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The Governance of Migrant Labour Supply in Europe, Before and During the Crisis

An Introduction

Ferruccio Pastore

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Abstract

After more than two decades of policy inertia, since the late 1990s a new interest in labour migration arose across Europe and at the EU level. This translated into a new season of policy experimentation which expressed itself in very different forms across the continent. Such an uneven wave of policy change has not been interrupted by the crisis, which however has deeply altered its dynamics, propelling innovation in some countries and blocking it elsewhere. Based on in-depth fieldwork carried out in the framework of a comparative research project (www.labmiggov.eu) in six European countries (France, Germany, Italy, Spain, Sweden, United Kingdom) and at EU level, this special issue aims at generating fresh empirical knowledge and new theoretical insights into the complexities of labour migration governance in Europe. In an attempt to go beyond a limited understanding of labour migration policies as admission of foreigners for working purposes, all the articles share a common theoretical framework based on the concept of ‘migrant labour supply (MLS) policies’. Under this conceptual umbrella, different functional equivalents of (and alternatives to) direct labour migration policies are considered. Besides setting the broad empirical scene, illustrating the common conceptual foundations of the special issue and providing an overview of the articles’ main findings, this Introduction formulates some core arguments. It is argued that determining and constantly adjusting the composition of MLS policy mixes is a fundamental expression of states’ agency in the field of labour migration, especially in times of major economic fluctuations. I also contend that such national MLS policy mixes can be explained as country-specific attempts to find and constantly adapt ‘paths of least resistance’ meant to maximise fulfilment of labour immigration demands while minimising resistances to it.

Keywords: Migration policy, Labour migration, Economic crisis, Europe

This special issue focuses on the regulation of labour migration and of the access of international migrants to labour markets in a crucial phase of transformation linked to the multidimensional crisis – financial first, then in sequence productive, occupational, budgetary and institutional – which has been asymmetrically hitting Europe over the last seven years.

One of the starting assumptions of this collective work is precisely that the crisis, by affecting all the dimensions which are generally acknowledged as structural determinants of labour migration policymaking (material interests, public perceptions, regulatory capacities), is inducing policy changes which are not superficial nor transient. On the contrary, the hypothesis is that these crisis-related policy shifts are theoretically relevant and have the potential to illuminate some fundamental dynamics of this policy field.

The crisis is thus taken here not just as an encompassing and durable factor of empirical transformations, but also as a ‘revealer’ of deep constants and commonalities, as well as of areas of sometimes unexpected differentiation among national policy approaches. The protracted economic downturn, with its repercussions at social and political level, is thus conceived and used as a lens which can help us better understand, also from a theoretical point of view, the functioning of labour migration governance in Europe.¹

In order to pursue these overarching research objectives effectively, we deemed it necessary to cast our conceptual net more widely than what is usually done in the field of labour migration policy studies. A comprehensive assessment of the impact of ongoing macro-economic transformations on migration policies required to go beyond a narrow focus on labour migration policies *stricto sensu*, i.e. meant as targeted admission of foreigners from abroad for specific and explicit working purposes. The multi-situated and comparatively oriented fieldwork from which this special issue arises² convinced us of the necessity of a wider framing of the research object, and brought us to adopt the concept of *migrant labour supply* (MLS) policies.

As we will see in greater details below (paragraph 4), this entails widening the research focus as to include, in the first place, national implementation of EU legislation on labour mobility and, in particular, over the last decade, the actual regulation of transition periods for the purposes of full recognition of freedom of movement to workers from Eastern European acceding countries.

In the second place, focusing on country-level migrant labour supply policies implied giving specific attention to what we propose to define 'functional equivalents' of strictly meant labour migration policies, or 'indirect' labour migration policies. By this we intend all policies aimed at granting, facilitating or boosting access to domestic labour markets to immigrants originally admitted for reasons other than work (humanitarian, family, study, etc.).³

The last, but certainly not least set of policies that we have posed as a structural component of the migrant labour supply policy field is what we have termed as 'functional alternatives', understood as all policies and measures (mainly situated in the fields of employment, education or training) which are explicitly meant to reduce the dependency on immigrant labour by increasing the presence of native workers in given employment sectors (for a groundbreaking contribution in this direction, Devitt, 2010).

Labour migration policies *stricto sensu*, management of intra-EU labour mobility, functional equivalents and functional alternatives to ad hoc 'import' of foreign labour: all these tools are simultaneously mobilized by most European states in order to match and reconcile the different and often conflicting sets of interests which operate in the field of labour migration. Migrant labour supply therefore needs to be understood as a complex and constantly evolving *policy mix*.⁴

Our contention, in this article and more broadly in this special issue, is that the evolution of the composition of such policy mix is crucial to understand the role of the state in the field of labour migration. As a matter of fact, we argue that acting to determine and modify over time the composition of country-level migrant labour supply policy mixes is a key expression of the agency of states in this field, probably a more effective and relevant one than the often proclaimed but usually failed ambition to determine the magnitude and skill composition of overall inflows.

From this point of view, the ongoing economic crisis, with its highly uneven impact in different parts of Europe, acts as a revealing factor, in particular by affecting the ratio between direct and indirect labour migration policies. While in the least crisis-affected EU countries, a reduced public anxiety about the economic impact of labour immigration and more vocal employers' demands induce governments to enhance direct labour immigration admission, the opposite seems to take place in more severely hit contexts where explicit and straightforward admission of foreign workers is nowadays harder to implement without stirring popular rejection. As Devitt effectively puts it in her comparative study of France and the UK included in this special issue, admission of indirect labour

immigrants is politically easier. Devitt: “As the government does not permit the latter to enter in order to work, it is [p. 446] less likely to be blamed for irresponsibly facilitating labour immigration in the context of an economic slump”.

Diverging evolutionary trends in the regulation of migrant labour supply clearly emerge from the six country-level case studies (France, Italy, Germany, Spain, Sweden, United Kingdom) which represent the empirical basis for the articles included in this special issue. A few words are needed here to explain the rationale for the case selection. A first criterion, although not the most important one, was one of quantitative relevance in economic and demographic terms: as a matter of fact, five out of six among our national contexts of reference – i.e. all but Sweden – represent the largest EU countries in terms of both overall population, foreign immigrant stocks and immigration flows (at least until the outburst of the crisis, which brought to a steep decrease in inflows in some of them) (OECD, 2013).

Qualitative criteria, however, have been even more crucial in driving our fundamental methodological choices, and in particular in suggesting to include a Scandinavian case. Our qualitative strategy for case selection aimed at grasping the widest possible spectrum of country variation in terms of *migration history* (both established and ‘new’ immigration countries are covered), *models of welfare* (social-democratic or ‘Nordic’, conservative, liberal, familialist or ‘Southern’: see Esping-Andersen 1990; Ferrera 1996) and *varieties of capitalism* (coordinated/liberal/mixed market economies: see Hall and Soskice, 2001; Hancké, Rhodes and Thatcher, 2007).

As I will illustrate in greater details in the final section of this Introduction, not all the studies presented in this special issue are based on a wide-ranging comparison of all six countries. Actually, two of the articles have a narrower focus on pairs of countries. While referring to individual articles for more circumstantial explanations of tailored case selection criteria in these cases, an example can be given here by pointing out at Finotelli’s article on international recruitment of physicians, where the two cases are selected as typical of different models of healthcare systems (social security-financed as in Germany versus tax-based as in Spain).

1 Changes of season in European labour migration policies

The last quarter of the past century represented a long ‘winter’ for labour migration in Europe. International flows for working purposes were significantly reduced compared to post-WWII decades (Bade, 2003; Castles, 1986; Hollifield, 1992; Kindleberger, 1967). Following the formal stop to recruitments from abroad enacted by most traditional immigration states in the first half of the 1970s, labour migration policies underwent a process of atrophization, consisting in a loss of administrative weight, political salience and visibility in the public debate. In the meantime, other forms of migration gained relevance and other specialized branches of migration policy climbed the ladder of political priorities. In particular, at both national and European level, the regulation and management of *irregular* and *forced* flows conquered the centre of the (broadly defined) migration arena, sharing it with the quickly escalating concerns over the *integration* of immigrants and their descendants (Joppke, 1999; for an analysis of such priority shifts as ‘evolutionary patterns’, see Zincone, 2011, in particular pp. 412 and ff.). In parallel with the changes in the demographic composition of immigrant minorities, also the impact of immigration on national and local welfare systems gained centrality as both a political issue and a scholarly topic (Boeri, Hanson and McCormick, 2002; Bommès and Geddes, 2002; Schierup, Hansen and Castles, 2006).

This deep restructuring of the European migration policy agenda and the growing focus on asylum, undocumented movements and integration were mirrored in the evolving composition of migration research agendas, which were in the meantime becoming increasingly Europeanized (Bommès and Thränhardt, 2010; Favell, 2001). Among researchers, just like in the political sphere, the nexus between migration and labour was gradually shadowed by prevalent attention given to other ‘nexuses’, perceived as increasingly important, such as those between migration and security, development, or social cohesion.

Under the frozen surface of alleged ‘zero (labour) migration’ doctrines, however, linkages between population movements and labour dynamics were persistent and still strong, although in less evident forms than in the era of ‘fordist’ migration. Even if often labeled as ‘unproductive’ in the political debate, migrants admitted for reasons other than work (e.g. family connections with already settled immigrants, international protection obligations of the receiving state, common descent with natives) had problematic but nevertheless significant access to labour markets, as clearly illu-

strated also by the comparative analysis of Labour Force Survey data carried out in this special issue by Alessio Cangiano. The economic importance of what we define 'functional equivalents' of official work-oriented flows (see below, para. 4) is even more evident for undocumented migration, especially in the case of low-skilled arrivals to southern European states, which by the end of the last century had become sizeable and were in rapid expansion (Calavita, 2005; Colombo 2012; King et al., 1999).⁵

It was precisely in southern Europe in the second half of the 1990s that the first burgeoning of a new labour migration policy season appeared most spectacularly and unexpectedly. Starting with the reversal of Italy's net migratory balance in the late 1970s, during the 1980s and 1990s all southern European countries had gradually turned into net receivers. States followed suit by adopting policies which on the one hand acknowledged market trends by means of mass regularizations and, on the other, tried to channel and regulate inflows via planning mechanisms and legal admission procedures (Doomernik and Jandl, 2008; Einaudi, 2007; Finotelli and Sciortino, 2009; Sciortino 1999, 2009; Zincone, 1998).

In general, these policy experiments did not prove very effective, suggesting that the 'gap hypothesis' (according to which, in its influential original formulation by Cornelius, Martin and Hollifield: 'the gap between the goals of national immigration policy [...] and the actual results [...] is wide and growing wider'; 1994: 3), although originally tailored primarily on more mature immigration states, could find in this new group of destination countries a particularly fertile ground of application (for a critical and analytical review of the debate on the effectiveness gap, see Czaika and De Haas, 2013; among theoretical discussions, Bonjour, 2011; Boswell, 2007).

The beginning of a new cycle in labour migration policies was not only witnessed in the southern part of the continent. The late 1990s and early 2000s were also a period of major transformation in discourses and policy approaches in the United Kingdom (Boswell, 2008; Somerville, 2007) and, in connected and partly similar forms, in Ireland (Barrett and Duffy, 2008; Devitt, 2014; Messina, 2009). Along the Atlantic rim of Europe, however, migration policy change took place in a very different political and economic context, with a more vocal role of employer's lobbies and of economic expert knowledge (the latter mainly in the British case: Boswell, 2009a; Boswell, 2009b), a stronger official emphasis on the linkage between an increase in the supply of skilled foreign labour and national competitiveness, and a decisive impact of liberalization of intra-EU mobility in the framework of the first wave of EU's enlargement to the East (2004). Such important differences imply that explanations of the change of season in

the field of labour migration policies based on such concepts as ‘competition state’ (Lavenex, 2006) or ‘managed migration paradigm’ (Menz, 2008) do not apply as convincingly everywhere. Tailored on traditional receiving countries with a special eye to the British case, they do not fit equally well southern European countries where what has been defined a ‘low cost immigration’ (Pastore, Salis and Villosio, 2013) has been more functional to the preservation of a dysfunctional and highly segmented socio-economic model than to its structural transformation through liberalization and enhanced competition.

Giving account and providing explanations for the specificities of southern European approaches to labour migration is indeed one the goals of this special issue. This is done through in-depth issue-based comparisons of two Mediterranean cases – Italy and Spain – and some other important European receiving countries (France, Germany, Sweden, United Kingdom). At the origin of this comparative endeavour is a certain degree of dissatisfaction with the way in which the historical novelty represented by the emergence of southern Europe as a major labour migration destination has been interpreted in the field of migration policy studies. For instance, the Spanish case, as analysed here by Finotelli, goes against an often undifferentiated presentation of southern European labour migration policies as exclusively focused on ex-post regularization of low-skilled foreign workers drawn in the country by job opportunities in poorly regulated labour markets.

In her comparative analysis of national responses to labour shortages in the care sector, Salis elaborates on the paradox of a country (Italy) where the demand for immigrant labour does not stem primarily from organized employers – as almost taken for granted in most theoretical appraisals of labour migration policymaking since Freeman’s path-breaking work (1979, 1995) – but rather from an atomized and unorganized plurality of micro-employers. In Italy as in other (relatively) recent destination countries, such a silent and highly ambiguous pro-immigration constituency is formed by small and often informal enterprises and, ever more prominently and characteristically, by private households. Families, in particular, play a key role in recruiting foreign care workers to fulfill an expanding set of ‘new’ welfare needs associated with growing (although slowly) female activity rates and above all with acute population ageing, in a context in which such booming care demand is not adequately met by a shrinking and anachronistically designed public welfare (Salis in this special issue for references).

2 The crisis as a factor of policy change

In the pre-crisis decade (roughly 1997-2007), southern Europe and the UK, with Ireland following a similar path, emerged in the European context as the two main labour immigration basins and as the most dynamic contexts for policy innovation in that field (Pastore, 2012). But similarities between the 'Mediterranean laboratory' and the Atlantic one did not go much beyond comparatively high levels of sectoral policy dynamism. As for the actual contents of labour immigration reforms in these two very different groups of countries, they differed significantly. The six country studies produced in the framework of the international research project from which also this special issue arises, all of them based on extensive field-work and available at www.labmiggov.eu, provide a detailed description of such heterogeneity. In particular, they show how national specificities emerge at different levels (policy justifications, advocacy coalitions, reform methods, technical tools used, policy outcomes), and not only *across* the two groups but also *within* groups (Arango, 2012; Baldwin-Edwards, 2012; Finotelli, 2014; Peixoto et al., 2012), thus questioning the existence of a single and coherent Mediterranean immigration policy model that was hypothesized by earlier regional studies (see for instance Baldwin-Edwards and Arango, 1999; King and Black, 1997).

The multidimensional crisis which has been propagating since 2007 has had a deep but highly differentiated impact on migration and mobility trends, as well as on integration processes. It would go beyond the scope of this introduction to provide here an overview, however rapid (for systematic evidence, latest issues of OECD's International Migration Outlooks are the key source; see also IOM, 2010 and other research reports available at <http://www.labourmigration.eu/>). However, one essential figure referred to the six countries more directly targeted in the articles collected here may be useful to exemplify how uneven the repercussions of the downturn on labour market outcomes of immigrants have been, both in absolute terms and relative to natives.

