 5.1.2 shows that a predicted number of 2.5 million migrants from the Candidate countries would amount to only 0.66% of the population of today’s Union. When on takes into account experiences concerning the rate of return- and onwards migration made in the context of earlier migration movements to the Northwestern European countries, one can expect the net migration figure (the number of migrants who actually stay in the countries of destination) to be even lower (cf. Straubhaar 2001, p.168). Net immigration would amount to about 1.25 million persons or 0.33% of the EU15 population. Given the predominantly pendular nature of the current migration movements, even lower net-migration rates seem plausible in the case post accession East-West migration. Even if one would assume that the migrants would exclusively settle in Germany and Austria the resulting figures do not justify fears of uncontrolled mass immigration by nationals of the new member states.

Table 5.1.2 relative size of projected candidate country immigration to the EU15		
	Gross migration (2.500.000)	Net migration (1.250.000)
% of EU15 population (376.000.000)	0,66%	0,33%
% of combined Austrian and German pop. (91.000.000)	2,75%	1,37%
% of CEEC-8 population (74.000.000)	3,38%	1,69%
Source: Own calculations based on the figures presented in table 5.1.1		

Compared to the percentages of nationals from the Southern EU member states that are living in other EU member states (about 2%) the expected net levels of migrants to be present in the EU15 member states after 15 years (1.69%) do not justify the impression that the EU15 member states

⁵² See also Straubhaar (2001, p.168) who reaches similar results after comparing a slightly different group of studies.

will be faced with extraordinary levels of Eastern European migrants after the upcoming enlargement (cf. Straubhaar 2001, p. 168).

When comparing the situation after the accession of the SECC to the Union to the projected situation 15 years after the accession of the Eastern European candidate countries, the main difference would not be the *levels* of migrants present in the established member states, but the *dynamics* that lead towards these levels: while in the case of the Southern enlargement the migrant stock is the result of a steady net inflow of labor migrants that primarily took place *before* the accession, the available projections suggest that in the case of the Eastern Enlargement similar levels will be reached in shorter period that will occur *after* the implementation of freedom of movement of workers.

This leads to the question whether the numbers of potential migrants predicted in these studies come *on top* of those persons who are already engaging in migration or if these figures *include* today's migrants. While this question is not addressed in the majority of the studies, there are some theoretical arguments, which suggest that parts of the today's migrants are included in the numbers predicted:

The persons that are currently engaging in undocumented migration from the candidate countries to the EU15 do not appear as migrants in the official statistics. Therefore one can argue that they are assumed to be present in their countries of origin, even if this is not case. These persons are thus counted as inhabitants of the assumed sending countries and would therefore belong to the overall migration potential of these countries. As these individuals have already made the decision to migrate one can safely assume that they are included in the share of the population, which, according to the gravity equations, would eventually migrate to the West.

The fact that the majority of the predictions are based on the assumption that potential migrants will wait until migration becomes a *legal* option makes the potentially blind to migration already happening. It is therefore important to know in how far today's migratory movements are overlapping with the predicted figures.

Some clues come from one of the query based studies that have been undertaken in order to forecast migration: Fassmann and Hintermann (1997, p. 48) have pointed to the fact that 40% of the persons they identified as being '*real*' potential migrants do already have documented or undocumented employment in one of the destination countries.

When combining these findings with the above theoretical considerations it seems safe to argue that at least some of the migration predicted to occur *after* the extension of the freedom of movement for workers to new member states is *already* taking place.

While, due to the methodological problems associated with them, the results of the available studies are to be consumed with great care, the figures presented justify the general conclusion that, there is no threat of uncontrolled ‘mass immigration’ from the new member states to the established ones after the introduction of freedom of movement. The figures predicted’ are quite moderate, overall comparable to the shares of migration from existing poorer member states to richer ones during past accession rounds, and there are indications that the implementation of free movement of workers in the new member states will not lead to a sudden influx of labor migrants as these movements are already taking place, albeit through different, mainly undocumented, channels.

[5.2] Available policy options to prevent East-West migration

As I have noted above, the various studies that have come up with these predictions, have been used as a empirical basis and justification in the development of policies aimed at dealing with the perceived ‘immigration problem’. The main actors in this process have been the European Commission, the current member states and the aspiring member states. The ongoing process of accession negotiations between the Union and the candidate countries has focused on an eventual restriction of the free movement of workers during a possible transitional period.

[5.2.1] How to implement the free movement of workers

It is important to realize that any restrictions of the right of free movement for workers accompanying the accession of new members will be *exceptions* from the regular situation concerning the free movement of workers an enlarged EU. Being exceptions, they have to be specified in detail in the accession treaties in order to become effective. (cf. Becker, 2000, p.58). As these exceptions would potentially limit one of the basic liberties of the common market they can only be justified, and thus be in accordance with the treaties that form the basis of the Union, when there are specific reasons that require them to be implemented (idem, p.76). Such reasons can be formed by the potential collision of interests, principles or mechanisms protected by European Union law. In the case of the freedom of movement such a collision could for example occur with the protection of fair labor market competition and regional stability.

While both the assessments of the migration potential in the studies discussed above and the Commission's assessment of the current situation⁵³ clearly show that the upcoming Eastern enlargement will not lead towards irresolvable conflicts between the right to free movement and the stability of labor markets in the European Union, this does not mean that the Commission does not anticipate problems in the realm of the freedom of movement once the accession becomes reality:

Although the overall impact of enlargement on the EU15 labour market should be limited, recent research suggests that in some member states or regions there will be sizeable increases in migration. Surveys bear out a marked preference for temporary stays abroad rather than for permanent migration. Some member states are likely to be more affected than others, mostly on account of geographical proximity to candidate countries. (European Commission, 2001a, p.17)

Among the national governments that are involved in the accession negotiations, it is currently possible to differentiate three 3 general positions regarding a possible transitional period: The position of the candidate countries, that fundamentally opposes transitional regulation in this area, the position taken by Austria and Germany, that makes the accession of the CC3 countries conditional on the presence of some form of transitional regulation and finally the position of most other member states that are opposing transitional regulation for practical reasons:

- The opposition of the candidate countries towards a temporal suspension of the freedom of movement of workers of their citizens is based has two main reasons: The hope that labor migration towards the established member states of the EU can lift pressure of the domestic labor markets and stimulate the economies of the candidate countries via remittances and qualifications obtained abroad. While it is questionable in how far this is a realistic conception of the possibilities this argumentation certainly nourishes the fears of mass migration and 'unfair' labor market competition in the bordering EU member states.

The second reason therefore constitutes a much stronger argument in the negotiations: The limitation of free movement is, in the light of the post WWII history of the candidate countries a very sensible issue. The limitation of any form of free movement is therefore conceived as a very serious intrusion in the rights of the citizens, and the possibility of such transitional regulation in

⁵³ Which in turn is based on the very same studies (cf. European Commission 2001a, p.12f.)

this area adds to the fear of becoming second-class EU citizens that are present among the population in the candidate countries.⁵⁴

- The EU member states that share borders with the major candidate countries, Austria and Germany, are the main proponents of transitional regulation in this area. Their insistence on a temporal suspension of the freedom of movement of candidate country workers after the accession is based on the fear that otherwise mass immigration from these countries would take place. Both the Austrian and German governments argue that this could lead to serious labor market instabilities and even social unrest in the areas affected by immigration.
- The rest of the EU15 member states have less clear positions on the necessity of transitional regulation. Generally transitional regulation is not regarded as necessary. Some member states, most notably Spain, Portugal and France have opposed transitional regulation in the negotiations so far, but they seem to do this primarily in order to improve their bargaining position in the negotiations on enlargement and internal restructuring of the EU. Their opposition to the German and Austrian position seems in fact to be intended to be ‘traded in’ against specific national interests (mainly in the area of distribution of structural funds money and the future of agriculture subsidies) during the upcoming rounds of negotiations.