In almost all EU countries of immigration, unemployment rates of both native and foreign-born workers have been growing during the crisis, but at very different pace. If we consider the five largest receiving countries in the European Union plus Sweden, Germany stands out as the only one where unemployment has been decreasing altogether, and more so for foreign workers than domestic ones. Elsewhere, the growth in unemployment was everywhere higher for immigrants than for natives except in the United Kingdom, where the latter lost proportionally more jobs. In all other

countries, the unemployment gap by origin grew, but in some (Spain, of course, but also Sweden, although starting from incomparably lower levels) more than in others (See Fig. 1).

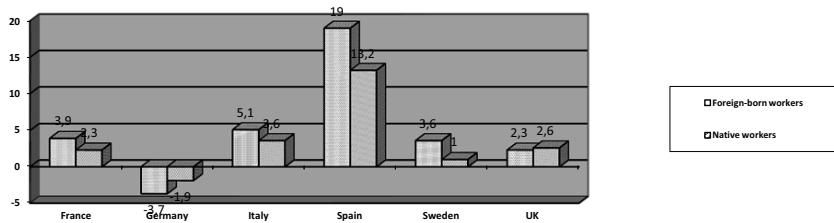


Figure 1 Changes in unemployment rates by place of birth (between Q1-Q3 2008 and Q1-Q3 2012)

Source: Own elaboration based on OECD, 2013: 72

The impact of the crisis has been highly differentiated also on political debates and policy developments. Some of the early attempts at assessing such impact have understandably focused mainly on *convergences* among economically advanced immigration countries in migration policy responses to the crisis, pointing in particular at the proliferation of quantitative and qualitative restrictions imposed on new inflows, especially on ‘discretionary’ (as opposed to rights-based) ones (Awad, 2009; Martin, 2009). Such perspective conveys the general idea of a relapse into ‘winter’, after the short and unaccomplished ‘spring’ of European labour migration policies that we recalled above. However, this ‘seasonal’ metaphor appears less convincing if one adopts a slightly different perspective, focusing on the several substantial divergences and exceptions that, seven years since the outburst of the crisis, are countering the initial perception of an undifferentiated ‘restrictive wave’. From this point of view, the six European countries taken as case studies in the LAB-MIG-GOV project, and which represent the primary empirical ground for the comparative analyses carried out in this special issue, offer a few interesting cues.

The most evident outlier – if one takes for good the general picture of a ‘restrictionist mainstream’ – appears to be Sweden. As a matter of fact, at the end of 2008, when recession was spreading across Europe, this Scandinavian country carried out a sweeping liberalizing reform of its migrant labour admission policy, strongly limiting the traditional role of trade unions as gatekeepers and unconditionally adopting an employer-driven model without any kind of skill-based filter nor a priori defined quantitative thresholds (Bucken-Knapp, 2009; Spehar, Bucken-Knapp and Hinn-

fors, 2013). As the Swedish minister for migration, Tobias Billström, put it when interviewed for the LAB-MIG-GOV project: ‘... now it is up to the market to assess its own needs, not to the minister, or the parliament, or another State authority. Of course politics has to make sure that rules are followed, but the starting point is that the individual employer best knows the recruitment needs of his business’ (cited in Quirico, 2012: 14).

Apparent Swedish exceptionalism, however, appears less such when one widens the comparative lens to include, in particular, Germany. The first symptoms of a new policy climate had already been emerging at the beginning of the 2000s, starting with the temporary recruitment programme for 20,000 highly-skilled migrants launched in 2000 by Gerhard Schröder’s ‘red-green’ majority (Laubentahl, 2008). But it was not until the end of the decade that the trend took momentum: in the years of the ‘black-yellow’ coalition (2009-2013), while the unemployment rate was sinking from slightly below 8% to little over 5% and the shortage of skilled labour force (*Fachkräftemangel*) was increasingly perceived as a national issue and a limit to further growth, a quiet revolution in admission policies was undertaken. The ‘style of reform’ was less explicit and spectacular than in the Swedish case, and more based on targeted regulatory adjustments than on comprehensive legislative changes, but the results are equally tangible, particularly in the (diminishing) degree of selectivity of the system: “While the ‘German model’ in its rhetoric still exclusively focuses on highly qualified immigration, the actual definition of highly-qualified has considerably changed during the last years” (Laubenthal, 2012: 28)⁶. Such discreet shift was implemented through a variety of technical tools amongst which the lowering of the required minimum income for recruitment from abroad, the adoption of a positive list of needed professional profiles, the reception of the EU’s Blue Card directive according to relatively liberal criteria and an important (although adopted with little media coverage) law for the recognition of foreign qualifications (Laubenthal and Finotelli, both in this issue). Even a new job search visa was introduced, which stands out as a quite heterodox tool in the European policy landscape and which ‘introduces a skills-based element into the hitherto exclusively demand-oriented German labour migration regime’ (Laubenthal, 2012: 28; Kolb, 2014).

Also in national political systems dominated by a much more cautious (if not hostile) official rhetoric on immigration than in the two cases just recalled, no undifferentiated restrictionist turn was witnessed as a response to the crisis. As Devitt convincingly shows with regard to France and Britain in her article for this special issue, both states have shielded the

categories of more skilled migrants, for which labour market demand persists, from the harsh closure proclaimed in the public discourse.

Even among the countries more severely hit by the crisis, newly introduced restrictions to labour immigration varied significantly. If we compare the two largest southern European recruiters, such divergence stands out clearly. While in both Italy and Spain planned entries for non-seasonal working purposes were curtailed to negligible numbers, the Italian Centre-Right government – in charge until November 2011 – persisted in an established tradition of ambiguity. This translated itself, on the one hand, in the adoption of several pieces of harsh flagship legislation targeting also regular immigrants, and, on the other hand, in the repeated relapse in the hard-to-eradicate habit of mass regularizations (in 2009 and again in 2012, this time under a technocratic, non-partisan executive; see Sciortino, 2013). As for Spain, the change of majority in 2011 contributed to a rather abrupt correction of the previous, confidently open, policy direction (Arango, 2013; Aja, Arango and Oliver, various years). Such u-turn expressed itself not only in virtual closure to new entries of non-EU foreign workers, but also in a controversial reintroduction of restrictions to the freedom of movement of Romanian and Bulgarian nationals, and in unprecedented limitations to basic fundamental rights of undocumented migrants, especially in the sphere of health (Royo-Bordonada, Díez-Cornell and Llorente, 2013).

On the whole, these changes reveal a high degree of responsiveness of labour migration policies to changing sets of economic and political opportunities and constraints, in the context of crisis. Such responsiveness, in some cases even volatility, is observed not just at the level of political discourses but also of policy design, and even in the countries where path dependency trends are more evident (such as in Italy with regard to periodical large-scale regularizations). From a comparative point of view, the evolution documented by LAB-MIG-GOV country studies and by the articles in this issue adds up to a radical reshuffle of the geography of labour migration governance in Europe, with a *de facto* overturning of alignments which took shape in the pre-crisis decade. Southern European countries, UK and Ireland, which had previously emerged as the main engines of the conversion to a more proactive and open policy attitude, now clearly rank among the 'cautious', with rhetorical peaks of strong policy discontinuity as with the new British conservative government's explicit challenges to the principle of intra-EU freedom of movement (Cameron, 2013). In the meantime, the torch of labour migration policy innovation has seemingly been taken by countries which until recently were among the most rigorous guardians of the hyper-selective labour immigration orthodoxy.

3 How to explain complex patterns of policy change?

Assessing and explaining the diverging policy paths outlined above is certainly not easy, but it seems essential for a theoretically grounded understanding of policymaking dynamics in the field of labour migration. In particular, it is difficult to distinguish what in these policy shifts represents a merely contingent response to a transitory economic slowdown and what instead may be understood as the result of a deeper process of adaptation to structural changes brought about by the crisis itself or by more fundamental and longer-term trends such as neoliberal globalization.

In 2010, Georg Menz and Alexander Caviedes claimed that we are witnessing a 'systematic and fundamental transformation of migration policy design [*the one associated with broad 'neoliberalization' trends and consisting in a growing openness to 'managed migration'*] that is unlikely to be affected by the worst economic recession since the early 1930s' (Menz and Caviedes, 2010: 19); they also judged it 'unlikely that this recession will play a similar functional role to the OPEC crisis of 1973' (Menz and Caviedes, 2010: 19), which as we saw in the beginning brought to a lasting stall in active international recruitment policies by European states.

The authors of the lines cited above are important voices in one of the most fertile streams of recent scholarly literature on labour migration policies, which attempts to develop an international political economy perspective on the subject, mainly by adopting and adapting the 'Varieties of Capitalism' (VoC) paradigm which gained considerable influence and visibility during the 2000s (Hall and Soskice, 2001; Hancké, Rhodes and Thatcher, 2007; Menz, 2005). Through their recent contributions (Caviedes, 2010b; Menz, 2008; Menz and Caviedes, 2010), Menz and Caviedes have developed an articulated theoretical view of European labour migration policies emphasizing on the one hand their convergence towards selective openness as a result of neoliberal globalization and, on the other hand, persisting specificities due to the embeddedness in distinct national production systems which crucially affect the design of such policies, primarily by determining employers' interests, attitudes and policy preferences in the field of labour migration (Menz, 2010).

An interpretation of recent policy trends as anything more than temporary reactions to transitory labour market oscillations would challenge the rather univocal theoretical stance according to which '[t]he re-conceptualization of migration policy as a national human resources strategy as opposed to a largely defensive security-driven domain more likely marks a long-term paradigmatic shift, notwithstanding the recession of the late

2000s and a largely sceptical public' (Menz and Cavedes, 2010: 3). Besides, if we conceive the recent policy changes as anything more than a wave of superficial and transient adaptations, a rethinking of the fundamental categories of the VoC literature would be needed (in this direction, but without a specific focus on migration, see Bosch, Lehndorff and Rubery, 2009). As a matter of fact, convincing theoretical explanations seem so far lacking for such important empirical developments as the gradual but constant opening of a Coordinated Market Economy (MME) *par excellence* like Germany to high- but increasingly also medium- and even low-skilled migration (see endnote 6), or the spectacular and not very contentious Swedish metamorphosis into a rather unselective receiving state, or also to give account of the singularities of anomalous Mixed Market Economies (MMEs) like the Mediterranean ones, which in the last decade have been oscillating wildly between deregulated openness and harsh closure.

Our contention is indeed that we are going through a phase of deep and not univocal restructuring of the labour migration policy field in Europe. In order to understand such evolution, we cannot stick to a homogeneous conceptualization of the structure of the field of interests driving policy design, one in which employers' preferences inevitably prevail (although in a more or less crushing way) and where trade unions are forced to accept managed migration as a lesser evil against greater ones like social dumping through irregular migration and delocalization of production (Menz, 2010). A more flexible conceptualization is required: one in which the agency of states (or, more broadly and accurately, of complex and dynamic structures of multilevel governance still centred on states; see Zincone and Caponio, 2006) is acknowledged in a more articulated way, in particular by recognizing the key role played by indirect channels for the admission of migrants in domestic labour markets.

In the next paragraph we will elaborate further on our key argument, namely that state agency in the field of labour migration expresses itself not only (and perhaps even not so much) in the determination of overall volumes of admissions and the profiles of the entrants, but more effectively and more specifically in influencing the composition of migrant labour supply in terms of channels of entry and modes of access to the domestic labour market. But before turning to this final section, it is worth briefly reviewing two in many respects rather different scholarly efforts which have nevertheless in common a flexible and pluralistic conception of the determinants of labour migration policymaking.

The first is the model of labour migration policy as a 'choice under constraints' recently put forward by Ruhs (2013, see in particular Chapter

3). The main focus is on how high-income liberal democracies design labour immigration policies in order to pursue a 'core set of four interrelated and sometimes-competing policy goals' (p. 5), namely economic efficiency, distribution (in particular, avoiding negative impacts on low-skilled natives), national identity and social cohesion, national security and public order. Nation-states' agency is constrained by a complex grid of macro-level factors the most important of which are i) structural limits to the capacity to control immigration, ii) national and international liberal norms and institutions, and iii) specificities in national political systems, production regimes and welfare systems. Based on these conceptual foundations, Ruhs finds sophisticated although not always equally compelling quantitative and qualitative evidence in support of three fundamental hypotheses on the dynamics of labour immigration policymaking: positive relationships are identified between targeted skills and both policy openness and levels of recognition of some categories of migrant rights, while a negative relationship is found between openness and (some) rights.

Among the merits of Ruhs' theoretical framework is indeed its flexibility, which allows *inter alia* to account for more or less deep policy fluctuations across periods of crisis:

The argument that states are simply passively reacting to different interests and have no substantive policy objectives of their own is [...] difficult to defend in practice. The economic interest of employers may well be the driving force of immigration policy in certain countries at certain times, especially during economic growth where concerns about distribution and national identity may be less of a priority, but evidently do not describe policymaking processes in all countries and at all times. In times of economic downturn, for example, states are likely to increase the importance of protecting low-skilled workers (Ruhs, 2013: 32-33).

But what is not entirely satisfactory, from our current point of view, in Ruhs' otherwise comprehensive and clear model, is its explanatory capacity with regard to specific key features of some contemporary European cases. Here too, a narrow conceptualization of the research object ('policies for regulating the number, skills and rights of migrants who are admitted for the primary purpose of work', Ruhs: 10) appears as a limitation and it is again southern Europe, in particular, which represents a puzzle and provides theoretically challenging empirical material. We have already recalled the crucial role that *ex-post* large-scale regularizations have constantly played, over the last two decades, in southern European attempts

to regulate labour migration (Barbagli, Colombo and Sciortino, 2004). However, this central policy feature does not seem properly explained by a theoretical account in which one of the fundamental propositions is that of a reverse proportionality between ‘numbers’ (of admitted foreign workers) and ‘rights’ (granted to them) (Ruhs, 2013; Ruhs and Martin, 2008). In regulatory environments essentially based on periodical legalizations of undocumented populations (accompanied by amnesties of their irregular employers) a fundamentally different logic seems to operate. Namely, until underground foreign workers represent a tiny and little visible category, their fundamental rights can easily be denied. But such strategy of systematic denial of (primarily) economic and social rights has proven to become unsustainable when ‘numbers’ get sufficient to set in motion the heterogeneous advocacy coalitions supporting regularizations, generally composed by trade unions, churches, migrant rights movements and immigrant associations (Zincone, 2006). In such cases, the quantitative openness of the system in terms of actual intakes of foreign workers plays a critical role in explaining dynamics of rights expansion through regularizations which represent the outcome of peculiar forms of social and political mobilization.

Explaining the complex and often ambiguous but still critical role of the state in shaping labour migration and making sense of the ongoing complex transformations of the European labour migration governance field are also the essential goals of another important theoretical contribution, Boswell’s theory of the functionalist imperatives of the state (2007). In her search for convincing alternatives to both political economy and neo-institutionalist theories of migration policymaking, Boswell bases her analysis on a conceptualization of the state as a complex actor constantly striving to secure, reinforce and perpetuate its own legitimacy, which is assumed to be based on various possible combinations of four fundamental criteria (fairness, accumulation, security and institutional legitimacy) (Boswell, 2007: 89). It is argued that labour migration policy is an area where the potential conflict among these different sources of legitimation is particularly acute and where ‘a state unable to meet all functional requirements may have an interest in the persistence of contradictions and inefficiencies in policy’ (Boswell, 2007: 93); more specifically, as Boswell adds, ‘such malintegration usually takes the form of a gap between proclaimed, restrictive migration policy, and the *de facto* toleration or covert implementation of more liberal measures’ (Boswell, 2007: 93).

Such a flexible theoretical model allows Boswell to propose an articulated but convincing typology where even the generally elusive Italian case

finds a satisfactory location in a policy type significantly baptized 'Uncontrolled'. In this particular policy configuration, '[t]he Berlusconi government [*but the ideal type which is proposed catches a good amount of bipartisan continuities in Italian migration policy history*] has adopted a highly restrictionist rhetoric, whilst tolerating substantial levels of irregular migration and employment, and even encouraging these through periodic regularizations' (Boswell, 2007: 95; Zincone, 2002). As correctly stated by the author, this formally contradictory policy mix is typical but far from exclusively characteristic of Italy, as some of its elements 'can be discerned in the policies of many other European countries as well as the US, insofar as these countries fail to introduce robust measures to control irregular immigration and labour' (Boswell, 2007: 95).

The awkward combination of (economic) openness and (cultural and political) closure incorporated in this latter policy type as singled out by Boswell might even gain ground in a context of 'chronicized' economic crisis where labour market positions of immigrants tend to deteriorate, competition with natives is reactivated, but no large wave of returns or secondary migration flows is observed. As a result, while the overall immigrant presence is not significantly reduced, the economic bases for economic integration become thinner and risks of 'wars among poors' grow. In such an environment, which may be spreading even beyond southern Europe, populist calls for more closed communities are not necessarily perceived as irreconcilable with neoliberal campaigns for more 'open' and competitive societies. Further structural weakening of the labour market position and further social exclusion of immigrants may thus emerge as the implicit strategic goal towards which traditionally opposed sets of interests converge. In such a context, spurious coalitions of pro-immigrant employers and anti-immigrant native workers and/or welfare beneficiaries (an odd alliance which is hardly conceivable in the framework of most political economy and neo-institutionalist theories) do not appear as hardly viable anomalies any more. Facing these apparent contradictions, neo-marxist accounts emphasizing the discriminatory segmentation of labour markets (Castles and Kosack, 1973; Piore, 1979), which seemed to have been made outdated by 'neoliberalization' trends and by the parallel evolution towards the 'knowledge economy' and the 'competition state', regain explanatory potential (Castles 2004).

4 Comparing foreign labour supply policy mixes

The distinction between ‘front-door’ and ‘back-door’ immigration policies (the latter mainly referred to the toleration of undocumented low-skilled immigration) is traditionally used in policy debates in the United States, where scholarship has devoted specific attention to the interplay between these two fundamental branches of immigration regulation (for a masterly example of this kind of analysis, see Zolberg, 2008). This is less frequently the case in Europe, where on the one hand specialists of labour migration policies have given prevalent attention to official admission channels while, on the other hand, control and repressive policies against irregular flows have frequently been dealt with as an autonomous research field. As a consequence, the interdependence between policies on ‘legal’ and ‘illegal’ migration, and the porous nature of the boundary between the social and legal spheres of regularity and irregularity (in both ways: as a result of different forms of regularizations, in one direction, of refusals of residence permit renewal and consequent relapse into an irregular condition, in the other) have often been neglected (among the exceptions, for a conceptualization of irregularity as a ‘very dynamic condition’ structuring a ‘foggy’ social space, see Bommers and Sciortino, 2011: 219).

This special issue tries to avoid these shortcomings by framing its object in a more comprehensive way. However, given the complexity of the regulation of the access of foreign workers to European labour markets, a dualistic model based on the metaphorical juxtaposition between a front- and a back-door appears insufficient and unable to grasp effectively the actual variety of national policy mixes.

In the first place, over the last decade, a crucial role has been assumed by the ‘open gate’ of free movement for (new) EU citizens next to the traditional front-door of legal admission of third-country nationals for working purposes. The different use made of the limited discretionary power recognized to ‘old’ EU member states in managing the labour market access of citizens of Eastern European accession countries has emerged in this period as one of the main factors of differentiation in national approaches to the regulation of international mobility of labour (Black et al., 2010; Galgoczi, Leschke and Watt, 2009; OECD, 2001). This policy dimension and its interplay with the regulation of labour migration from outside the EU are thus given specific attention in the LAB-MIG-GOV country studies and in the comparative articles collected here.

In the second place, we have included in our analyses what we define *functional equivalents* (of narrowly defined labour migration policies): all

policies giving access to domestic labour markets to immigrants admitted for reasons *other than work*. This covers profiles as diverse as family migrants (including spouses, offspring and in some national contexts even parents of labour immigrants admitted through family reunion procedures), different types of humanitarian migrants, international students, so-called co-ethnics (e.g. *Aussiedler* in Germany or descendents of emigrants in Italy). In most European countries, this 'side-door' consisting in granting or extending the right to work for persons belonging to these (often rights-based) immigration categories has been opened more widely in the pre-crisis decade. This trend, based on a growing awareness of the actual and potential labour market role played by these groups, has since the early 2000s been fostered and streamlined by the European Union. This liberalizing role was exerted by the supranational legislator through ad hoc clauses aimed at limiting the possibility for Member States to exclude asylum seekers or family migrants from domestic labour markets.⁷

Besides the policies aimed at giving (usually delayed) access to domestic labour markets to immigrants originally admitted for reasons other than work, our concept of functional equivalents encompasses also post-entry regularizations of undocumented migrant workers which have until recently played a very significant role especially in southern European countries. It is interesting to point out that, contrary to what happened with policies aimed at fostering labour market participation of non-labour migrants, the attitude of the EU towards large-scale regularizations has systematically been negative, with even some unsuccessful attempt to formally restrict the use of such policy tool.⁸

Beyond labour immigration policies *stricto sensu*, the management of intra-EU mobility and the use of functional equivalents, the addition of a fourth component in the framing of our research object was suggested by the preparatory fieldwork carried out in the six target countries in 2011-2013. In national policy debates, and in the words of the policymakers, officials and stakeholders we interviewed, references are often made to the interplay between migration policies and other labour-related policy fields. In particular, in the context of discussions on how to increase national competitiveness in response to the economic crisis, raising natives' and settled immigrants' activity rates while reducing the need to import foreign labour is often singled out as a desirable strategic goal. This prompted us to include in our research design a specific attention towards what we propose to call *functional alternatives* to labour migration policies, defined as all policies and measures (mainly situated in the fields of employment, education or training policies) which are explicitly meant to

reduce the dependency on immigrant labour and to increase the presence of native and settled immigrant workers in given employment sectors. The article by Devitt in this issue explores the different extent to which this trend is gaining ground, on the basis of a comparison of the French and British cases.

By widening our empirical scope as to include the different sets of policy tools described above, the goal of this special issue is to construct as a unitary research object a functionally integrated policy field which we define as a *migrant labour supply (MLS) policy field*. The essential structure of this complex policy field is schematically represented below in Figure 2.

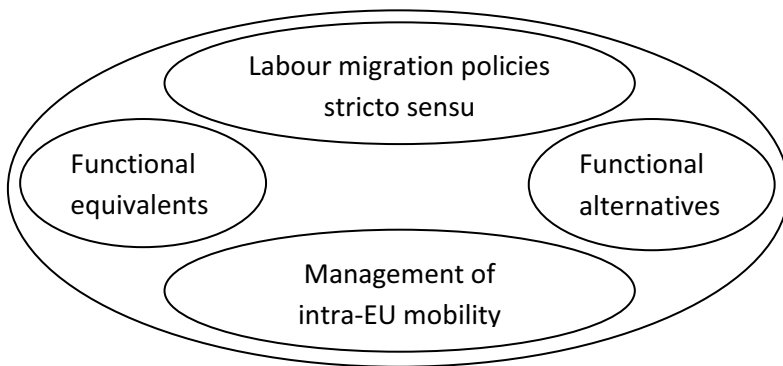


Figure 2 The structure of the Migrant labour supply policy field

This is just a standardized representation of what we conceive as the four essential components of MLS as an intrinsically pluralistic field of regulation. The actual configurations of this composite policy field, including for instance the relative weight of each component, vary substantially in time (see above, para. 3) and in space.

From an institutional point of view, it is clear that MLS policies are still primarily defined *at national level* and this explains why cross-national comparison is the fundamental methodological choice on which the research presented in this special issue is based. This does not exclude, however, the awareness of the importance that sub-national and supra-national levels of regulation may take in this area, as well illustrated in the article by Laubenthal in this issue. It is thus certainly possible to conceptualize MLS as a field of *multi-level governance* (for an application of the concept, originally proposed by Marks, 1993, to the field of migration, see Zincone and Caponio, 2006; Hepburn and Zapata-Barrero, 2014), even though – as some analyses of specific EU policies produced in the frame-

work of the LAB-MIG-GOV project clearly show (Lazarowicz, 2013 and 2014; Pascouau, 2013; Pascouau and McLoughlin, 2012) – the degree of actually achieved Europeanization is low compared to other domains of EU legislative competence (Pastore, 2004).

As for the sub-national levels of regulation, their role in regulating labour migration is generally limited, with a few partial exceptions among which the German *Länder* as studied here by Laubenthal. However, in the framework of future research assuming the paradigm shift that we propose towards a more integrated consideration of the MLS policy field, even the role of sub-national institutional and political actors in shaping the governance of migrant labour supply could stand out more prominently, given the institutional competences on employment and training issues that regional and local governments hold in many European countries.

Notwithstanding the multi-level perspective adopted in some of the articles, our approach essentially consists in ‘comparing places’ (in the broad sense proposed by Martiniello, 2013: 12; for another recent reflection on the role of comparison in migration studies, see Bloemraad, 2013). More precisely, our comparative lens focuses on how some important European states deal with the complex task of regulating the supply of migrant labour on the domestic labour market, struggling to find advantageous and sustainable compromises in the simultaneous pursuit of different functional imperatives. Two of the articles (the ones by Cangiano and Salis) adopt a broad comparative angle including all or most of the target countries of the LAB-MIG-GOV project and making more systematic use of quantitative methods; other two contributions (by Devitt and Finotelli) are based on bilateral comparisons in each case with a specific rationale for the selection of pairs (in Finotelli’s article, for instance, Germany and Spain are taken as ‘most different cases’: see Seawright and Gerring, 2008). Laubenthal’s contribution is the only one where the comparative method is not applied across countries but across institutional levels within one single national system, by focusing on the different uses made of EU legislation between the federal state and a *Bundesland*.

Before providing a concise overview of the key contents and findings of the articles that will follow, it is worth dwelling a little more on the determinants of the significant cross-country variations in the composition of national systems of regulation of migrant labour supply. How can such variations be explained? What drives the complex and constantly adjusted choices by which states compose the ever changing palette of MLS policies? From the comparative work presented in this special issue, some common explanatory principles can be singled out. In broad terms, it can

be stated that liberal democratic states (such fundamental political identity is common to all our case studies) tend to choose the MLS policy mix corresponding to the *path of least resistance* across the main sets of political constraints characteristic of each national political environment. Of course, the two key sets of such constraints are represented by *politically organised* demand for immigrant labour and *politically organised* resistance against it. As several scholars – following Gary Freeman – have argued, the mere existence of a certain amount of demand for, or resistance against labour immigration is not in itself sufficient to shape policy-making. What is crucial is indeed the *level of organization of such collective interests* meant as collective capacity to a) identify and express a unitary economic interest, b) to translate it into a clear and viable policy option, and c) to channel such policy option effectively into the policymaking circuit. The research presented in this special issue shows that the level of organisation of pro- and anti-(labour)immigration constituencies varies very significantly across European states, and that such patterns of variation are themselves deeply affected by the euro crisis.

Making sense of such variations in terms of their impact on MLS policy-making evidently requires to focus on the changing *relation* between levels of organisation of the demand for labour migration, on one side, and of the resistance against it on the other. In a simple heuristic model where such levels of organisation can vary only from ‘high’ to ‘low’ and vice versa (as shown in Table 1), four ideal-typical situations can be envisaged: A) High (level of organization of) demand + high (level of organization of) resistance; B) High demand + low resistance; C) Low demand + high resistance; D) Low demand + low resistance.

Table 1 Types of relations between levels of organisation of demand for and resistance against labour immigration – A heuristic typology

	DEMAND High level of organisation	DEMAND Low level of organisation
RESISTANCE High level of organisation	A	C
RESISTANCE Low level of organisation	B	D

One of the key findings of the collective fieldwork carried out for this special issue is that when both demand for and resistance to labour immigration are high (situation A in the heuristic typology summarised above and visualized in Table 1), the pressure to reduce the *public visibility* of

policy choices aimed at enhancing migrant labour supply discourages direct admission of migrant workers while generating specific incentives to boost indirect policies (i.e. functional equivalents) and in some cases to adopt, or at least envisage the adoption, of functional alternatives to directly tackling shortages with immigrant labour. Of course, this is not without counter-indications, as direct labour immigration policies tend to be more efficient in terms of both quality of the micro-level matching between labour demand and supply (especially if based on a sound assessment of labour market needs: see Martin and Stark 2014, Ruhs and Anderson, 2010), and of economic and social integration outcomes of migrant workers in the receiving context (fresh evidence for this latter statement is found in Cangiano's article in this special issue). The tension between the political advantages and the technical weaknesses of a MLS strategy relying more heavily on functional equivalents are evident, for instance, in the case of France, where in presence of high levels of organisation of resistance against labour immigration (mainly represented by the Front National) the share of indirect labour immigration remained comparatively high in spite of the alleged policy goal of boosting skill-based selectivity (*immigration choisie*).

In contrast, in situations marked by highly organised demand for, and low resistance to labour immigration (situation B in Table 1), it becomes easier for policymakers to include in the MLS cocktail a larger share of direct admissions thereby aiming at better results in terms of both short-term labour market efficiency and longer-term integration. Such configuration seems for instance to adequately describe pre-crisis Spain in which explicit entrepreneurial lobbying for a more open admission policy was not countered by any strong and vocal anti-immigration movement.