On the other hand there are member states⁵⁵ who, given the experiences made with the freedom of movement in the context of the earlier enlargements, do not see the necessity of a transitional period or who are convinced such regulation, should it be enacted, as limiting them in gaining access to the labor supply from the new member states.

Five options

The Commission's (2001a) information note ‘The Free movement of Workers in the Context of Enlargement’ discusses the possible approaches concerning the expansion of the right to free movement of workers to nationals of new member states on a more abstract level: According to the

⁵⁴ Although transitional regulation concerning the right of free movement of workers does not mean the limitation of freedoms already enjoyed by CC nationals the immigration related requirements the EU imposes on the Candidate countries will interfere with existing migration systems in the Candidate countries: In order to be admitted to the European Union the candidate countries are required to ‘upgrade’ their eastern (the new exterior borders of the enlarged Union) to the standards of the existing exterior borders of the Union. These ‘upgrades’ that are already taking place are directly financed by the European Union (cf. Progress reports on Hungary, Poland and the Czech Republic, European Commission 2001bcd) They do not only consist of increased fortification of these borders but also mean that citizens from the neighboring states will be required to obtain visa before entering the territory of the Union. In the eastern border regions of the candidate countries, that are characterized by substantial small-scale, cross-border economic activities (Compare Okólski, 2000, p.63ff), such measures can be expected to severely limit the possibilities of local economic actors (cross border petty trading).

Commission there are five different options: The full and immediate application of the *acquis*; the introduction of safeguard clauses; the creation of a flexible system of transitional arrangements; establishing a fixed quota system; and finally, the general non-application of the *acquis* for a limited period of time (cf. European Commission 2001a, p.18).

The information note discusses these options in terms of expected effects and their feasibility. The prime concern of the Commission seems to be the anticipated effect of the discussed measures on the public support of the enlargement in the existing member states:

... it needs to be borne in mind that in parts of the EU15 there is considerably more anxiety regarding the above possible negative effects on labour markets and employment conditions, which may well affect overall public support for enlargement (idem, p.17)

Popular acceptance in the candidate countries and considerations of a more ‘constitutional’ (in how far is it acceptable to curtail basic freedoms) nature are discussed only on a marginal level. In the following I will briefly describe the five options identified by the Commission:

- *Option 1: ‘full and immediate implementation of the *acquis*’* - This option is the only one of the five suggested ones that would not include a transitional period. In line with the general principle guiding the accession negotiations that the whole *acquis* needs to be implemented by the date of accession the unconditional introduction of the freedom of movement would ensure the geographic unity of the single market.

While the Commission doesn’t regard this option as a realistic one, as is “does not provide any kind of guarantee against possible disruptions of labour markets due to increased inflows of migrant workers.” and because of the fact that it “ignores the sensitivity of public opinion” (idem, p.19) the information note at the same time states that it would be the most effective option in order to combat undocumented labor.

This option represents the approach that was chosen during those accession rounds, where labor migration did not appear to be threatening, as in the case of the accession of Austria, Finland and Sweden.

- *Option 2: ‘safeguard clauses’* - This option combines the immediate and full implementation of freedom of movement with a safeguard clause that would act as an insurance against unwanted

⁵⁵ For example The Netherlands and Sweden have already announced that they will allow CC nationals full access to their labor markets immediately after the accession of these countries (cf. de Volkskrant, 14.6.2001 *doorbraak EU en Hongarije over migratie*)

effects. Such a safeguard clause could either be formulated in general terms requiring ‘serious and persistent disruptions of the labor market’ in order to trigger the suspension of free movement. Alternatively the safeguard clause could be defined as a threshold (in terms of the presence of workers from the new member states in the labor markets of the established member states) above which the free movement of workers could be suspended. The relative height of such a threshold would define the character of this approach: where a high threshold would imply an insurance character, a low threshold could give this option a restrictive character.

Such a threshold could be defined per region, member state or sector and would therefore be suitable to address specific regional, national or sectoral concerns. Extensive differentiation would however, increase the complexity of such an arrangement and change its character from being a general ‘insurance policy’ against labor market disturbances to that of a steering instrument seeking to guide immigration into channels, predefined by the established member states.

In the eyes of the Commission, this option is problematic for two reasons: It requires extensive monitoring of migration flows and safeguard clauses and “may be less reassuring for the public in the EU.” (idem, p.20)

- *Option 3: ‘flexible system of transitional arrangements’* – This approach combines a number of different elements in a way that according to the Commission assures “...gradual implementation of free movement of workers within a limited period of time while at the same time providing sufficient guarantees for member states” (idem, p.21). Central to this option is the fact that all member states retain the right of general non-application of the *aquis* on their territory for a period of time that is defined in the accession treaties. This mechanism is combined with the possibility for all member states to loosen immigration restriction to their own territory according to their own (political) choices or (economic) needs, and a review procedure that takes place after a pre-defined period, or at the request of a (new) member state. While this review procedure can lead to a shortening of the transitional period, individual member states cannot be forced to give up their right to stick by the transitional period initially agreed on.

While the Commission assumes that this option would provide ‘sufficient’ reassurances for the public in the member states, the information note also remarks that there might be little incentive for member states to loosen their immigration restrictions. This might be especially relevant in the cases of the countries that have insisted on transitional regulation. Given the possibility to keep their borders closed and not forced to change this situation until the very end of the transitional regulation, chances are, that these countries will maintain their ‘defensive’ positions, as the assumed ‘threats’ will continue to be perceived.

There is, however, a chance that the non-occurrence of ‘mass immigration’ to member states that do loosen their restrictions will trigger a change of attitude in the more skeptical ones, and that the member states will commonly shorten the transitional period after review, as it was the case after the accession of Spain and Portugal.

- *Option 4: establishment of a fixed quota system* – This option in many aspects resembles option 2. Where in the case of safeguard clauses, free movement is generally implemented and can only be suspended in case of irregularities, this option does not implement free movement in general, but creates limited exceptions in a regime of restricted immigration. While the commission points out the fact that quotas can be differentiated for different sectors or regions, such a system would still mean that national or regional governments could effectively abolish free movement of workers into their territory. Arrangements where certain minimum quotas would be mandatory would be extremely complex to negotiate and to implement especially if the quotas would be differentiated according to different regions and/or sectors as the Commission suggests. Therefore a quota-based system would essentially prolong the status quo without any concrete steps towards the implementation of freedom of movement. Not surprisingly it is, according to the Commission, “the principal advantage of quotas and restrictions is that they give a sense of security to the population and create predictability on both side of the border.” (European Commission 2001a, p.23)

While it would be possible to include a mandatory annual increase of the quotas leading towards full freedom of movement in the accession treaties such an arrangement poses important conceptual questions: Quotas imply that there are levels above which immigration becomes problematic. It is difficult to argue why in the context of accession such levels should increase over time. Implementing a quota based transitional system, would therefore implies that freedom of movement of workers as such is a problematic system and only exists by the gratitude of the limited use made of it.

- *Option 5: ‘general non-application of the aquis for a limited period of time’* – According to the information note this option is only listed “for the sake of completeness” (idem, p.24). It would simply postpone the implementation of freedom of movement for a period that would be specified in the accession treaties. This option resembles the transitional arrangements that were in place during the accession of Greece, Portugal and Spain, where it was combined with a mandatory review of the measure. While this option can be expected reassure the population in the existing member states, it is regarded by the Commission to be harmful to the required economic adjustment of the new member states and to “be extremely difficult to negotiate with the candidate countries” (European Commission 2001a, p.24).

In April 2001 the European Commission has proposed transitional arrangements “to phase in full rights of free movement of workers for new member states” (European Commission Press Release, Brussels 11.04.2001). This proposal, which is based on 'Option 3', must be seen as an attempt to reconcile the three different negotiation positions outlined above. Hungary and the Czech Republic have meanwhile accepted this option⁵⁶, while Poland has publicly stated its rejection of any regulation that includes extensive periods, during which transitional suspension of the right of free movement is possible⁵⁷.

It is, at the moment of writing, not possible to predict, how the introduction of the freedom of movement will be implemented in the case of Poland, but the fact that Hungary and the Czech Republic have already agreed on the arrangements brought forward by the Commission makes it likely that Poland will eventually agree on the similar terms.

The Commission's proposal consists of four measures that in their totality form a transitional arrangement that will block the free movement of workers for a minimum period of 2 years up to a maximum period of seven years. The general transition period is set to 5 years:

The transitional measures would operate as follows:

- 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. This means they can apply their own restrictions, or decide to go further than others in opening their labour markets, according to local needs and circumstances.
- 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. On the basis of a Commission proposal, the Council, acting by unanimity, and following consultation with the Parliament, decides whether to shorten or lift the transition period. This could lead to the full application of the *acquis communautaire*, perhaps combined with safeguards for exceptional circumstances. 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 (current or new) with a view to further relaxation of controls. The same decision mechanism as above would apply.

⁵⁶ Both governments have however publicly states that they expect the EU15 states not to make use of the full length of the transitional period that has been agreed on (Compare for Hungary: Compare: *de Volkskrant*, 14.6.2001 *doorbraak EU en Hongarije over migratie*; for the Czech Republic: European Commission DG Enlargement: Weekly newsletter 5.November.2001.)

⁵⁷ See: 'Polen willen geen tweederangs-burgers zijn' - Secretaris voor Europese Zaken Danuta Hübner bepleit snelle aansluiting bij EU en flexibele houding van lidstaten, in: *de Volkskrant* 4 December 2001

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. (idem.)

This proposal addresses both the positions of the bordering member states, as it allows them to enact transitional regulation for a maximum of 7 years, as well as the positions of the present member states opposed to transitional regulation as it gives them the freedom to open their labor markets according to their own interests.

On the other hand the proposal does not address the concerns of the new member states. While it offers the possibility of a relatively short transitional period of 2 years, it still discriminates against the citizens of the new member states. More importantly it does not offer any guarantee of a shortening of the transitional period even if it will prove unnecessary or ineffective, as each of the present member states would be able to veto such a step.

While the Commission has undergone great efforts in order to present its approach as a ‘flexible system of transitional arrangements’ this cannot hide that the core element of this approach remains the suspension of the right of free movement of workers for the nationals of the new member states.

[5.2.2] The transitional suspension of the right of free movement

The idea, that a transitional suspension of the right of free movement for the nationals of new member states can prevent unwanted mass immigration from these countries into the established member states is based on a number of assumptions. They can be divided in assumptions about the motivations for labor migration and assumptions about the economic development in an enlarged Union.

The central assumption in the above-mentioned studies is, that the differences in economic development and the resulting differences in income between the candidate countries and the established member states will lead to increased migration, once the legal possibilities for such movements are created by the extension of the free movement of workers to the citizens of the new member states.

In the light of this assumption on the development of migration, the suspension of the right of free movement for a transitional period is seen, by it advocates, as a measure that is capable of preventing these unwanted migration flows. It is important to notice that such a measure *does not have any direct effect* on the assumed causes of migration: The suspension of the right of free movement for a limited period of time does not directly influence the economic difference between the countries of origin and destination: The fact that the free movement of workers is suspended

does not lead to an increase in the economic strength of the new member states⁵⁸ nor does it reduce the economic advantage of the established member states.

In order for the suspension of free movement to be effective, another – implicit - assumption must be realized: During the transitional period the economic differences between the new and the established member states must be significantly reduced.

A temporary suspension of the right to free movement of workers will thus only be able to produce the desired effects, when the economic development during the transitional period differs between the new and the established member states: Only when the new member states realize growth rates that are higher than those of the established ones, will the economic difference, that is held responsible for the projected migration flows, decline. Both the experiences made after earlier enlargements of the Union (cf. Chapter 4.1.1) and the current predictions concerning the economic development of the involved countries seem to justify this expectation (cf. Straubhaar, 2001, p.168, Boeri and Brückner, 2000, p.172ff). This poses the question, to what extent this difference can be reduced during a transitional period. Only when there is a substantial reduction of the economic difference between the countries of origin and destination the temporal suspension of the right of free movement can be expected to lead to a significant reduction of migration instead of simply delaying the unwanted migration flows.

[5.2.3] Suspension of free movement put into economic perspective

In the following section I will test how far this expectation is realistic in the case of the three countries that are included in this study. In order to do so I will use projections⁵⁹ of the economic development of both the candidate countries and the present member states from now until the end of a possible transitional period.

As I have argued in Chapter 3 migration decisions are based on a number of economic and non-economic considerations. The most important factor is how the economic position of the potential migrants compares to the position they can expect to realize after migrating to another place. As it is difficult and would probably extend the scope of this study to operationalize this process of

⁵⁸ It can however be argued that the suspension of the free movement of workers has a negative effect on the economies of the countries of origin as this reduces the possibility of remittance generating labor migration that could benefit the economies of these countries.

⁵⁹ As I have argued in Chapter 3, the causes of labor related migration cannot be reduced to economic factors. As modern migration theory does not offer an encompassing framework that can be used to predict migration, the following projections of the development of the economic differences between the current member states and the candidate countries are used in order to demonstrate the limited efficiency of the temporary suspension of the freedom

reasoning, it needs to be replaced by an economic indicator that both describes the economic situation of the individual potential labor migrants and that is easily comparable across different national economies. Therefore the following two projections of the economic development of the national economies in an enlarged European Union use the Gross Domestic Product (GDP) per Capita as a proxy for the economic development. The figures are made comparable by basing the GDP of the individual countries on the current (1999) Purchasing Power Parities⁶⁰ (PPPs). This step is especially useful in this case, as the use of purchasing power parities ensures that the different price levels in the different countries are accounted for.⁶¹

Based on the assumption that the actual enlargement will take place in 2004 and taking into account that the maximum length of transitional regulation that is currently proposed is 7 years, the period that needs to be studied extends until the year 2011. I have also included the figures for the years 2006 and 2009 in my projections, as, according to the current negotiation position of the Commission, the transitional regulation can be shortened to a period of 2 or 5 years respectively.

The projections⁶² have been calculated for two different scenarios. In the first scenario (table 5.2.1: 'realistic growth projection') it is assumed that after the accession to the EU the new member states will show economic growth that is twice as high as the growth in the present member states (4% p.a. and 2% p.a. respectively). Both the experiences made after earlier enlargements of the Union and the current projections concerning the economic development of the countries in question, suggest that this scenario is a realistic one (cf. Boeri and Brückner, 2000, p.164f).

Table 5.2.1: GDP per capita at 1999 prices based on 1999 Purchasing Power Parities (realistic growth projection)

	2001	2004	2006	2009	2011
Czech Republic	14.278	16.061	17.371	19.540	21.135
in % of Austrian GDP	54,7	57,9	60,2	63,8	66,4

of movement *as a measure to reduce migration*. Therefore they must not be interpreted as projections of migration pressure or of the size of future migration flows.

⁶⁰ Purchasing Power Parities (PPPs) are the rates of currency conversion that eliminate the differences in price levels between countries. Per Capita volumes indices based on PPP converted data reflect only differences in the volume of goods and services produced. (OECD 2001b p.268).

⁶¹ A comparison on the basis of exchange-rate converted national GDPs per capita would result in much higher economic differences between the candidate countries and the EU15 member states. This is however not an adequate representation of the situation faced by potential migrants. While the quantitative results of a projection based on exchange rate converted GDPs per Capita, would underline my argumentation more clearly, it would overall reduce the validity of my argumentation.