One last argument is worth adding here with regard to possible explanations of cross-country variations in the composition of MLS policy mixes. In some cases, such explanations are *sector-specific*, i.e. they apply specifically and sometimes exclusively to one or few labour market sectors, or even to specific occupational categories. A good example is provided by Salis in her analysis of the determinants of national policies on immigration of care workers (in this special issue). In her compelling account of the Italian case, the author shows how governments of different political orientation have been giving a privileged treatment to migrant care workers (MCWs) (through ad hoc admission channels, ad hoc regularization procedures, etc.) while systematically tolerating dubious exploitation of such special procedures by other types of migrant workers. The author explains such a peculiar policy choice precisely as an attempt to find a path of least

resistance between a persisting demand for (different types of) low-skilled labour and a public opinion environment marked by a relatively more extensive and stronger consensus about the immigration of care workers, perceived as socially more desirable and sustainable than other categories of migrant workers. In Salis' words, "... the openness towards MCWs has, at least partially, allowed the Italian authorities to open the doors to all other labour migrants while presenting them as *good and useful* for the Italian society".

In conclusion, I will briefly sketch the structure of the issue and the essential contents of the five articles that follow. Each of these centres the analysis on one specific dimension of national migrant labour supply systems. In Cangiano's piece, the starting question is how entry channels (typified in five categories: labour, family, study, asylum, permit-free) affect subsequent occupational careers of individual migrants. This relation is explored by using the dataset generated by the 2008 Ad-Hoc module on migrant workers of the EU Labour Force Survey. The results provide theoretically interesting and practically relevant insights on the different 'outputs' of distinct national MLS systems in terms of labour market integration.

Devitt compares the composition and the evolution of policy mixes (and accompanying public rhetorics) governing the supply of migrant labour in France and United Kingdom. She highlights both similarities (a continuing favour towards high-skilled migration in spite of the economic downturn) and differences, mainly explained by the embeddedness of MLS policies in different institutional contexts. Different national traditions in the fields of social protection and active employment policies, among other factors, are used to explain differences in the recourse to what we have called functional alternatives to labour migration.

In the next piece, Laubenthal explores the forms and dynamics of Europeanization in the field of labour migration in the German context. By focusing on the process of transposition of the EU's 'Blue Card' directive in national law, she shows how a convergence of policy aims between the domestic and the European level became a precondition for a substantial policy change. From a traditional setting in which *Länder* were generally seen as braking Europeanization and the federal government as 'using' the EU mainly to legitimize restrictive changes at the national level, a new posture is emerging whereby European regulation becomes functional to a more open attitude towards labour migration.

In her dense comparative study of the norms and practices regulating the access of foreign health professionals to domestic labour markets in

Germany and Spain, Finotelli provides a fascinating insight on the everyday management of a crucially important type of high-skilled migration, under the veil of official political discourses. By focusing specifically on the role of foreign credentials recognition and of language knowledge in international recruitment, she reveals the tensions and compromises lying behind the 'competition state' rhetoric on the 'attraction of talents'.

The special issue ends with an article by Salis on the governance of another crucial sector for immigrant employment, namely the market of elderly care services. Through a careful combination of qualitative and quantitative methods, she shows first the very different extent to which European states have been using immigrant labour to address shortages in the care sector across Europe and then moves to illustrating and explaining the heterogeneity of national policy mixes adopted. The results corroborate the hypothesis of a 'sectoral turn in labour migration policy' (Caviedes, 2010a, 2010b) but generate also some fresh theoretical insight on the political economy of low-skilled migration in a peculiar but crucial sector where the demand for migrant workers stems from households and not from organised employers.

The overall picture emerging from this diverse but internally consistent set of thematic studies is complex, dynamic and does not permit easy generalizations or forecasts on future trends (Holtslag, Kremer and Schrijvers, 2013). What is certainly confirmed is the variety of national approaches in the MLS field and the importance of the ongoing transformations, which are taking place at an accelerated pace since the outburst of the crisis. Structural explanatory principles, such as the peculiarities of national 'varieties of capitalism', political cultures, welfare models or care regimes are certainly still relevant and useful. But the rough and unsteady policy landscape that we have been reconstructing suggests the necessity to complement context-based explanations with a more fine-grained focus on policymaking processes. Without neglecting the importance of vertical interactions across institutional levels, this processual perspective still needs to be centred on states and on the distinct agency they exert in developing specific national approaches to the complex issue of migrant labour supply and in progressively blazing the 'path of least resistance' across the different sets of constraints that are punctuating this tormented policy field.

Notes

1. For two inspiring examples of theoretically informed analyses of the structural transformations induced or enhanced by the crisis, in the social and political spheres respectively, but with no specific focus on migration or migration policies, see Hall and Lamont, 2013; Schäfer and Streeck, 2013.
2. The articles collected in this special issue are all based on a three-years comparative research project on “Labour Migration Governance in Contemporary Europe” (acronym: LAB-MIG-GOV). This collaborative project has been carried out by a multinational team of researchers with different disciplinary backgrounds under the scientific coordination of Ferruccio Pastore. LAB-MIG-GOV was managed by FIERI (Forum of International and European Research on Immigration, Torino, Italy, www.fieri.it) and benefitted from the generous support of the “Europe and Global Challenges” Programme, promoted by Compagnia di San Paolo, Riksbankens Jubileumsfond and VolkswagenStiftung. All the reports and working papers produced in the framework of LAB-MIG-GOV are available on the project’s website (www.labmiggo.eu).
3. Another strand of policies which could be included in a broad definition of ‘functional equivalents of labour migration policies’ is represented by all those policies aimed at granting multinational and transnational companies leeway to move workers across borders thus introducing exceptions to general labour immigration regulations (e.g. intra-company transfers, cross-border ‘posting’, etc.). Although it has not been made object of specific attention in this special issue, this is an expanding area of regulation that would deserve more attention from migration scholars (temporary staffing has so far mainly attracted research attention from economic geographers and scholars of ‘transnational labour markets’; for an overview see Coe, Jones and Ward, 2010).
4. The concept of ‘policy mix’ has been originated in the macro-economic field to indicate the combined use of monetary and fiscal policy (see, for instance, Farina and Tamborini, 2008). We deem it appropriate to describe the combined use of different sectoral policies to pursue complex systemic objectives also in other fields, such as in the case of the migrant labour supply policy mix.
5. Besides the policies aimed at giving access to domestic labour markets to immigrants originally admitted for reasons other than work, also post-entry regularizations of undocumented migrant workers can be conceived as *functional equivalents* to legal admission for working purposes. As we will see in greater details below, in some EU states, regularizations have indeed played a key role in functionally replacing official and more straightforward labour immigration policies.
6. Although German admission policies remain highly selective and essentially targeted on high-skilled and skilled migrant workers, in some important labour market sectors which are traditionally framed as low-skilled the share of migrant workers is far from negligible. As illustrated in details in Salis’ article on the governance of labour migration in the care sector (in this special issue), EU-LFS data show that in Germany the share of migrant workers among personal care workers is equal to the EU15 average while it is much higher among domestic helpers. Such significant migrant presence is not the outcome of direct labour immigration policies but of a more articulated migrant labour supply system which is relying on functional equivalents especially for lower skills (Lutz and Palenga-Möllnbeck, 2010; Shire, 2014).
7. See respectively Council directive 2003/9/EC ‘laying down minimum standards for the

reception of asylum seekers', Article 11(2) and Council directive 2003/86/EC 'on the right to family reunification', Article 14(2).

8. The European Pact on Immigration and Asylum adopted by the European Council under the impulse of the French Presidency of the EU in October 2008 contained a statement whereby "... the European Council agrees [...] to use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons". Such agreement, however, did not prevent subsequent rather 'generalised' (although not completely unconditional) regularizations to be adopted, notably by Italy.

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Migration Policies and Migrant Employment Outcomes

Conceptual Analysis and Comparative Evidence for Europe

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Abstract

While a number of studies explored the demographic and human capital attributes affecting migrant socio-economic assimilation, less is known about the role of immigration status on entry. In particular, little evidence exists on the employment outcomes of migrants admitted outside economic immigration channels (family, study, asylum or permit-free) and joining the labour market once in the country of destination. This paper addresses this knowledge gap. Its conceptual framework for understanding how immigration status on arrival influences access to the labour market highlights the role of selectivity mechanisms and of different rights and constraints characterizing the legal situation of migrants who enter via different admission routes. The empirical analysis builds on original estimates of the migrant workforce by immigration status on entry based on the 2008 Ad-Hoc Module of the EU Labour Force Survey. Logistic regressions show that immigration status on arrival affects the participation in the labour market, the probability of being unemployed and the access to a job commensurate to the migrant skills. While the participation of family migrants and refugees in the labour market is positively associated with their length of stay, these categories retain a significant unemployment disadvantage in almost all European destinations. This gap becomes particularly evident at the intersection of immigration status and gender. Results suggest the need for a more holistic approach to the governance of labour migration that takes into account the long-term trends of migrant labour supply.

Keywords: migration, migrant employment, migration policies, immigration status, Europe

1 Introduction

Migrant workers are generally found to experience significant economic disadvantage relative to the native population. A lower labour participation of migrant women, consistently higher unemployment rates (for both male and female migrants of all educational levels) and a high concentration in underprivileged employment sectors and low-pay jobs (particularly for non-EU nationals) characterise migrant employment in most EU labour markets, although migrant/native gaps significantly vary across EU host countries (e.g. Münz, 2007; Eurostat, 2011). In the current economic climate the immigrant employment gap has also widened as a result of the crisis in most EU destinations – Germany being the notable exception (OECD, 2013: 72).

An expanding body of literature investigating the factors responsible for the lower performance of migrants in European labour markets has shown that the socio-demographic background (e.g. age, gender, education, marital status, ethnicity, country of birth) and other measurable attributes (e.g. host language skills, duration of stay) only explain a part of immigrant participation, employment and income differentials¹ (see for instance Bernardi et al., 2011; Kogan, 2011; Reyneri and Fullin, 2011; Dustmann and Frattini, 2012). Some scholars argued that other factors underpinning migrant poorer outcomes in European labour markets can be identified in the institutional context of the receiving country, including: labour market structures and regulations; the welfare regime; and, most notably, immigration and integration policies – see for example Büchel and Frick (2005), Kogan (2007) and Wanner (2011)².

A limited direct evidence of the effects of migration policies exists. In particular, quantitative research comparing the labour market outcomes of migrants with different legal status vis-à-vis immigration regulations seems to be rare in the European migration literature. This evidence gap can be ascribed, to a large extent, to the dearth of disaggregated data on the migrant workforce in Europe by legal/immigration status³. A lack of interest in policy evaluation by institutional actors has also been indicated as a reason for limited research on the “effectiveness gap” in migration policy-making (Pastore, 2010). The partial exception is some earlier research looking at the employment disadvantage of refugees and/or family migrants and emphasizing the role of labour market restrictions and integration policies that vary by entry category (Bloch, 2007; Bevelander and Pendakur, 2009).

In order to fill part of the knowledge gap surrounding the experience of different categories of migrants in the EU labour markets, an ‘ad hoc’ module (AHM) of the EU Labour Force Survey (EU-LFS) on the situation of migrant workers and their descendants was carried out in 2008. This supplementary module included a bespoke set of questions on the reasons for migration, date of acquisition of citizenship, and country of birth of both parents. The combination of these variables offers the unprecedented opportunity to classify the migrant workforce by category of entry. This paper builds on this dataset to shed new light on the diversity of labour market experiences among migrants admitted to EU countries on different grounds (employment, family, humanitarian, ancestry, study etc.). Its overarching aim is to contribute to a better understanding of how migration policies – intended here as the set of laws, rules and practices governing the admission to the country *and* access to the labour market of non-national workers – shape migrant patterns of labour market incorporation. Analysis is carried out for the EU-15 as a whole and separately for the six LAB-MIG-GOV target countries (France, Germany, Italy, Spain, Sweden and the UK).

The paper is structured as follows. Next section provides a comparative overview of migration policy trends across EU countries. In section 3, I set out the conceptual links between migration policies and migrant labour market outcomes. This conceptual framework highlights the role of selectivity mechanisms operating in points-based systems and demand-driven labour admissions and of different employment rights and entitlements granted to migrants admitted via different immigration routes. Section 4 describes the methodological approach used for the construction of nine categories approximating immigration status on arrival, its strengths and limitations, and illustrates the composition of the migrant workforce by entry category resulting from this procedure. The core empirical part of the paper uses standard logistic regression analyses to compare the patterns of labour market incorporation by category of entry after controlling for the other demographic and skill attributes typically associated with migrant labour market performance. My results show that immigration status on arrival affects migrant participation in the labour market and their access to jobs commensurate to their skills. In particular, family migrants and refugees retain a significant disadvantage, with these gaps becoming particularly evident at the intersection of immigration status and gender. A final discussion reflects on the main results and highlights some lessons for migration policy-making that can be drawn from the findings.

2 Migration policy trends in the EU: an overview

Migration policy-making in Europe remains largely – and perhaps increasingly – dominated by national policy frameworks. More specifically, while some convergence has been achieved in coordinating measures to prevent irregular migration and in designing a common EU asylum policy, EU countries have been reluctant to give up their national sovereignty in the governance of labour migration. National policy approaches in this field have taken mostly divergent pathways throughout the 1990s and until the end of the 2000s (Pastore, 2014).

France, Germany and Sweden consolidated a restrictive and selective approach in the admissions of non-EEA nationals via labour-related channels (tab. 1). In contrast, the UK abandoned the restrictive labour migration approach of post-1973 continental Europe by taking an explicitly open stance towards labour migration in the years of the Blair's administration and admitting significant numbers of skilled workers via a work permit system (the predecessor of the current 5-tier Points-based system). The greater openness of the UK to labour mobility was then confirmed by the decision not to restrict employment of A8 nationals upon the 2004 EU Enlargement – Sweden also took this stance⁴. A further feature of the UK system – in common with France – has been its popularity as a European destination for international students⁵. Despite formally restrictive labour admission avenues, Italy and Spain progressively developed a de-facto open policy approach to labour migration by regularising the status of large numbers of irregular migrants (Finotelli, 2012; Salis, 2012), most of whom had overstayed temporary visas and had been working in the irregular economy (e.g. Reyneri, 2003).

Significant differences are also apparent in the restrictions (or lack of) used by EU countries to regulate access to the labour market and occupational mobility of non-EU nationals. The wider formal recruitment channels for labour migrants to enter the UK have been paralleled by restrictions in the occupational mobility of work-permit holders (who are typically tied to their employer or to the sector of employment). These restrictions are generally absent or less binding in other EU destinations. In countries where many non-EU migrants were admitted via family (e.g. France), asylum (Sweden) and ancestry-based (Germany) channels, these categories were generally granted unrestricted access to the labour market, potentially playing a substantial role as functional equivalents to labour migration (Pastore, 2014). In contrast, student access to the labour market is time-limited virtually everywhere in Europe.

Table 1 Salient characteristics of labour migration policies in the 2000s

Country	Labour market access of EU-accession country nationals ^(a)	Employment-related admissions	Labour market access of non-economic migrants	Integration policies
France	Restricted for A8 migrants; weaker restrictions for A2 migrants	Limited number of admissions, weak skill selectivity (but shortage occupation list introduced in 2007); unrestricted occupational mobility	Students allowed to work part-time, unrestricted for other categories	Pre-entry language test for family migrants. Attendance certificate of language course for unlimited leave to remain. Recognition of qualification allowed but extremely limited openness to foreign qualifications
Germany	Restricted for A8 migrants (lifted restrictions for highly skilled in 2007); restricted for A2 migrants	Limited admissions of highly skilled workers; restricted occupational mobility for work-permit holders	Unrestricted as a general rule (time-limited restrictions for "tolerated refugees" until 2008); encouraged ancestry-based admissions (large numbers of ethnic Germans)	Pre-entry language test for family migrants. Compulsory language course for benefit recipients applying for permanent residence. Recognition of qualification allowed but extremely difficult (low rate of recognition), changes in 2011
Italy	Admissions tapped through quotas for A8 migrants between 2004 and 2006; restrictions for A2 immigrants until 2011	Limited legal admissions, no skill selectivity, preferential quotas for some nationalities; extensive regularization procedures; unrestricted occupational mobility	Mostly unrestricted, but access of asylum-seekers restricted for an initial period of 6 months; international students only allowed part-time employment; preferential route for ancestry-based admission quotas (but low numbers)	Language test for unlimited leave to remain. Recognition of qualification allowed but extremely difficult (low rate of recognition)
Spain	Restricted for A8 migrants; restricted access for A2 migrants between 2008 and 2009	No explicit skill selectivity; extensive regularization procedures; restricted occupational and geographical mobility before the first renewal of stay permits	Time-limited restrictions for international students (but low numbers); 6 months waiting period for asylum seekers; unrestricted for other categories; preferential route for ancestry-based admission quotas	Voluntary participation in state-funded language courses for new arrivals. Language test for applicants for regularization. Recognition of qualification allowed but extremely difficult (low rate of recognition)

Country	Labour market access of EU-accession country nationals ^(a)	Employment-related admissions	Labour market access of non-economic migrants	Integration policies
Sweden	Unrestricted	Limited number of admissions; no skill selectivity (but change with 2008 labour migration law); restricted occupational mobility for the first two years	Time-limited restrictions for international students; unrestricted for other categories; preferential access for those who have lived in another Nordic country	Compulsory attendance of language course for asylum seekers (voluntary for other migrants). Recognition of qualification difficult, often delegated to the market
UK	Unrestricted for A8 migrants; restricted for A2 migrants (agriculture, hospitality and self-employment)	Extensive recruitment of highly skilled workers, restricted occupational mobility for work-permit holders	Restricted for asylum seekers before recognition of refugee status; international students only allowed part-time employment; unrestricted for family members and ancestry-based admissions (low numbers within Tier 5)	Pre-entry language test for family migrants and migrants entering via the point-based system. Language test for unlimited leave to remain. Recognition of qualification comparatively easy for nationals of Commonwealth countries

Notes: (a) A8 countries (joined the EU on 1st May 2004): Czech Republic, Estonia, Latvia, Lithuania, Hungary, Poland, Slovakia and Slovenia. A2 countries (joined the EU on 1st January 2007): Bulgaria and Romania
 Source: table compiled by Ester Salis based on LAB-MIG-GOV country reports.

While synthesizing the wide realm of integration policies across EU countries is beyond the scope of this paper, the last column of table 1 points to significant differences – e.g. in the use of pre-entry language tests for some categories of new arrivals and in the provision of post-entry language courses – but also to some similarity, particularly in the limited provision for the recognition of qualifications obtained overseas (the UK is a partial exception as far as Commonwealth migrants are concerned).

3 Migration policies and immigrant incorporation in the labour market: conceptual underpinning

The potential impact of migration policies on the economic outcomes of the migrant workforce is multifaceted. First, by establishing the number and/or individual and professional attributes of labour migrants admitted to the country, migration policies influence the size and characteristics of the migrant workforce selecting those workers who are supposedly most in demand in the host economy. The selection of new arrivals on the basis of human capital or skills (e.g. educational titles and knowledge of host country language) is explicit in points-based systems (e.g. in the UK) but some degree of selectivity is also implicit in quota systems and schemes used to recruit lesser skilled workers in specific jobs (e.g. care workers) or economic sectors (e.g. agriculture). Selection mechanisms are also in place when preference in filling job vacancies is accorded on the basis of nationality, such as the preferential treatment of EU workers within the EU labour market, or when bilateral agreements are in place with countries of origin. Although not driven by an economic rationale, the admission of migrants via ‘non-economic’ immigration channels (mainly dependants, refugees and students) also contributes to shaping the labour force because these categories are generally entitled to work⁶. The recent introduction of pre-entry conditions such as language tests for family migrants is another selection mechanism that supposedly enhances opportunities for economic and social inclusion (Bonjour, 2014).

The second major way in which migration policies are likely to influence the demographic composition and labour outcomes of the migrant workforce is by regulating (and restricting) access to the labour market of the different categories of non-national workers who are residing in the country. Different types of residence and work permits carry different rights and entitlements establishing the duration of the permit and possibility for renewal, access to the labour market, and the possibility to apply

for permanent residence or citizenship. While highly skilled labour migration routes (e.g. points-based systems) do not normally carry significant initial restrictions and lead to a relatively smooth transition to full citizenship rights, temporary labour migration schemes typically allow migrants to work only in specific sectors (e.g. agriculture) and restrict settlement opportunities (e.g. Ruhs, 2011)⁷. Similarly, access to the labour market of other immigration categories may be, to some extent, restricted. For example, asylum seekers may not be allowed to work while their asylum applications are pending (Bloch, 2007). International students are normally allowed to work only on a part-time basis (e.g. in the UK and Germany) and granted a limited period after the completion of their studies to find a job offer entitling them to a work permit. In the context of the 2004 and 2007 EU enlargements, the transitional arrangements adopted by most EU-15 countries to restrict access to their labour market and welfare benefits of new EU-12 citizens were also an example of normative framework temporarily limiting employment opportunities on the basis of nationality. Policies regulating status changes (e.g. for people willing to shift from labour to dependent visas or vice-versa), status regularization (i.e. allowing previously irregular migrants to take up legal employment) and, at the other end of the migrant legal journey, access to citizenship (in relation to the possibility to take up public sector jobs reserved to EU or host-country nationals) may also affect migrant opportunities in the host labour market⁸.

Lastly, employment pathways of different immigrant categories are likely to be influenced by policies aimed at encouraging labour participation and improving migrants' employability. Access of foreign nationals to the whole set of "mainstream" government programmes, benefits and services addressing exclusion from the labour market is often subject to temporary restrictions. However, integration policies aiming to tackle specific factors of migrant socio-economic exclusion – e.g. language courses, vocational training courses, and support in the recognition of qualification obtained abroad – may also be in place. Non-economic migrants (especially dependants and refugees) are the main target groups of these measures⁹.

The above discussed conceptual framework and characteristics of national migration regimes feed into the empirical approach of this paper by suggesting a set of assumptions that can be placed under empirical scrutiny. The overarching hypothesis is that immigration policies are likely to shape not only the categorical composition of immigration flows, but also the labour market outcomes of the different categories of migrants. In the

short term, an advantage for economic migrants should arise from professional/skill selection mechanisms that fine-tune migrant characteristics to labour demand – as well as from the different nature and motivations of non-economic migration. Nevertheless, the impact of the immigration category may be assumed to decrease with the duration of stay because restrictions to employment and benefits are lifted and/or because of the role of employment support structures targeting immigrant exclusion. Category-specific selection processes are also likely to operate, particularly for immigration categories that are more temporary in nature¹⁰. Impact of the immigration category on entry is also expected to vary by sex because of the gender-specific nature of some immigration channels (especially family reunification). While some consistency in the differential outcomes of labour and non-economic migrants can be expected in all national contexts, potentially divergent trajectories for some categories as a result of country-specific entry criteria, conditions attached to the different immigration statuses and the different capacity of national integration policies to maximise employment opportunities of newcomers can also be anticipated.

4 Empirical estimates: the migrant workforce by category of entry

Empirical analyses included in this paper are based on statistical exploitation of the EU-LFS AHM 2008¹¹. Despite some well-known limitations in quality and coverage¹², the LFS is commonly used across the EU to produce data on migrant workers in employment and includes sample sizes for the migrant workforce large enough to conduct disaggregated analyses in most EU-15 countries (Eurostat, 2010). Given the policy-related nature of the core questions addressed in this paper, I focused my analysis on first generation migrants, namely foreign-born individuals who migrated to the country of destination when they were 15 or older – and were in the age range 15-64 at the time of the survey. The core component of the methodology consisted of the construction of nine categories approximating immigration status on arrival. Due to the lack of specific information on the type of permit/visa (or lack of) held by migrants when they entered the country, immigration categories were derived by combining information provided by the core LFS module on country of birth, nationality and year of arrival, with 2008 AHM variables on the country of birth of parents, main reason for (last) migration and the year of acquisition of citizenship. Nine immigra-

tion categories were defined: 1) ancestry-based¹³; 2) EU-15 / EFTA¹⁴ migrants; 3) Post-enlargement EU-12 migrants¹⁵; 4) labour migrants with a job found before migrating (including intra-company transfers); 5) labour migrants with no job found before migrating; 6) migrant students; 7) international protection (asylum seekers); 8) family migrants (including both marriage and family reunification); and 9) other migrants (residual category). For non-EEA nationals (categories 4 to 9) immigration categories were attributed building on the assumption that the reported reason for migration (variable MIGREAS) was a proxy for the type of entry visa. For Germany, a bespoke procedure (based on the correspondence between year of entry and year of acquisition of citizenship for migrants coming from Eastern Europe and the former Soviet Union) was used to capture ethnic Germans (*Spätaussiedler*)¹⁶.

This approach is affected by apparent limitations. Employment-related categories are defined in generic terms, with no explicit reference to country-specific visa types for the admission of labour migrants. Importantly in countries highly affected by irregular migration such as Italy and Spain¹⁷, it is not possible to identify those who entered the country without a residence authorization (including both irregular migrants and those overstaying tourist or visitor visas). More in general, the assumption that the stated motivation for migration corresponds to the actual type of permit/visa held by the migrant on arrival is a strong one, with implications for the definition of immigration categories that are hard to gauge. The identification of descendants of emigrants is also imprecise because the dataset only includes information on the country of birth of parents and not of the previous generations. In addition, analysis based on the retrospective observation of the stock of migrants living in the country at the time of the survey is affected by the potentially highly selective nature of return migration (or re-migration). Selection processes are likely to differ by immigrant category because labour and study migration is more temporary in nature than family and asylum migration, as shown by analyses of UK and Swedish official data (Statistics Sweden, 2011; Achato et al., 2013). While all these caveats have to be borne in mind in the interpretation of the results, the broad trends captured by my estimates are consistent with other data sources – such as the OECD estimated composition of the immigrant flows by category of entry (Lemaitre et al., 2007; OECD, various years) – and with prior expectations based on policy differences in the national admission systems reviewed in section 2.

The results of this procedure reveal a very different composition of the migrant workforce by category of entry across the six LAB-MIG-GOV target

countries¹⁸. Labour admissions account for only 1 in 10 (or less) of the recent migrant working-age population in countries where immigration policies predominantly focused on rights-based admissions (France, Germany and Sweden). Sweden mostly admitted non-EU migrants on family and humanitarian grounds – with the largest proportion of asylum seekers (20%) and family members (43%) in the six countries. Germany stands out for the largest share of ancestry-based migrants (17%), reflecting the still large (although decreasing) number of arrivals of Ethnic Germans from the former Soviet Union in the late 1990s and early 2000s. In the UK, the relatively high openness to skilled labour migration resulted in more non-EEA labour migrants entering the country with a job offer (i.e. via the work permit system) than without, while demand for lesser skilled workers has been met by post-enlargement EU-12 migrants (1 in 5 among recent arrivals). The UK, together with France, has also been the most popular destination for international students (14% of total admissions in both countries, twice as large as the EU-15 average). Given that in Italy and Spain there has long been virtually no provision for obtaining a labour entry visa without a job offer (Salis, 2012; Finotelli, 2012), it can be assumed that most recent migrants who entered these countries with no residence authorisation or overstaying a temporary visa were included in the category ‘employment without a job’ (41% of the migrant working age population in 2008 in both countries). However, results for the two Southern European destinations seem to understate the presence of post-enlargement EU-12 migrants – in 2008 Romanians were already amongst the largest immigrant groups in both countries. This is probably due to the aforementioned limitations of the LFS in recording recent arrivals.

A diachronic comparison of the composition by immigration category of the recent and long-established migrant workforce (figures 1.a and 1.b) seems to reveal significant changes over the last decade. With some national differences, these include: a decrease in the share of ancestry-based arrivals (particularly in Germany) and of immigration from other EU-15 countries (Spain and Sweden); a decline of humanitarian migrants (Sweden and Germany)¹⁹; a general increase in the proportion of labour-related flows (Spain and UK), particularly when the predominantly employment-oriented characterization of EU-12 migration is taken into account; and the growing importance of international student mobility (France, Germany and the UK).

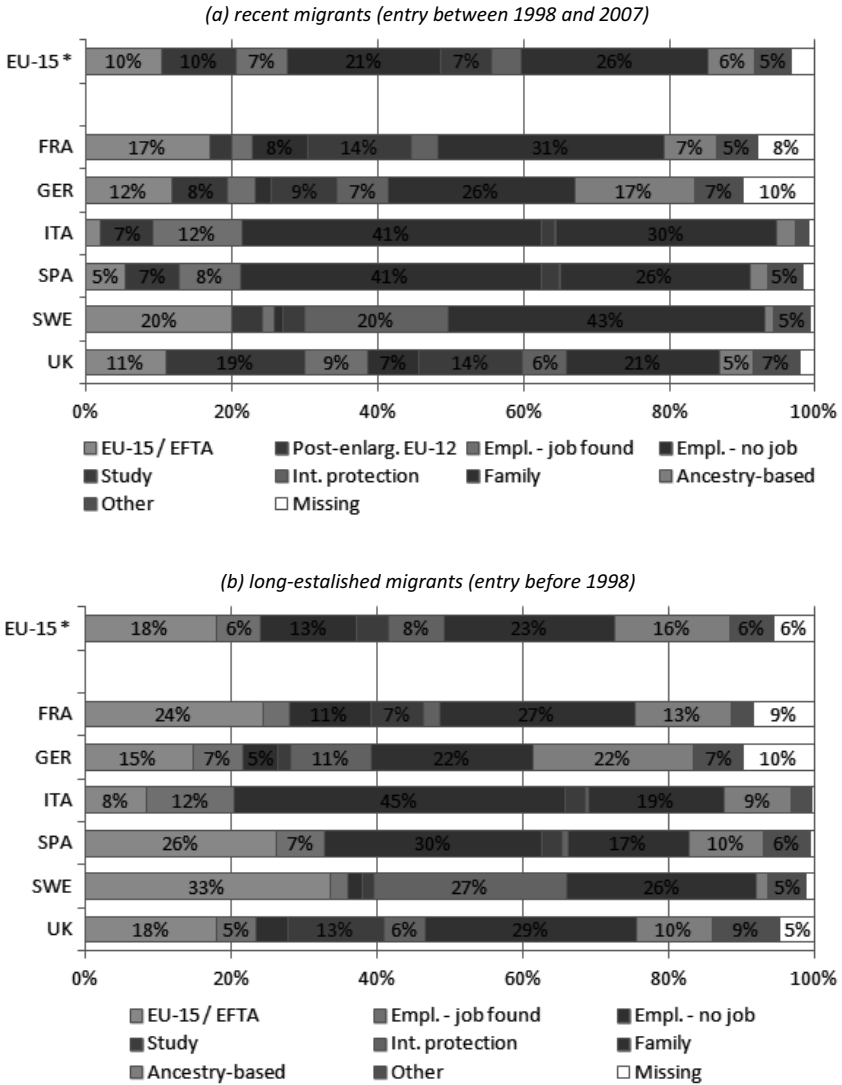


Figure 1 Composition of the migrant workforce by immigration status on entry and country of destination, recent and long-established migrants. EU-15 and selected countries, 2008 (%)

Own estimates based on the EU-LFS, 2008 Ad-hoc module.