⁶² I have pointed out above that the fear of mass labor immigration from the new member states is mainly present in Germany and Austria. Therefore special attention has been paid to the position of these two countries: The projected economic development of the three candidate countries is compared against the projected economic development of Austria, Germany and the average of all 15 current member states respectively.

in % of German GDP	57,3	60,7	63,1	66,9	69,6
in % of EU15 GDP (average)	60,0	63,6	66,1	70,0	72,8
Hungary	12.335	13.875	15.007	16.881	18.259
in % of Austrian GDP	47,2	50,1	52,0	55,2	57,3
in % of German GDP	49,5	52,5	54,5	57,8	60,1
in % of EU15 GDP (average)	51,8	54,9	57,1	60,5	62,9
Poland	9.356	10.524	11.383	12.804	13.849
in % of Austrian GDP	35,8	38,0	39,5	41,8	43,5
in % of German GDP	37,5	39,8	41,4	43,8	45,6
in % of EU15 GDP (average)	39,3	41,6	43,3	45,9	47,7
Austria	26.123	27.722	28.842	30.607	31.844
Germany	24.926	26.452	27.520	29.205	30.385
EU15 (average)	23.811	25.268	26.289	27.898	29.025

Source: GDP per Capita in US Dollars at purchasing power parities from the OECD national accounts data base; Growth rates 1999-2001 from European Commission Progress reports 2001

The second scenario (Table 5.2.2 'optimistic growth projection') assumes that after the accession to the EU the economies of the new member states will grow three times as fast as those of the present member states (6% p.a. and 2% p.a. respectively). This scenario, which according to present expectations seems rather unlikely to become reality, is included here primarily in order to show that my argumentation is also valid in case of a stronger than predicted economic development of the new member states.

Table 5.2.2: GDP per capita at 1999 prices based on 1999 Purchasing Power Parities (optimistic growth projection)

	2001	2004	2006	2009	2011
Czech Republic	14.278	17.005	19.107	22.757	25.570
in % of Austrian GDP	54,7	61,3	66,2	74,4	80,3
in % of German GDP	57,3	64,3	69,4	77,9	84,2
in % of EU15 GDP (average)	60,0	67,3	72,7	81,6	88,1
Hungary	12.335	14.691	16.507	19.660	22.090
in % of Austrian GDP	47,2	53,0	57,2	64,2	69,4
in % of German GDP	49,5	55,5	60,0	67,3	72,7
in % of EU15 GDP (average)	51,8	58,1	62,8	70,5	76,1
Poland	9.356	11.143	12.520	14.912	16.755
in % of Austrian GDP	35,8	40,2	43,4	48,7	52,6
in % of German GDP	37,5	42,1	45,5	51,1	55,1
in % of EU15 GDP (average)	39,3	44,1	47,6	53,5	57,7
Austria	26.123	27.722	28.842	30.607	31.844

Germany	24.926	26.452	27.520	29.205	30.385
EU15 (average)	23.811	25.268	26.289	27.898	29.025
Source: GDP per Capita in US Dollars at purchasing power parities from the OECD national accounts data base; Growth rates 1999-2001 from European Commission Progress reports 2001					

The projections show that the above question concerning the reasonability of the expectation that temporary suspension will reduce labor migration to the EU15 countries cannot be answered for all three countries in the same way. While the Czech Republic and Hungary show some signs that imply that this is indeed the case, this expectation is clearly unrealistic in the case of Poland:

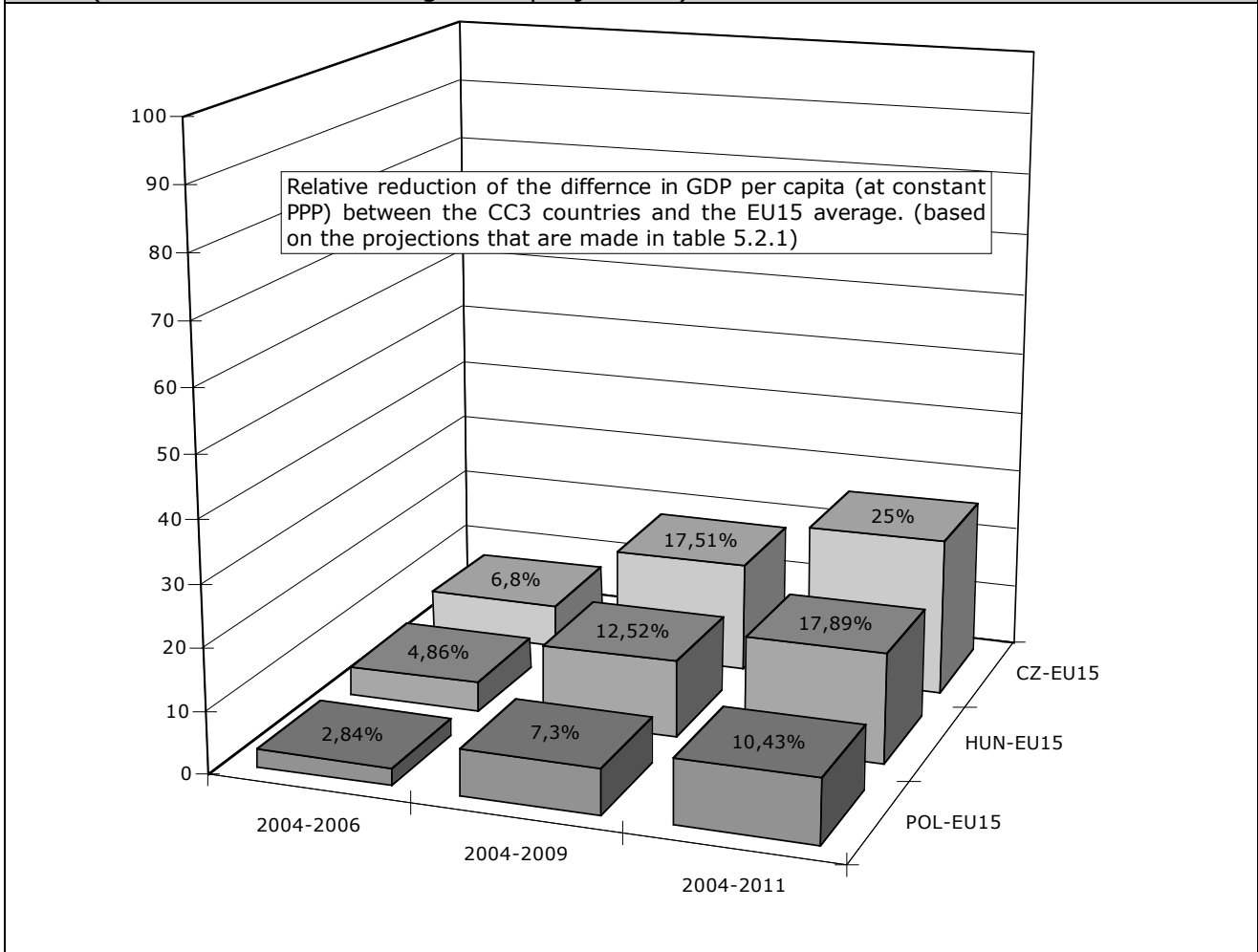
The Polish economy is considerably weaker than the economies of the two other candidate countries. According to the 'realistic' scenario (Table 5.2.1) the Polish GDP per capita level will stay below 50% of the EU15 average until after the end of a potential seven-year transitional period (47,8% in 2011) while the optimistic scenario would bring it to only 57,8% of the EU15 average. This means, that according to scenarios the Polish economy will not even reach the current (2001) level of the Czech economy within a period of seven years.

Both the Czech Republic and Hungary start from a higher level (63,2% and 55,1% of the EU15 average in 2004 respectively) than Poland (41,7%) and can thus be expected to catch up with the rest of the EU much quicker. Both countries are expected to realize GDPs per capita that account for roughly two thirds of the EU15s average after seven-years of membership.

As I have pointed out in Chapter 4, Poland, both because of the size of its population and because of its recent history in the field of migration must be seen as the most important country of origin for potential post-accession East-West labor migration. Within the proposed transitional period of seven years, the Polish economy cannot be expected to reach relative (to the EU15 average) levels that exceed the levels that the other two assumed countries of origin are expected to achieve by the date of accession.

When it is argued, that the difference between the economic strength of potential countries of origin and destination is responsible for the labor migration between these two groups of countries, the relative *development* (in this case the reduction) of this difference during the transitional period can be interpreted as an indicator for the effectiveness of such a measure. Figure 5.2.1 shows the relative reduction of the difference in GDP per capita of the three candidate Countries compared to the EU15 average for a the three possible time spans of transitional regulation. Based on the projected differences in the assumed year of accession (2004) the difference after seven years will be reduced by 25% in the case of Czech Republic, 17.9% in the case of Hungary and 10.4% in the case of Poland.

Figure 5.2.3: relative development of the difference in GDP per capita 2004-2011 (based on the 'realistic growth projection')



Source: own calculations based on the data obtained from the projection made in table 5.2.1

This means that even after the longest proposed period of suspension of the right of free movement for the citizens of the new member states the assumed economic causes for migration to the EU15 countries can only be expected to be reduced by 10.4% in the case of the most important country of origin (Poland) and a maximum of 25% in the case of the Czech Republic. In other words, delaying the implementation of the right of free movement for the nationals of the new member states by seven years creates a situation where, depending on the country, between 75% and 89% of the assumed economic causes for labor migration are still present when the right of free movement for workers is finally implemented.

As I have indicated above it is of course not possible to equate the reduction of the economic difference with a reduction of the overall motivation for migration. Looking at the current approaches of migration theory, it is furthermore important to notice that economic difference

between the countries of origin and destination does not automatically lead towards migration from the one to the other. Economic differences are discounted against a number of non-material and other costs that make giving up one's place of residence unattractive for potential migrants even when there is a possible country of destination with a stronger economy. The introduction of complete freedom of movement in an enlarged Union will not, however, mean the abolition of most of the non-material costs of labor migration, such as the loss of one's social contacts, and the problems associated with having to acquire a new language.

While it is not possible to specify the precise level of economic difference above which migration becomes an economically viable strategy, one can put the above projections in the context of the argumentation that supports the implementation of a transitional suspension of the free movement of workers in order to assess their potential effects:

Based on both the 'realistic' and the 'optimistic' growth projections it appears that a delay of the introduction of free movement can produce the desired results in the cases of the Czech Republic and Hungary. Both countries will see significant reductions of their economic difference with the EU15 member states within the proposed transitional periods and in both cases the projected economic development will lead towards a level of economic strength that, when compared to the EU average, does give little reason to expect massive labor migration towards the established member states. This expectation is based on the fact that the relative (compared to the EU15 average) economic levels of the percentage projected for Hungary and the Czech Republic have existed in the EU before without leading to mass movements of labor from the poorer to the richer member states (cf. Chapter 4.5, Straubhaar, 2001, p.169).

The situation is different in the case of Poland: The 'realistic' growth projection gives little reason to expect that the assumed economic rationales for labor migration from Poland to other EU member states will be reduced significantly after the end of a possible transitional period. The fact that a seven-year suspension of the free movement of workers is projected to lead to a situation where (seven years later!) almost 90% of the economic difference, are still present, rather gives reason to expect that such a measure cannot be effective in this case. The expectation that a temporary suspension of the right of free movement will lead to a reduction must thus be considered unrealistic. Rather, it is likely that the suspension of the right of free movement will only have the effect, that accession related migration dynamics will be *delayed* for the duration of the transitional period.

There is, however, one effect of a transitional suspension of the right of free movement for the nationals of the new member states that can be expected to 'smoothen' the accession process: By *delaying* the candidate countries' nationals access to the labor markets of the EU15 member states this controversial issue, will be disconnected from the actual accession:

Labor migration of poorer East European citizens of the European Union towards the Western European member states, is likely to become an issue that will not be associated with the actual accession date, and thus the accession preparations by the general public. Implementing regulations that lead towards a seven-year long delay of the access to the EU15 labor markets must, in the light of the above projections, be seen as an attempt to keep this sensible issue out of the public discourse on the terms of accession. By the established member states this is expected to increase public support for enlargement process (cf. European Commission, 2001a, p.18ff).

While this may certainly have the expected effect prior to the actual accession one must keep in mind that such regulation, should it contain a fixed-length or maximum-length for the transitional regulation does not offer any openings for a public discussion after the ratification of the accession treaties and thereby threatens to undermine any meaningful public discourse on this issue at all.

In the light of the above considerations, the approach towards implementation of the freedom of movement of workers of the new member states that is currently advocated and pushed forward in the accession negotiations by the Commission raises a lot of questions.

The Commission claims to introduce a 'flexible system of transitional regulation' that ensures public support for the enlargement process, security for vulnerable sectors and regions, and flexibility for the member states to fulfill their immigration needs (idem, p.21f). In fact this 'flexible' system comes down to an arrangement, where every member state is entitled to impose a complete ban on labor related immigration from the new member states⁶³ for a period of seven years. The individual member states can choose not to make use of this regulation and implement freedom of movement style arrangements for immigration to their territories, but freedom of

⁶³ It is interesting to notice that both the Czech Republic and Hungary have, after agreeing on the Commissions proposal, stated that they would also implement immigration restriction for workers from the EU15 member states. For example, Czech negotiators have demanded that: "...if the EU insists on banning Czech workers, then there must be safeguards built in: not only could the Czech Republic ban EU workers, but it also wants the power to keep out workers from other new member states as long as the EU ban lasts. So if Germany imposes limits on workers from Poland, the Czech Republic can also do so, to avoid seeing its own job market flooded by Polish workers disappointed that they cannot get into Germany." (*Czech hopes for agreement on free movement of labour*, in: *Enlargement Weekly*, 12.10.2001 issue) This shows that the idea of freedom of movement is still not understood as a fundamental right of the citizens of the Union's member states but a privilege issued to them by their national governments.

movement *as a right* for all citizens that extends over the entire territory of the Union will only be realized after the last member state agrees to end the transitional period.

This is especially problematic as the measures taken are inconsistent with the problems diagnosed: The fact that there are considerable differences in income and economic power between the candidate countries and the EU15 member states, is interpreted as a indication of potential migration movements that threaten to undermine the labor market stability in certain regions of the Union. The instrument chosen, the transitional suspension of the free movement of labor, cannot – by itself - change the factors that are seen as reasons for the anticipated migration movements. I have shown that the transitional suspension, while it can hold back documented migration from Hungary and the Czech Republic until these countries have archived a relative level of economic prosperity that is comparable to that of the SECCs at the point of their accession to the EC, will not be able to realize such results in the case of Poland. A suspension of the right of free movement for seven years will enable free documented migration from Poland roughly at a point where the countries economic position vis-à-vis the EU15 member states can be expected to be comparable with the position that is projected for Hungary and the Czech republic for the date of accession. This means that either the implementation of a transitional period in the cases of the Czech Republic and Hungary is unnecessary or, that this instrument must be considered to be ineffective in the case of Poland⁶⁴.

[5.3] Other considerations

There are a number of aspects of the implementation of free movement of workers in the new member states that have received little attention in the abovementioned studies and in the discussion of the different implementation approaches. This does, however, not mean that these aspects are less important or that they can be ignored, when trying to obtain an encompassing picture of the situation and to evaluate the expected migration movements and possible strategies dealing with them. In this section I will focus on two important aspects, which in my eyes have not received adequate attention so far. The aspects in question are the existence of a system of undocumented labor migration between the candidate countries and the EU 15 member states and the way freedom of movement is perceived in the candidate countries.

⁶⁴ One could of course argue that this means that the duration of the suspension of the right of free movement is to short in the case of Poland. It is however highly questionable if a longer transitional period would be possible and legitimate (see: Becker, 2000, p.93f)

[5.3.1] Transitional regulation in the context of undocumented immigration

As I have shown in Chapter 4, a large portion of the current East-West labor migration movements into the EU member states takes place in the form of undocumented migration that has a pendular character. As undocumented migration, by definition, does not happen along the paths that are drawn by the immigration legislation of the countries of destination, this portion of the migration flows will not be directly affected by any form of transitional regulation that focuses on the right of free movement of workers.