5 Regression analyses

Standard binomial logistic regressions were used to 'isolate' the impact of the immigration category on entry after controlling for the demographic and social attributes (age, sex, education, duration of stay, relation to the head of the household, language skills) that are typically identified as the main determinants of migrant labour market outcomes. Estimates of the differences between categories of entrants and the domestic labour force²⁰ were produced for: i) the probability of being economically active; ii) the probability of being unemployed (for those who are active); and iii) the probability of being overqualified for the current job (for those who are employed and have medium or high qualifications).

All model specifications were statistically significant in terms of labour market participation, unemployment and over qualification are statistically significant in terms of both variance of the data explained by the model and contribution of the main predictor of interest and other control variables. However, the immigration category contributes to a lower part of the log likelihood accounted for by the model than some other covariates typically associated with labour market outcomes such as education, age and sex. The models describing the determinants of unemployment and over qualification capture a smaller portion of the variability than those on the determinants of labour market participation.

Overall results provide support for the assumption that, *ceteris paribus*, immigration category on entry plays a role in shaping migrant employment opportunities and outcomes, with statistically significant cross-category variations found for all three labour market indicators – see Table 2. Unsurprisingly the effect of the immigration category on the probabilities of being active and unemployed appears to be stronger upon or soon after arrival (Model 2). Amongst recent arrivals, those who entered with a job offer are by far the most likely to be active in the labour market. They are also the only category less likely than the domestic workforce to be unemployed. Labour migrants without a job on entry and post-Enlargement EU-12 migrants have levels of economic activity and unemployment not different from the domestic labour force. In contrast, all other categories are less likely to participate in the labour market than the domestic working age population and have higher probabilities of being unemployed, with students, asylum seekers and family members showing the lowest levels of participation and asylum seekers by far the highest risk of joblessness. The immigrant gap is even higher in terms of probability of being employed in a job matching educational qualifications, with all categories of medium-

and highly-educated migrants (except EU-15 workers) more likely than the domestic workforce to be overqualified for their current job. Labour migrants entering without a job offer, asylum seekers and post-enlargement EU-12 migrants experience the largest gaps, while comparatively lower levels of over qualification are found for those with a job before migrating.

Table 2 Logistic regressions for the probability of being economically active, unemployed and overqualified. EU-15, alternative model specifications

	Model 1		Model 2		Model 3		Model 4		Model 5		Model 6	
	All migrants		Duration of stay <= 5 yrs		Duration of stay 6-10 yrs		Duration of stay > 10 yrs		Male, dur. of stay <= 10 yrs		Female, dur. of stay <= 10 yrs	
<i>Probability of being economically active^(a)</i>												
Immigration category ^(b)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EU-15 / EFTA	1.030		0.520	**	0.558	**	0.770	**	0.568	**	0.497	**
Post-enlarg. EU-12	2.424	**	1.023						2.938	**	0.700	**
Empl. - job found	1.955	**	4.507	**	1.377	*	0.837		1.979	**	2.275	**
Empl. - no job	2.452	**	1.760	**	1.668	**	1.476	**	1.719	**	1.588	**
Study	0.468	**	0.124	**	0.432	**	0.661	**	0.127	**	0.286	**
Int. protection	0.452	**	0.100	**	0.241	**	0.472	**	0.191	**	0.142	**
Family	0.578	**	0.254	**	0.372	**	0.461	**	0.838		0.266	**
Ancestry-based	1.169	**	0.450	**	0.870		0.926		0.885		0.536	**
Other	0.982		0.477	**	0.502	**	0.880		0.531	**	0.465	**
N	603,153		555,106		553,499		576,312		278,738		293,760	
Cox & Snell R ²	0.218		0.220		0.220		0.219		0.222		0.195	
Nagelkerke R ²	0.314		0.318		0.317		0.316		0.346		0.269	
<i>Probability of being unemployed^(d)</i>												
Immigration category ^(d)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EU-15 / EFTA	0.892		1.411	**	1.252		0.911		1.458	*	1.114	
Post-enlarg. EU-12	0.626	**	0.920						0.717		1.042	
Empl. - job found	0.859		0.652	*	1.010		1.312		0.981		0.869	
Empl. - no job	1.090		1.102		1.407	**	1.194	*	1.726	**	1.089	
Study	1.211		1.511	*	1.956	**	1.828	**	1.970	**	1.132	
Int. protection	2.033	**	6.729	**	3.393	**	2.365	**	4.011	**	2.910	**
Family	1.616	**	2.776	**	2.422	**	1.825	**	2.315	**	2.263	**
Ancestry-based	1.330	**	2.301	**	1.944	**	1.363	**	2.445	**	1.694	**
Other	1.850	**	2.128	**	2.346	**	2.175	**	1.406		2.795	**
N	428,176		400,743		399,749		416,730		219,044		183,162	
Cox & Snell R ²	0.029		0.028		0.028		0.027		0.030		0.031	
Nagelkerke R ²	0.073		0.080		0.080		0.076		0.078		0.074	

	Model 1		Model 2		Model 3		Model 4		Model 5		Model 6	
	All migrants		Duration of stay <= 5 yrs		Duration of stay 6-10 yrs		Duration of stay > 10 yrs		Male, dur. of stay <= 10 yrs		Female, dur. of stay <= 10 yrs	
	<i>Probability of being overqualified^(e)</i>											
Immigration category ^(f)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EU-15 / EFTA	0.797	*	0.850		0.716		1.083		0.609	**	1.055	
Post-enlarg. EU-12	4.573	**	5.641	**					5.481	**	6.190	**
Empl. - job found	1.897	**	1.827	**	3.171	**	2.170	**	1.830	**	3.449	**
Empl. - no job	4.614	**	7.421	**	6.113	**	4.657	**	4.040	**	12.0-	**
											48	
Study	1.448	**	2.717	**	1.695	**	1.230		2.254	**	1.915	**
Int. protection	3.127	**	6.419	**	7.051	**	2.768	**	6.914	**	7.001	**
Family	3.273	**	4.846	**	4.799	**	3.053	**	4.495	**	4.983	**
Ancestry-based	2.202	**	2.985	**	3.241	**	2.241	**	3.055	**	3.145	**
Other	2.059	**	1.813	**	3.735	**	2.103	**	3.106	**	2.538	**
N	277,134		256,060		255,101		265,776		136,147		125,050	
Cox & Snell R ²	0.063		0.054		0.052		0.046		0.057		0.069	
Nagelkerke R ²	0.114		0.100		0.098		0.087		0.108		0.123	
<i>Covariates^(g)</i>	<i>Sex, age, education, relation to head of household, language, duration of stay</i>											

Legend: ** statistically significant at 99% confidence level; * statistically significant at 95% confidence level.

Notes: (a) Dependent variable: working status (0=inactive, 1=active). (b) Reference category: domestic working age population (native-born + foreign-born who migrated when younger than 15). (c) Dependent variable: employment status (0=employed, 1=unemployed). (d) Reference category: domestic labour force (native-born + foreign-born who migrated when younger than 15). (e) Dependent variable: overqualified (0=no, 1=yes).

Overqualification was defined by comparing education (only for those with medium and high educational levels) with the occupational level (Low = ISCO 9, Medium = ISCO 4-8, High = ISCO 1-3). (f) Reference category: domestic employment (native-born + foreign-born who migrated when younger than 15). (g) Age (15-24, 25-39, 40-54, 55-64); education (Low = ISCED 0-2, Medium = ISCED 3-4, High = ISCED 5-6); relationship to head of the household (head of household, spouse or partner, child or ascendant, other); language (no need to improve language skills to get a job; need to improve language skills to get a job); duration of stay (native-born, 1-4 years, 5-9 years, 10-19 years, 20 years or more).

Source: Own estimates based on the EU-LFS, 2008 Ad-hoc module.

As duration of stay increases (models 3 and 4), partial convergence of employment outcomes to those of the domestic workforce is observed. This implies that after 10 years or more differences across immigration categories are also greatly reduced: on the one hand, labour migrants lose all or part of their advantage in participation and employment levels; on the other, the participation and employment gap significantly declines amongst all non-economic categories, particularly humanitarian migrants. However, even in the long term those who entered via asylum, family reunification and – perhaps surprisingly – study routes retain some gap in their access to employment. The assimilation hypothesis – that migrant employment outcomes become more similar to those of the domestic workforce as their duration of stay increases – finds some em-

pirical support also in terms of access to qualified jobs, but large gaps remain even after 10+ years of residence for most categories, especially labour migrants who entered without a job offer. Students are the main exception, being the only non-EEA migrant group not experiencing higher risk of getting a job below their qualification if they stay for 10 or more years. A singularity is also that there is little or no change in the differentials between native and migrant probabilities of being overqualified over the first 5-10 years.

Analyses disaggregated by sex (Models 5 and 6) show some significant gender differences. In terms of activity levels, a gender gap is mostly visible for two categories: post-enlargement EU-12 male migrants outperform labour participation rates of their domestic counterpart (and of all other categories of male migrants), which is not the case for post-enlargement EU-12 migrant women; similarly, the levels of exclusion from the labour market of migrant spouses are significantly higher only amongst women, while migrant men are not less likely than the domestic working age population to look for a job if they enter the country via the family reunification route. Comparisons by sex of the probability of being unemployed display less marked differences across categories, with migrant men generally facing higher risks of unemployment than women compared to the native labour force for all immigration categories. Perhaps the most striking gender difference is observed in the levels of over qualifications of labour migrants, with female migrant workers (particularly if entering without a job offer) experiencing a much larger gap in accessing qualified jobs matching their educational level than male labour migrants. This result may be ascribable – at least partly – to the vast increase in the employment of migrant women (many of whom educated Eastern Europeans) in low skilled jobs in the household and care sector (Cangiano, 2014). In contrast, similarly high levels of disadvantage amongst men and women are observed for non-economic entry categories.

Some methodological caveats in the interpretation of these findings should be considered in relation to possible selection effects operating differently for the various immigration categories. The immigrant gap in the probability of being active might vary by category because of genuine differences in the propensity to participate in the labour market and not only because of access conditions dictated by the immigration status. This does not apply to the probabilities of being unemployed and overqualified, because only people who are, respectively, willing to work or currently employed are considered in the analysis. Employment levels might how-

ever be affected by the type of jobs that different categories of migrants do, e.g. migrants who enter the country with a job offer are likely to be over-represented in highly skilled jobs that tend to be more secure and less exposed to the risk of unemployment. Category-selective impact of return migration (e.g. temporary migrant workers and students more likely to leave than family migrants) and the changing composition by country of origin of immigrant flows over time (e.g. the rise in East-Asian student migration) can also affect the comparison of labour market outcomes by duration of stay (Models 2, 3 and 4).

The general definition of entry categories used in this paper does not allow for separate analysis of the short-term effects of country-specific admission criteria and restrictions attached to non-EEA immigration statuses before migrants are granted permanent residency. However, national-level analyses can provide some clues on the differential capacity of European migration regimes to enhance labour market inclusion of different categories of migrants in the long term. To this end, regression models shown in table 3 only included migrants who spent at least five years in the host country²¹.

Table 3 Country-level logistic regressions for the probability of being economically active, unemployed and overqualified (duration of stay > 5 yrs)

	France		Germany		Italy		Spain		Sweden		UK	
	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
	<i>Probability of being economically active^(a)</i>											
Immigration category ^(b)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EEA	1.126		0.816	*	0.577	*	0.519	**	0.286	**	0.720	*
Empl. - job found	1.210		0.830		1.848	**	1.391				2.090	*
Empl. - no job					2.639	**	2.029	**			0.745	
Study	0.516	**									0.488	**
Int. protection			0.410	**					0.300	**	0.172	**
Family	0.432	**	0.391	**	0.709	**	0.875		0.289	**	0.184	**
Ancestry-based	0.572	**	1.223	*	0.639	*	1.272				0.420	**
Other	0.910		0.672	**	0.853		1.225		0.237	**	0.405	**
N	37,948		26,412		105,303		66,348		45,373		62,027	
Cox & Snell R ²	0.296		0.188		0.289		0.220		0.199		0.167	
Nagelkerke R ²	0.420		0.284		0.395		0.317		0.314		0.248	

	France		Germany		Italy		Spain		Sweden		UK	
	<i>Probability of being unemployed^(c)</i>											
Immigration category ^(d)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EEA	1.061		0.577	**	0.281		1.534		1.460		1.086	
Empl. - job found	1.931	**	1.549	**	0.530		1.232				1.449	
Empl. - no job					1.026		1.564	**			1.352	
Study	1.910	*									1.186	
Int. protection			1.776	**					3.427	**	2.264	**
Family	2.888	**	1.046		1.857	**	1.909	**	2.846	**	2.327	**
Ancestry-based	2.248	**	0.927		2.153	*	2.364	**			1.319	
Other	1.470		1.887	**	1.095		2.342	**	3.138	*	1.242	
N	26,122		20,268		64,199		45,984		39,051		45,954	
Cox & Snell R ²	0.036		0.026		0.040		0.043		0.061		0.039	
Nagelkerke R ²	0.088		0.064		0.104		0.087		0.169		0.116	
	<i>Probability of being overqualified^(e)</i>											
Immigration category ^(f)	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.	Exp(B)	Sig.
EEA	0.996		0.8834- 402283- 826486		0.576		1.041		1.189		0.913	
Empl. - job found	2.834	**	2.805	**	12.194	**	4.492	**			0.423	**
Empl. - no job					11.128	**	6.080	**			1.488	
Study	2.516	**									1.297	
Int. protection			3.297	**					3.848	**	2.232	**
Family	2.711	**	3.340	**	6.374	**	5.538	**	3.602	**	2.358	**
Ancestry-based	1.418		3.717	**	0.859		1.815				0.614	
Other	4.855	**	1.566	**	2.714	**	2.435	**	1.910		1.763	**
N	17,841		16,128		36,361		23,385		30,668		33,849	
Cox & Snell R ²	0.049		0.050		0.068		0.112		0.035		0.038	
Nagelkerke R ²	0.089		0.097		0.158		0.168		0.080		0.065	
<i>Covariates^(g)</i>	<i>Sex, age, education, relation to head of household, language</i>											

Legend: ** statistically significant at 99% confidence level; * statistically significant at 95% confidence level. Categories with small numerosity in national samples are not shown.