Contemporary undocumented labor migration can be conceptualized as a two-step process. The first step consists of the actual entering of the country of destination. It is relatively easy for nationals of the countries of origin discussed here, to cross the border, as they do not require visa or need to follow special procedures in order to gain access to the territories of the EU15 member states. This access to the territories is, however, both subject to temporal limitations (generally a maximum stay of 3 months) and made conditional on certain forms of behavior (most importantly in this case: that the admitted person does not engage in any form of economic activity, other than consuming).

The second step of undocumented labor migration consists of not abiding by these conditions that are attached to ones admittance to the country of destination: Once inside the country of destination the undocumented migrants take up work (either pre-arranged or newly found). It is at this moment⁶⁵ that their stay becomes undocumented (they do not possess the required documentation for in order to be allowed to work) or 'illegal' (their economic activities are regarded as unlawful by the societies of destination). The undocumented status of the migrants makes it impossible for them to enter into regular employment relationships. The fact that they are active only in undocumented employment relationships must be regarded as a consequence of the fact that their immigration titles (usually labeling them as tourists) do not allow them to take up work.

An eventual transitional suspension of the right of freedom of movement of workers for the nationals of new member states cannot be expected to change this situation. Neither does such a step implement new hurdles for those persons from the new member states that are willing to engage in undocumented labor migration to the established member states, nor can it be expected to reduce the incentives. To the contrary, it can be expected that in the process of accession to the

⁶⁵ Actually the immigration legislations of some EU member states contain legal constructs that make entering the territory of the country under a title that does not cover the intended nature of the stay in the county unlawful. These constructs have the intention of moving the place where the 'illegality' of undocumented labor migration starts to the borders of the national territories, where, as it is argued, control can be more effective. (Compare for example: Huber

Union the controls on the then intra-Union borders will be reduced to a level that is currently practiced along the current intra EU borders. Such a development will render efforts to control undocumented labor migration even more difficult.

Regarded from the perspective of a potential labor migrant who is willing to engage in undocumented labor inside the EU the delayed implementation of the right of free movement will not change the available possibilities, effectively channeling the existing potential of persons that are willing to be economically active in the EU15 member states into undocumented employment situations.

While a temporary suspension of the right of free movement will not change the possibilities of potential labor migrants in the new member states, the full and immediate implementation of the acquis, eventually secured by safeguard clauses, or to a lesser extent a quota based system of admittance to the EU15 labor markets would open up important new possibilities for *all* potential migrants in the new member states. Such a step would offer them the possibility of taking up work legally in the other member states. This possibility will, however, not mean that all potential migrants will be able to realize their migratory intentions. If potential labor migrants can indeed take up legal employment in one of the other member states, is primarily dependent on the question whether they can find employment opportunities that fit their economic (the financial gain justifies the migration decision), geographic (in the case of pendular migration, does the distance allow this form of migration) and other (personal preferences etc.) requirements.

If such possibilities exist and when their anticipated economical returns compare favorably to existing strategies of undocumented labor migration, then the implementation of the freedom of movement can actually lead to a reduction of undocumented labor migration from the new member states to the established ones.

Delaying the implementation of the freedom of movement thus means giving up one of the sparse possibilities of influencing the undocumented labor migration between the new member states and the EU15. It is therefore interesting to see that the Commission and the individual member states have not paid more attention to this aspect of the issue of free movement. While the Commission has at least realized this potential benefit of an early implementation and noted that “bringing existing illegal workers into legality would reduce unfair competition in the labour markets” (European Commission, 2001a, p.20), such considerations have not gotten the deserved attention in the process of formulating transitional policies.

(1992), Asyl und Ausländerrecht in der Europäischen Gemeinschaft, in: *Neue Zeitschrift für Verwaltungsrecht*, 1992, p.618ff)

There are, however, important questions concerning the possibility of ‘bringing existing illegal workers into legality’: Such an ‘upgrading’ of the employment relationships will only work if the resulting employment relationships remain economically attractive for both employers and the labor migrants. This, however, is highly questionable as the attractiveness of undocumented employment for employers is, for a large part, based on their relative inexpensiveness. If on the other hand the former undocumented migrants take up documented work in different sectors than those they were working in before new questions arise: On the one side the danger exists that the migrants compete against the local population in specific sectors of the labor market, and if they do so successfully undermine the economic position of the local population. On the other side the question arises, who would ‘fill up’ the now vacant positions in the informal labor market.

While it is not possible to give answers or predictions here, these processes, should they occur, could probably give interesting insights in the relationship between undocumented migrant labor and the way it is perceived by the migrants in comparison to documented labor relationships abroad. Therefore these issues should be closely monitored (from an academic perspective) when they become detectable in reality.

[5.3.2] The status of the freedom of movement provisions

During the accession negotiations two basic considerations have received remarkably little attention: The attitude of both the general public and the political elites of the candidate countries towards the freedom of movement of workers and the status of this freedom as a fundamental liberty of the single European market.

The right of free movement of workers is one of the four fundamental freedoms that are established by the Treaty of the European Union. The treaty, through its articles 39 and 40 (plus various instances of ECJ case law) refers this right directly to the EU citizens (cf Becker, 2000, p.7ff). Among the four fundamental rights it is the one that is most directly directed towards the individual citizens of the Union. As such it is one of the rare occasions where the fact that one is a citizen of a EU member state enables one to perform a specific activity (in this case to take up work in another member country). While the other fundamental freedoms refer rights primarily to economic actors other than individual workers⁶⁶ the freedom of movement directly empowers individuals.

The fundamental character of the freedom of movement is, however, less visible when this right is perceived to threaten other legal goods valued by the Union and its member states: In spite of its ‘fundamental’ nature, the freedom of movement has been limited in the case of the Southern

⁶⁶ The freedom of services has a comparable effect, when exercised by individuals.

enlargement, because the Northern member states feared mass immigration from the new member states and, as I have argued above, the same pattern is likely to repeat itself in the case of the upcoming eastern enlargement.

While in almost all other areas the full and immediate implementation of the *acquis communautaire* has absolute priority, in the field of the freedom of movement both the commission and important member states fail to acknowledge the fundamental character of the provisions and to act accordingly. The following passage from the Commissions information note clearly shows that the Commission honors the individual principal freedoms of the single market quite differently:

Although in theory restrictions in this area [cross border provision of services] follow the same logic as those concerning workers, their implementation *would [...] indeed represent a major disruption of the principle of free provision of services* and possibly the right of establishment. It should be noted that such restrictions have never been used in the past. (European Commission, 2001a, p.19)

As long as the commission does not defend the freedom of movement against public opinion in the same way, as it seems to be willing to defend the free provision of services, the principle of free movement is deprived of the status as a fundamental freedom. It appears that especially the fact that the freedom of movement has been subject to restrictions during the Southern enlargement has created a precedent that continues to justify the temporary suspension of this fundamental part of the Single European Market, while the non-restriction of other freedoms in the past protects them against future weakening. It appears that in the field of freedom of movement the both the Commission and a number of member states, distrust the same market forces that they are advocating in nearly every other field where policies have been formulated on a European level although historical experience cannot support such an position:

On the *macroeconomic* level international labour migration has proved to be mainly *demand-determined*: it usually depends to a major extent on the needs and employment opportunities in the *immigration* countries. In the EU, trade has reacted much faster and more elastically to economic integration than labour. The removal of formal and informal protectionist impediments led to a strong increase in intra-community trade. [...] To an important degree, *trade has replaced the economic demand for migration* in the EU. In brief: having the option to migrate within a common labour market has turned out to be the most effective antimigration policy! (Straubhaar, 2001: 170)

This disregard for the status of the freedom of movement becomes even more important when one places the freedom of movement in the context of the expectations that are present among the population in the candidate countries. While specific studies focusing on the expectations of the candidate country citizens are not available, there are a number of indications that suggest that the freedom of movement is perceived as an important benefit of an eventual EU membership. In the abovementioned information note, on the freedom of movement the Commission states that:

Due accounts needs to be taken of the expectations of people in the candidate countries that they would be allowed to benefit from the right of freedom of movement, which for them represents one of the important benefits of enlargement. (European Commission, 2001a, p. 17)

Polish negotiators have repeatedly stated that they do not want to be treated as second class Europeans after an eventual accession to the Union and that their perception, that this will be the case results from the fact that, polish citizens will not be immediately be granted freedom of movement⁶⁷.

These indications should also be seen in the context of the recent historical developments in the candidate countries: Until the changes of 1989 the situation of the general population was marked by the fact of limited (international) mobility. This was especially obvious when compared to the situation in Western Europe. A temporary suspension of the right of free movement of workers, would at least symbolically reestablish a situation where the population in Western Europe would enjoy more freedom of movement related privileges that the population in the new member states. Furthermore the accession to the EU has direct consequences for the freedom of movement in the new member states: They are required by the European Union to impose much stricter controls on their Eastern borders, that will limit much of the regional migration patterns that are currently existing in those regions (cf. Okólski, 2000, 63ff).

[5.4] Alternative possibilities

The current negotiating position of the EU15 is thus based on a number of questionable factors. It is based on research results that, due to a methodologically induced 'blindness' towards a number of factors that modern migration theory holds responsible for a reduced migration propensity among potential migrants, are likely to overestimate the real migration potential. Additionally the fact that there are considerable undocumented migration movements, that are unaccounted for in these

studies, further suggests that the predicted figures are too high as that parts of the predicted migration movements do already take place in the form out of the view of the official statistics.

Although the migration levels projected by these studies do not exceed what can be considered 'normal' intra-EU labor migration rates, these studies have given rise to a public discourse on 'unwanted mass-immigration' from the candidate countries.

In this situation the current member states are advocating a regime of transitional suspension of free movement that can be extended up to duration of up to seven years. As I have shown above, such a temporal suspension of the right of free movement can, however, not be expected to deliver the desired results. While these measures can be expected to be capable of *delaying* some of the anticipated accession related migration dynamics, and to reduce the popular opposition to the enlargement, these measures also produce effects running contrary to the initial motivations for implementing them: For the duration of the suspension of right of free movement, the possibility of legal access to the labor markets of the EU15 is withheld from the nationals of the new member states while the already existing possibilities for undocumented migration will remain available. Any policy targeted at the reduction of unfair labor market competition would need to address undocumented immigration as well, but the current negotiation position of the European Commission simply ignores such considerations.

Taking into account the status of the freedom of movement of workers as a fundamental right and the fact that it is one of the main advantages of enlargement that would be directly applicable to the citizens of the new member states, the development outlined above must be considered to be the wrong answer to the perceived problem. This is especially important, as there are both indications, that the feared mass migration movements will not materialize and implementation scenarios, which do not automatically curtail the rights of parts of the population of an enlarged Union:

Especially the second option presented by the Commission in its information note should be considered seriously. In a situation where the threat of 'mass-immigration' is primarily a hypothetical one and cannot justify much more than 'insurance' type precautionary measures, the immediate and full implementation of the free movement of workers combined with a safeguard clause in the form of a maximum level of labor migrants from the new member states to be active in the established ones, is a suitable compromise between respecting the rights of the new members and protecting the interests of the established members. Such a maximum level can also be implemented on a regional

⁶⁷ See for example: 'Polen willen geen tweederangs-burgers zijn' *Secretaris voor Europese Zaken Danuta Hübner bepleit snelle aansluiting bij EU en flexibele houding van lidstaten*, in: de Volkskrant 4.12.2001.

or per-nation basis in order to respond to the increased exposure to East West migration dynamics of individual member states⁶⁸. Alecke et al., after reviewing the available studies on the impact of the accession on East West migration come to a similar conclusion:

... our results imply that all estimates of migration potentials are highly unreliable and that uncertainty concerning the expected flow of migration remains. This clearly induces an element of risk into the accession process which maybe undesirable for both accession countries and incumbents. This risk could clearly be limited by restricting the maximum migration possible for a number of years. If migration is smaller than expected such a ceiling would not constrain migration. In consequence it would act only as an insurance policy against the unlikely event that migration is larger than the critical level. (Alecke et al., 2001, p.72)

[5.4.1] Changing the perception of labor migration

The existence of an area of freedom of movement does not automatically lead to migration movements that confirm to the theoretical or 'common sense' expectations about such a situation. There have been situations in recent European history, where the implementation of free movement, (a move that according to the current theoretical conception of labor migration would reduce the costs of migration and thus promote migration flows from poorer to richer regions) for certain groups of migrants has actually lead to a reduction of migrant stocks in the assumed countries of destination:

... in the last decades important re-migrations to the Mediterranean countries have occurred, from France and Germany to Spain, Italy, Portugal and Greece as well as Florida-type migrations of richer and older people from the north to the south. These developments have been in stark contrast to those of non-EU groups like Turks in Germany, Maghrebians in France and Moroccans in the Netherlands, who do not possess the right to free movement and are bound to loose the option of living in a rich country if they return to the country of origin. Interestingly enough, the figures for Italians in Switzerland, which is not a member of the EU and does not offer EU style freedom of settlement, demonstrate the same tendency. [...] It does not make sense for a poor Portuguese worker or peasant to go to Milan or Hamburg if he has not got employment. On the other hand, an employer in these cities will not be inclined to hire somebody from the south if he can get an indigenous woman or man of equal abilities and

⁶⁸ The maximum levels should however be the same in all member states and regions, as they are not intended to specify a 'absorption-capacity' of a region or nation.

motivation, irrespective of the nationality. Only if immigrant workers are cheaper, as are Portuguese saisonniers in Switzerland, undocumented Poles in Norway, or British construction workers in Germany, does hiring make sense from the employer's point of view. And it is no accident that the numbers of the Portuguese in Switzerland have been rising at a time when they declined in Germany and France." (Thränhardt, 1996, p.234)

Examples like this one indicate that the contemporary theoretical conceptions of migration dynamics are far from capable to be used as instruments for the prediction of such dynamics. As long as this remains to be the case it is important to try to gain more insights into migration dynamics by studying them as they unfold. The upcoming Eastern enlargement of the EU can offer interesting perspectives in this area: Choosing for the immediate and full implementation of the free movement of workers (combined with a safeguard clause) would create a situation where immigration flows between regions with considerable economic differences could be studied under the condition of full freedom of movement. This would not only offer the possibility to acquire new insights into the dynamics of migrations but also offer the possibility of 'de-demonizing' migration movements from the (semi-) periphery to the core:

If the argumentation I have unfolded in this chapter stands the test of reality, the migratory movements that will be observed after an eventual accession under the condition of free movement will not be remarkably higher than those that are already taking place. Such a situation would have the potential of dismantling the implicit assumption, dominating the various discourses on migration control, that any reduction of immigration barriers automatically leads to more (or even uncontrollable) immigration. Therefore such a measure could be the first step of the dismantling of the current worldwide system of excessive control of the movement of persons that sharply contrasts with the increasingly free movement of goods and services around the world.

[6] Conclusions

In the introduction of this paper I have identified two central sets of questions that I would try to answer in this paper. The most important aim of this paper was ‘to give a theoretically funded assessment of the possible impacts of a change in political structure on migration from the Eastern European Candidate Countries (EECC) to the European Union of 15 (EU15)’ resulting from the upcoming eastern Enlargement of the EU. Based on this assessment I was going to ‘discuss the different policies aimed at regulating the expected migration movements that are currently discussed and to put them in the context of my assessment of the developments.’

In the preceding chapters I have presented what my research brought up concerning these two sets of questions and I will now sum up my main conclusions. Most of what will be discussed in this chapter has already been presented in the conclusions of the individual chapters of this study.

While my research has been focused on the enlargements impact on migration, it is important to realize that the freedom of movement in the context of enlargement is perceived differently in the Eastern European Candidate Countries and in the current EU member states. In the EECC it is seen as one of the most tangible advantages of the aspired EU membership, while in (some of) the EU15 member states the idea of an extension of the freedom of movement to the citizens of the EECC gives rise to fears about mass immigration from these very countries.