Notes: (a) Dependent variable: working status (0=inactive, 1=active). (b) Reference category: domestic working age population (native-born + foreign-born who migrated when younger than 15). (c) Dependent variable: employment status (0 = employed, 1 = unemployed). (d) Reference category: domestic labour force (native-born + foreign-born who migrated when younger than 15). (e) Dependent variable: overqualified (0 = no, 1 = yes). Overqualification was defined by comparing education (only for those with medium and high educational levels) with the occupational level (Low = ISCO 9, Medium = ISCO 4-8, High = ISCO 1-3). (f) Reference category: domestic employment (native-born + foreign-born who migrated when younger than 15). (g) Age (15-24, 25-39, 40-54, 55-64); education (Low = ISCED 0-2, Medium = ISCED 3-4, High = ISCED 5-6); relationship to head of the household (head of household, spouse or partner, child or ascendant, other); language (no need to improve language skills to get a job; need to improve language skills to get a job).

Source: Own estimates based on the EU-LFS, 2008 Ad-hoc module.

Differences across national contexts seem to reflect – or at least relate to – the aforementioned characteristics of national migration regimes. In countries with a de-facto open approach to labour migration (i.e. the UK, Italy and Spain) established labour migrants have generally higher levels of participation in the labour market than the domestic workforce and no or small differences in the levels of unemployment. In contrast, amongst the countries that have been more restrictive in admitting migrant workers, after five or more years of stay labour migrants experience either a large participation gap (Sweden) or a significant employment gap (Germany and France). As regards non-economic migrants, outcomes substantially vary by country of destination. In Italy and Spain family migrants display small participation gaps with the domestic workforce, while this is not the case in the UK and Sweden where settled family migrants – as well as refugees – are considerably less likely to be active and more likely to be unemployed. Estimates for Germany suggest that the probability to be in employment for ancestry-based migrants is not significantly different from the domestic labour force.

At national level, the skill underutilization of labour migrants is particularly high in Italy and Spain. In these two countries where migrant recruitment predominantly occurred at the bottom of the skill ladder, labour migrants have either same (Spain) or lower (Italy) probability to be in a job with skill levels congruent to their educational qualifications than non-economic categories. In contrast, the UK is the only country where migrant workers who enter with a job offer are less likely to be overqualified after 5 or more years in the country – and even those entering without a job offer are not significantly different from the domestic workforce. This seems to suggest that the demand-driven work permit system has been relatively effective in meeting the needs for high skilled labour of the UK economy and in providing migrants with relatively good prospects to capitalize on their skills. For all immigration systems prioritising admissions on non-economic grounds, high levels of over qualification are observed: in these countries spouses, asylum seekers (in Sweden and Germany) and ancestry-based migrants (in Germany) who joined the labour market have mostly been employed in jobs below their educational qualifications. This seems to provide some support for the argument of a functional role of non-economic admissions in meeting labour demand at the bottom of the skill ladder and in mitigating demand for lesser skilled work-related admissions from outside the EU (Pastore, 2014). It is also interesting to note the difference between the two countries which have recently admitted the largest numbers of international students (the UK

and France), as migrants who entered the UK for study reason and stayed on after the completion of their studies had greater chances to find a job matching their qualifications and to 'assimilate' to the domestic workforce.

6 Conclusions

Despite some methodological caveats, analyses carried out in this paper provide some robust findings that fill, at least in part, significant evidence gaps in migration research and policy literature. Migrants entering via labour migration channels have systematically higher employment rates than the domestic workforce, while humanitarian and family migrants are, even after controlling for other socio-demographic attributes, the least likely to be employed in all selected countries. The disadvantage of so-called non-economic categories becomes particularly evident at the intersection of immigration status and gender (i.e. for female spouses and asylum seekers). While it is difficult to disentangle the economic, institutional and motivational factors underpinning these employment gaps, evidence that immigration category on entry is associated with differential employment outcomes appears to be robust. Across national admission systems, this results in a negative correlation between openness to labour migration and the gap between domestic and migrant employment rates – i.e. the immigrant employment gap is lower in the UK, Spain and Italy than in Sweden, France and Germany where the proportion of non-economic immigration categories in the migrant workforce is higher.

This is not to say, however, that 'non-economic' migrants are not involved in the labour market once they settle in the country of destination. On the contrary, the majority of them look for and find a job. Indeed an interesting finding of this paper is that the gap between labour and other immigration categories is significantly reduced (or even disappear) for the long-established migrant workforce as a result of higher participation levels of 'non-economic' migrants as well as of lower participation levels of non-EEA labour migrants. While it was not possible to ascertain the role of differential return and re-migration patterns by category of entry, there seems to be strong enough evidence that employment opportunities of family and humanitarian migrants are also likely to improve as they acquire language skills and other competences that are valued in the destination country's labour market.

In terms of 'quality' of migrant employment, evidence presented in this paper reiterates results showing a significant waste of immigrant skills in

most European economies (e.g. Eurostat, 2011: 51). While all categories of migrants are more likely than the domestic workforce to be overqualified for their job, differences exist in the extent of this outcome. The loss of 'skill potential' relative to the domestic labour force is particularly high for refugees, post-enlargement EU-12 and non-economic immigration categories. This seems to suggest that in countries with limited provision for lesser-skilled labour migration, the employment of family members, refugees and ancestry-based migrants (in Germany) below their qualifications has been functional to meeting the needs for low skilled labour in the economy. However, in several EU countries the loss of skill potential is also significant amongst labour migrants. This is particularly the case in Italy and Spain, where recurrent regularizations of migrants working in lesser skilled occupations implied that medium or highly skilled labour migrants experience even higher chances to be overqualified for their job than non-economic categories. Even more strikingly, female labour migrants (particularly those without a job offer) seem to experience far greater levels of over qualification than their male counterpart. This gender gap is, again, particularly large in Italy and Spain – where non-EU female workers are often employed as domestic helpers and care workers – but also significant in Germany and France.

These findings suggest some key lessons for migration policy-making. The first is that EU labour migration debates are often too narrowly framed – if not misplaced – in portraying a divide between 'economic migrants' that help meet labour shortages and rights-based immigration categories that are referred to as a burden on the welfare system. Our results suggest that a more holistic approach to the governance of labour migration should not only take into account the short-term needs of the labour market (and select those workers who are supposedly most suited to fulfil these needs), but also the long-term trends of migrant labour supply which are characterised by increased economic participation of migrants who entered outside labour migration channels.

The second, related, aspect is that there is still considerable scope for policy interventions enhancing the economic integration of so-called 'non-economic migrants'. Especially in the short run, the labour market disadvantage of these categories is large, not only in terms of high levels of inactivity – which might be partly voluntary and reflect different motivational factors and migratory plans of these categories – but also in terms of higher unemployment rates. This is particularly the case in countries such as Sweden and France where admissions on family and humanitarian grounds make up a large share of immigrant flows and where much em-

phasis is placed on migrant integration as a desired outcome of migration policies. Measures to address the initial labour market exclusion and allow migrants who want to work to take full advantage of their potential from (or soon after) arrival should focus on both the removal of institutional barriers (restrictions in the access to employment support services and non-recognition of educational titles) and on enhancing employability (e.g. language and training courses).

Finally, the association between the channels of entry and the levels of over qualification calls for a deeper reflection on – and further analysis of – the links between immigrant selection criteria and the matching of migrant skills to labour demand in the host economy. The limited provision for recognition of foreign qualifications and low recognition rates in most EU countries (see tab. 1) clearly testifies to a lack of prioritisation of this issue in migration policies. The current emphasis on formal qualifications as selection criteria that maximise migrant prospects of socio-economic integration may also prove inadequate if skill-selected migrants admitted via Points-Based Systems end up working in low skilled jobs (e.g. Altorjai 2013; Reitz 2013). Innovative solutions are also needed to address the gender dimension of over qualification, for example targeting the needs of women who migrate to follow their partners and experience a disruption in their career path. Yet over qualification has diverse root causes and its non-transient nature implies that further action such as labour market reforms are also needed to enhance migrant prospects of upward socio-economic mobility over the long run. A longitudinal extension of this study could provide further insights into the relationship between selective migration policies and the labour market trajectories of skilled migrants.

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Notes

1. Less measurable factors may also underpin these gaps, for example discriminatory practices excluding migrants from the most qualifying jobs; and the migrant 'temporary mindset' which makes them more likely to accept low-skilled or low-paid jobs unappealing to local workers because of the comparative gains relative to the conditions prevailing in the migrant country of origin (e.g. Anderson and Ruhs, 2010).
2. For example, some comparative work (Kogan, 2007; Wanner, 2011) analysed the determinants of immigrant economic integration with a multi-level framework including dummy variables and other aggregate indicators representing the migration policy context in different countries, obtaining varying results on the influence of these variables.
3. European censuses and major national household surveys do not record immigration status on entry or the type of permit migrants hold at the time of the data collection. Similarly, administrative data sources (e.g. population registers, social security records) do not normally keep track of the legal situation of migrants as they progress through the system – and also provide limited information on employment. However, register data from Sweden and other Scandinavian countries do include information on the category of entry (Bevelander and Pendakur, 2009).
4. In 2004, transitional restrictions of the right to work for citizens of the eight Central and Eastern European accession countries (Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovak Republic, and Slovenia) were adopted by all EU-15 member states except Ireland, Sweden and the UK. Cypriot and Maltese nationals were not subjected to any transitional arrangements. In 2007, initial unrestricted access to the labour market for Bulgarian and Romanian nationals was only granted by Finland and Sweden.
5. Between 2004 and 2010 the UK (16%), Austria (15%) and France (12%) were the EU countries featuring the largest share of international students in tertiary enrolment (OECD, 2013: 34). However, in the UK recent policy restrictions in the student admission and post-study route have produced a marked decrease in immigration for study reason (ONS, 2014: fig. 3.11).
6. However, the question of whether immigration policies actually succeed in letting in only migrants with desired skills and attributes (and whose migratory plans match allocated visas) deserves some critical consideration. Research has shown that some migrants apply for certain types of visa depending on the expectation they have of entering the country (Anderson, 2010). For example, if potential migrants perceive that their prospects of being granted a work permit have decreased as a result of more restrictive criteria, they may decide to apply for a self-employment or a student visa to access the destination country's labour market. In Anderson's words (2010: 308), «immigration controls are not a neutral framework facilitating the sorting of individuals by intentions and identities into particular categories, rather they *produce status*». At the macro-level, these strategies to circumvent the system might lead to increasing irregular migration or to categorical substitution effects – i.e. the shift of immigration flows from one legal avenue to another (e.g. from labour to family migration) (Czaika and de Haas, 2013).
7. Renewal of work permits is typically conditional on the availability of a job, with job-search periods of variable duration after the end of the previous employment relationship.

8. For example, studies looking at the role of regularization and naturalization in enhancing migrant employment opportunities confirmed the positive impact of these status changes (e.g. Carfagna et al., 2008; OECD, 2010).
9. For example, in Sweden Bevelander and Pendakur (2009) find significant differences in employment trajectories of government assisted refugees, landed refugees and family reunion immigrants and conclude that these differences result from category-specific integration policies.
10. This affects particularly international students: while most of them leave after completing their studies, those who stay are likely to be 'positively' selected because of the requirement to find a job in order to shift to a work permit.
11. A more comprehensive account of the approach used in the construction of the nine immigration categories can be found in Cangiano (2012).
12. Estimates of the migrant population and workforce provided by the LFS are likely to be conservative, although their level of inaccuracy is hard to predict. In particular, irregular migrants are likely to escape the survey. For a detailed account of the limitations of the LFS in producing migration data see Martí and Ródenas (2007).
13. This category includes individuals born abroad but citizens of the country of destination from birth; and migrants whose father and/or mother were born in the country of destination.
14. Nationals of the countries of the European Free trade Association (Iceland, Liechtenstein, Norway and Switzerland) enjoy unrestricted labour mobility in the European Union.
15. For the sake of simplicity, different transitional arrangements for the mobility of new citizens adopted by former member states were not considered. Also, it was not possible to differentiate between EU-10 and EU2 accessions as post 2007 migrants are not sufficiently captured in the dataset.
16. The variable 'Age of acquisition of citizenship' included in the AHM 2008 is in 5-year age groups, so it was not possible to identify the exact year of acquisition of citizenship. It is also possible that ethnic Germans were somewhat underestimated because my procedure does not capture those whose parents were already German nationals— see Cangiano (2012) for further details.
17. Regularization data for Italy and Spain suggest that in these countries very significant proportions of regular migrants acquired a residence permit (mostly for employment purposes) when they were already living and working irregularly (e.g. Cangiano and Strozza, 2008).
18. It is worthwhile noting that some immigration categories are clearly gender-unbalanced: at EU level, 60% of recent labour migrants and asylum seekers are men; while 70% (or more in some destination countries) of family migrants are women (see Cangiano 2012).
19. This is the combined effect of declining asylum applications (Germany) and the drop in recognition rates until the mid-2000s (Toshkov and De Haan, 2013).
20. The term 'domestic' working age population is used from here on to include the native-born population and foreign-born individuals who migrated when younger than 15.
21. Comparison across countries is however hindered by different labour market structures. For example, it is no coincidence that immigrant gaps in activity and unemployment are larger in countries where native workers have higher activity rates and lower unemployment levels. This is also true for the probability of being overqualified – the gap is larger in countries with occupational structures skewed towards lower skilled jobs.

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Government Responses to Foreign Worker Demand During Economic Crises

The Cases of Britain and France 2008-2013

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Abstract

With the aim of developing existing theories of labour immigration policy, I focus on the question of persisting demand for foreign workers during economic downturns and how governments attempt to respond to this. The argument is that, apart from turning a blind eye to irregular labour migration, there are two ways in which governments respond to demand for migrant labour during economic hard times. First, despite a rhetorical emphasis on restricting labour immigration, they continue to facilitate the entry of highly skilled labour migrants and the employment of migrants who enter a country with a non-economic motive. Second, they encourage resident workers to take up jobs in occupations where migrant workers are concentrated. This hypothesis is borne out in my exploration of French and British government responses to foreign labour demand between 2008 and 2013.

Keywords: labour immigration, labour supply, policy, Britain, France, economic downturn

1 Introduction

The focus of the existing literature on immigration policy differs depending on whether the context is good or bad economic times. In the good times, scholars analyse government facilitation of labour immigration and the role of stakeholders, such as employers and trade unions, in the policy process (Krings, 2009; Menz, 2005). In the bad times, the emphasis is overwhelmingly on government attempts to control and restrict immigration,

particularly labour immigration (Cornelius et al., 1994; Guiraudon and Joppke 2001). The dominant image presented in the latter analyses is of a gap or disjuncture between public opinion and immigration policies and above all between policy and levels of immigration (Freeman 1995; Hollifield 2004; Joppke, 1998). The argument is that the preference among the public at large, and at times also of governments, for low levels of immigration is often not reflected in immigration policy or in actual levels of immigration due to economic and political liberal constraints on government action. For example, Freeman has posited that organised interests, for example employer organisations, are better able to influence policy than the public and generally push for liberal labour immigration policies (1995). Similarly, the gap between labour immigration policy and levels of immigration can be explained by the fact that employers, arguably especially during economic downturns, have a large appetite for relatively cheap and compliant migrant labour. Consequently, even if labour immigration policies are restrictive, the strong demand for and supply of foreign labour results in irregular labour immigration. Furthermore, some scholars emphasise that governments are cognisant of the economic benefits of irregular migration and consequently tolerate it (Castles, 2004).