While these fears are very real and have considerable influence on the perception of the issue and the way the freedom of movement is likely to be extended to the citizens of the EECC, it is important to realize that the freedom of movement of workers, as it is defined by EU legislation, is clearly limited in scope: It enables *employed* persons and their family members to take up employment anywhere in the European Union and to establish their residence in the country where they are employed. While this right also includes the right to go to other member states in order to find employment, the right of freedom of movement *does not include* the possibility of moving to another member state in order to collect social security transfers. The use of the freedom of movement clauses is thus dependent on ones ability to obtain employment in the designated country of destination. The labor market possibilities, however, are not only dependent on the individual migrant’s skills and abilities, but also on the overall (economic) situation in both the countries of origin and destination.

When starting my research I was departing from the assumption that the socio economic situations that shaped the migration patterns prior to the Southern enlargement and in the wake of the upcoming Eastern enlargement would share important structural elements. After a more thorough analysis this impression turns out to be only partially in line with empirical observations: While both situations (the constellation between the assumed countries of origin and destination) look similar from the outside (economic difference between the countries of origin and destination, the fact that there has been considerable migration from the former to the latter), there are important differences within the respective migration systems:

Two observations are especially important when trying to conceptualize the current (pre Eastern enlargement) situation: Most importantly, when compared to the situation in the 1960s and 70s, labor migration plays a different role in the lives of the today's labor migrants: Prior to the Southern enlargement, migration to the Northwestern European core countries served as a *strategy of temporary accumulation* that was aimed at improving the situation of the migrants *after* their sojourns that usually lasted for two to four years. Today's East to West migration flows mainly serve as a *strategy of additional accumulation* that has the function of improving the social and economic positions of the migrants (and their families) in the countries of origin *during* and *in-between* the periods of economic activity abroad. This means that the EU member states that are afraid of mass *immigration* expect something that is not very likely to happen. The current patterns suggest, that there will be no one-directional *immigration* flows to the West. It can rather be expected that the majority of the EECC citizens who want to become economically active in the EU15 member states will incorporate their economic activities in pendular migration patterns. This means that it is very unlikely that East to West migration flows will result in the formation of sizable colonies of migrants in the cities of the West as it was the case as a result of the 'guestworker' migration flows in the 1960s and 70s.

Secondly, the means of migration have changed: While the bulk of the pre Southern accession South to North migration happened along official pre-determined routes (first the recruitment of workers and later family-related follow-up migration) important parts of today's East to West migration flows take place undocumented. Because there are almost no legal possibilities of entering the EU15 labor markets the most common manner of labor migration to the EU15 consist of entering the Union as tourists in order to take up work inside the Union.

This results in the fact that today's migration flows from the East to the West are much more difficult to regulate by the means of traditional migration control (prohibiting labor related immigration and (trying) to enforce such a ban).

These changes of the *quality* of the labor migration directed from the candidate countries to the EU do not directly affect the size of the expected migration flows. This latter aspect has been addressed by a number of recent studies that have come up with *quantitative* assessments of the migration potential in the Eastern European Candidate Countries. While being substantial in absolute numbers (2.25 to 2.7 million persons over the first 15 years after accession), the migration potential that is identified in these studies, is small when compared with the population of the EU15: it only amounts to 0.33% of the total population. According to these studies the most important difference between today's situation and the situation in the 1980s is not the *size* of the migration flows but rather their *dynamics*: While in the case of the Southern enlargement the migrant stock was the result of a steady net-inflow of labor migrants that primarily took place *before* the accession, it is prognosed that in the case of the Eastern enlargement comparable levels of migration will be reached in a shorter period immediately *after* the implementation of freedom of movement.

The predictions of these studies are problematic for two reasons: Due to methodologically induced insensitivities for a number of factors that are considered to have a negative impact on individual migration decisions, the quantitative assessments are very likely to overestimate the number of potential migrants. The fact that these studies fail to take undocumented migration movements into account is even more important: This means that significant shares of the persons that are expected to start migrating after the extension of the right of free movement are in fact already doing so, albeit not on the basis of the freedom of movement, but without proper documentation. Therefore it can be expected that the number of persons that will actually start to migrate after the accession will turn out to be much smaller than most of the studies predict.

The current state of the accession negotiations strongly suggests, that there will be a transitional suspension of the right of free movement for the nationals of the new member states after the actual accession. This suspension would last for two to seven years and the individual member states would be free to implement freedom of movement between their territory and the candidate countries prior to the end of the transitional period. While a number of member states have indicated, that they will do so, it seems that Germany and Austria are likely to make use of the possibilities to enact the suspension for the maximum possible length.

Looking at the projected effects of a temporary suspension of free movement does, however, show that such a measure cannot be expected to effectively prevent labor related immigration to the EU15 countries: In order for a temporary suspension to have the desired effect (to prevent

migration) the economic situations in the countries of origin and destination must converge during the transitional period. Economic projections do show that the rates of convergence that can realistically be expected are not big enough in order to significantly reduce the economic differences that are seen as the reasons for the expected East-West migration flows within the maximum duration of the suggested transitional regulation. This is especially obvious for Poland, the country that is expected to be the most important country of origin.

While the effectiveness of the proposed measures is thus highly doubtful, there are major drawbacks attached to them: On a very general level they undermine the fundamental character of the freedom of movement of workers. While being, due to its limitation on workers, essentially a freedom designed to enable the mobility of the factor labor inside the Single European Market, the freedom of movement is the only of the four fundamental freedoms that directly empowers individual citizens of the Union's member states and must therefore be protected from attempts to make it dependent on the goodwill of political sentiments in individual member states of the Union.

Secondly the freedom of movement is seen as one of the most essential advantages of EU membership by both the general population and the political elites in the EECCs. Curtailing this right therefore involves the risk of marking the Citizens of the new member states become 'second class EU citizens'. Finally the suspension of the right of free movement prolongs the current situation where undocumented migration the only broadly available possibility for EECC nationals to be economically active in the EU15. While it is impossible to tell if those who are currently engaging in undocumented economic activities inside the EU15 will stop doing so and take up documented work in the West after the implementation of the freedom of movement, temporary suspension of the freedom of movement essentially prevents them from doing so. This clearly counters the stated intention of the proponents of transitional regulation, to protect the labor markets of the established member states against unfair competition from the new member states.

Given the fact that the proposed measures are both likely to be ineffective and harmful to a number of other important aspects and possibilities that need to be protected from unnecessary limitation, it is obvious that the extension of the freedom of movement to new member states should be shaped differently: A non-intrusive transitional regulation that contains an insurance element seems to be a more appropriate way of implementing the freedom of movement of workers: This would mean the immediate and full implementation of the freedom of movement provisions for all citizens of the new member states, combined with a safeguard clause that would be triggered when immigration to one of the member states would exceed 'acceptable' levels of intra EU labor mobility. Should this

safeguard clause be triggered the freedom of movement for workers can be frozen for the affected member state for a limited period of time in order to enable adjustments to the situation in affected country of destination.

As, based on the research of the available indicators for migration, it seems unlikely that such a safeguard clause would be triggered at all, such a transitional regulation would guarantee that the freedom of movement is respected and that the nationals of the new member states have the possibility to take up employment legally in the established EU member states thereby making them EU citizens with equal rights from the beginning of their respective countries EU membership.

Ideally such a situation would have a number of additional benefits. It would show that immigration to the wealthy countries of the North is not directly linked to possibilities for legal immigration to them. The expected non-occurrence of massive immigration flows that is indicated by my above research, would enable a reevaluation of the immigration policies of the EU member states that are exclusively focused on limiting immigration by eradicating any legal means from immigration that is not deemed beneficial. Of course such reevaluations would need to be based on extensive research of how East to West migration flows adopt to such a changed structure of possibilities.

[7] References

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