This article focuses more closely on the question of persisting demand for foreign workers during economic downturns and how governments attempt to respond to this. The argument is that, apart from turning a blind eye to irregular labour migration, there are two ways in which governments respond to migrant labour demand during economic slumps. First, they continue to facilitate the entry and employment of certain categories of migrants who are considered to be important labour market actors and whose entry they deem will be the least likely to upset public opinion – and consequently their chances of re-election. I refer in particular to facilitating the entry of highly skilled labour immigrants, with skills ostensibly not available on the domestic market and whose education is perceived to facilitate their integration into society (Ruhs and Martin, 2008). But I also refer to the continuing provision of labour market access to “indirect labour migrants,” those who enter a country with a non-economic motive, for example family reunification or study. As the government does not permit the latter to enter in order to work, it is, I argue, less likely to be blamed for irresponsibly facilitating labour immigration in the context of an economic slump. Second, they try to substitute migrant workers¹ with resident unemployed workers, by encouraging and obliging the latter to engage in training and take up employment in occupations in which migrant workers are significantly employed. It should be noted that

the opposing pressures of employer demand for foreign workers and public opposition to immigration are relatively constant fixtures in the minds of immigration policy makers. However, the subjective pressure felt by policymakers to restrict labour immigration is much stronger during periods of economic downturn and rising unemployment, as can be seen by changes in government policy on immigration across advanced democracies during these periods (OECD, 2009).

Important theorising on immigration policy in Europe in the context of inclement economic conditions was done between the 1970s and 1990s. However, the politico-economic climate has changed considerably since the late 1990s. Governments now work firmly within a paradigm of global economic integration. Human capital competitiveness has become a key policy aim in most European states and the facilitation of highly skilled migrant workers has been viewed, since the late 1990s, as a requirement of open competitive economies (Devitt, 2010). In this sense, a complete closure to labour immigration, as occurred in the early 1970s in much of North West Europe, is, I contend, highly unlikely today. Analyses of government reactions to the current economic crisis, in terms of immigration, have so far been largely produced by international organisations such as the OECD and IOM. The focus of these analyses has been on changes to immigration policy rather than on the question of labour supply during economic crises. This paper thus aims to fill gaps in the literature in two main ways; it approaches immigration policy in economic hard times in a novel way by focusing on the question of government responses to on-going labour demand; and it focuses on the current international economic crisis, which has occurred in a markedly different politico-economic context than that of the 1970s.

In particular, I explore how governments in two large European states, Britain and France, have attempted to respond to foreign labour demand between 2008 and 2013, based on analysis of official documents and interviews with policymakers and stakeholders in each state (see appendix). The paper begins with a brief description of labour immigration policy in the two countries in the period prior to the international financial crisis, between the late 1990s and 2007, in order to assist readers in gauging the level of policy change in the following period. Then, the paper compares government policy across three dimensions: highly skilled labour immigration; indirect labour immigration; and substituting migrant workers with resident workers. I then provide an explanation for differences in policy choice in the two states and finish with some concluding remarks on how this analysis contributes to immigration policy theory.

2 Labour immigration policies late 1990s-2007

In the late 1990s, the discourse on labour immigration began to change in Western Europe in the context of concerns regarding demographic decline and labour shortages. British Labour governments decisively broke with previous discourse, emphasising the contribution that economic migration can make to the economy. The new policy approach which developed was based around the concept of “managed migration” (Home Office, 2002). Managed migration involves strong controls on unauthorised and non-economic migration, in particular asylum-seeking, and the facilitation of economic migration.

Between 2000 and 2004, the work permit system was eased and new schemes were introduced for high and low skilled workers. The number of work permits and first permissions issued between 1995 and 2005 more than tripled (Somerville, 2007). New Labour also decided not to impose restrictions on the free movement of workers from the new EU member states on their accession on the 1st of May 2004. The strategy was to fill low skilled labour needs with workers from the new member states and restrict non-EU migration to the highly skilled. The numbers were far greater than expected and public opinion polls generally showed an increasingly negative stance on immigration, with a majority preferring a reduction in inflows (Boswell, 2009).

In response to growing public concerns about immigration, Labour’s third term saw a major consultation on how to manage economic migration, the outcome of which was the Points Based System (PBS), which was rolled out from 2008. It consolidated existing work and study routes into five main categories or “tiers”. Prospective immigrants gain entry if they reach the required threshold of points, which are based on various criteria, depending on the particular route through which they are applying. For example, in the new Tier 2 general, prospective immigrants gain points for a “graduate” job offer with a licensed “sponsor” (employer), prospective earnings, English language ability and maintenance funds. Furthermore, an independent advisory body on immigration policy was created in June 2007: the Migration Advisory Committee (MAC).

Since the late 1990s, the French debate on labour immigration has been fed by concerns over the integration of resident migrant workers and descendants of immigrants, as well as the objective of ensuring economic competitiveness in a globalised world. The cross-party aim of gearing labour immigration towards the highly skilled – and, particularly among the centre right, reducing levels of family reunification – has become progres-

sively stabilised. The basic consensus on labour immigration has been hidden behind highly charged political conflict on other aspects of the immigration regime, for example, rights to family reunification and the treatment of irregular migrants. Immigration had become a major political issue in the early 1980s with the growth of the *Front National* (FN) anti-immigration party (Bertossi 2008).

The first elements of a selective immigration policy were introduced in 1998 by the centre-left government of Prime Minister Lionel Jospin, including a special immigration status for scientists and scholars (Weil, 2006). Stimulated by concerns about economic competitiveness, the policy of facilitating economic immigration was further developed by Minister of the Interior, Nicolas Sarkozy, in the following centre-right government. Sarkozy maintained that at that time legal immigration consisted only of *immigration subie*, family and asylum inflows, which France was forced to accept, as opposed to *immigration choisie*, which was one selected to respond to the economy's needs and integration capacity (Lochak, 2006). The 24th July 2006 Immigration and Integration Law (*loi relative à l'immigration et à l'intégration*) aimed to facilitate the access to the labour market of skilled foreign workers and students. For example, the law introduced shortage occupation lists and a "Skills and Talents" permit for highly skilled people. On election to the French presidency in May 2007, Sarkozy ordered the Minister for the Interior to aim to make economic immigration 50% of total migrant inflows.

Between 2006 and 2008, economic migration to France rose from a total of 11,678 to 21,352. This growth was, however, unlikely to have been the result of the 2006 law. The decree establishing the shortage occupation list for non-EU workers was only published in 2007 and all of the new permits and categories represent small numbers. Four years after its introduction, only 317 foreign nationals were issued with Skills and Talents permits in 2010.

3 British and French labour supply policies 2008-2013

The international financial crisis of 2008 led to the re-introduction of restrictions on labour immigration in most European states. As noted above, attempts to place stronger controls on labour immigration pre-dated this crisis in Britain and can be seen as a reaction to the size of migratory inflows following the Eastern enlargement of 2004. However, attempts to *reduce* levels of labour immigration came following the crisis in both states. At the same time, in order to ensure that employers could continue

to access skills, highly skilled labour immigration was protected. Furthermore, both states continued to allow the labour market participation of family migrants, though student labour market participation was constrained in Britain. Finally, the policy of attempting to substitute immigrant labour with resident labour was more developed in the British case.

3.1 Highly skilled labour immigration

British immigration policy shifted sharply from expansive to restrictive between 2009 and 2010. However, while governments have attempted to reduce numbers of non-EU labour immigrants by, for example, raising the skill threshold and imposing a numerical cap on certain inflows, significant numbers of highly skilled immigrants were excluded from the new restrictions. Indeed, we can see a disjuncture between rhetoric and policy reminiscent of that identified in scholarship on government responses to irregular labour immigration (Guiraudon and Joppke, 2001). Despite strong political commitments to reducing immigration, there is clearly a simultaneous economic interest, in this case voiced by multi-national companies and other actors, in keeping the door ajar.

In France, the *volte-face* on labour immigration occurred later than in Britain, two years later in fact. This was partly because the French economy began to feel the heat of the crisis later than in Britain (in 2009). However, levels of labour immigration, already low compared to Britain, did not fall sharply in France. Thus it appears that despite the crisis, government officials saw fit to continue to permit skilled migrants to enter the country.

3.1.1 Britain

With the onset of the economic crisis in 2008, the approach to labour immigration in Britain changed definitively. In that year, the House of Lords Select Committee on Economic Affairs published a report on the “Economic Impact of Immigration”, which questioned the positive consensus regarding the benefits of immigration. It maintained that there was a risk that too much migration would reduce incentives for training, and was contributing to the increase in housing prices, among other problems (Devitt, 2010). The Labour government began to make qualitative adjustments to the PBS in order to reduce inflows, for example strengthening the Resident Labour Market Test (RLMT)² in 2009 by lengthening the required advertising period to four weeks.

Mirroring Thatcher’s Conservative party victory in the 1979 elections (Schain, 2006), the Conservative party gained votes in the 2010 general

election due to its tough line on immigration. As Prime Minister David Cameron stated in March 2013:

As I've long argued, under the previous government immigration was far too high and the system was badly out of control. Net migration needs to come down radically from hundreds of thousands a year, to just tens of thousands, and as we bring net migration down so we must also make sure that Britain continues to benefit from it (Cameron, 2013).

Since in government, the Conservative-Liberal Democrat coalition have made some qualitative changes to the largest Tier of the PBS, Tier 2 (for highly skilled migrant workers with a job offer in the UK), in order to reduce the number of applicants; raising the job skill, language and the minimum pay thresholds. Furthermore, the list of occupations on the shortage occupation list was also shortened in September 2011.

Most controversially, in line with the Conservative electoral commitment to reduce net migration to the “tens of thousands, not hundreds of thousands”, the government introduced an annual cap on some categories of non-EEA³ economic migrants. Since April 2011, the annual cap for Tier 2 has been set at 20,700. The government also decided to limit Tier 1, the entry-channel which does not require a job offer in the UK prior to entry, to investors, entrepreneurs, and people of “exceptional talent” (for whom there are a maximum of 1,000 permits).

There has, however, been a general acceptance of the Conservative restrictions on immigration among the main parties and stakeholders, who display little appetite to oppose the general thrust of policy. While the Labour and Liberal Democrat parties did not support the idea of a cap on labour inflows, qualitative restrictions appear to be less controversial. Only a few employer associations, which are affected by the restrictions, in particular the ethnic catering industry, have been vociferously critical of current policy (Interview BIS1, BHA). The trade unions have also tempered their pro-migrant perspective and have begun to put more emphasis on the need to upskill local workers (Interviews HO, TUC).

This, I argue, can be partly explained by the fact that the changes introduced by the Conservatives are far less dramatic than might appear from the party rhetoric. Indeed, Intra-Company Transfers (ICTs) – workers moving within multi-national companies (MNCs) – are not subject to the cap, despite the MAC recommendation to the contrary, due to the MNC employer lobby and diplomatic pressure from the Indian and Japanese governments (Interview MAC). This is significant as the ICT route is the most

used route of the PBS system (about 70% of Tier 2 applications) and it is the only one, which does not necessitate an assessment of whether there are suitable candidates in the resident labour force (MAC 2009). The Tier 2 limit also does not apply to other categories including those who apply from within the UK (in-country applicants) or to those who will earn over £150,000 per annum. Furthermore, the cap on Tier 1 and Tier 2 routes introduced in April 2011 was substantially undersubscribed. This is partly accounted for by the fact that the cap was set at a relatively high level; indeed, the number of permits available under Tier 2 for 2011-12 was greater than the number of certificates issued under Tier 2 (excluding ICTs) in 2009 (Migration Observatory, 2011).

Moreover, while the Labour government made the RLMT more onerous in 2009, there is no public certification of the process or pre-admission checks and post-admission checks on employers are infrequent. In 2009, the MAC asserted that there may be a case for introducing certification; however, governments have not done so due to the cost it would entail and a political antipathy towards red tape and regulation (Interview MAC).

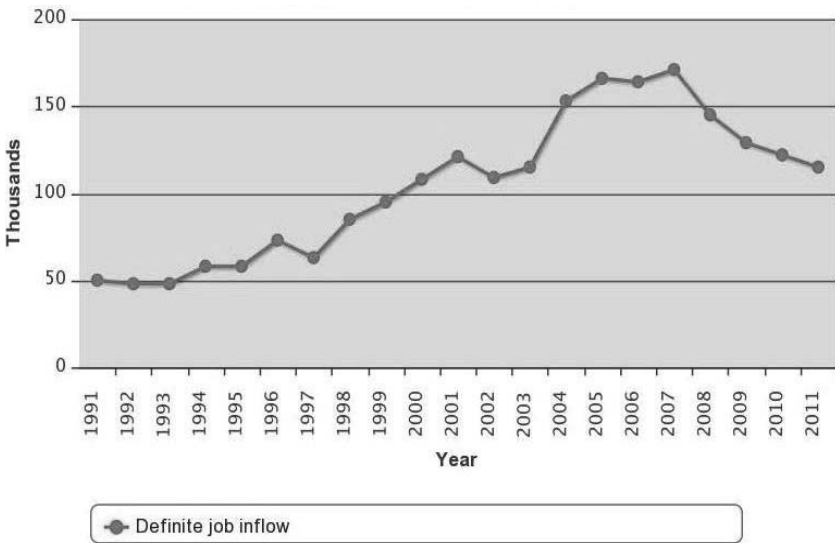


Figure 1 Work-related migration to the UK 1991-2011

Source: Migration Observatory Oxford 2014

Indeed, the number of people entering the UK with a definite job fell from 145,000 in 2008 to 115,000 in 2011 (see Figure 1), demonstrating a persisting demand for migrant workers in Britain despite the crisis.⁴

3.1.2 France

The international financial crisis did not have an immediate effect on immigration policy in France. Indeed, France was the first EU member state to transpose the European Directive 2009/50/EC of the 25th of May 2009 on conditions of entry and residence of third-country nationals for the purposes of highly qualified employment with the law of the 16th of June 2011. Furthermore, the French Office for Immigration and Integration (OFII) “Labour Immigration” website was created in April 2010 in order to make the French labour immigration procedures more accessible to employers and prospective migrants.

However, the approach of the government to labour immigration changed markedly from 2011. Referring to the economic crisis and rise in unemployment from 7.7% at the end of 2007 to nearly 10%, in late May 2011, Claude Géant, Minister for the Interior, declared that total immigration inflows were to be reduced by 20,000 and labour immigration by 50%. He maintained that “contrary to myth, France does not need skilled foreign workers. Last year, 730 foreign masons entered the territory; yet when Pôle Emploi (public employment agency) advertises 20 mason jobs, 100 jobseekers in France apply” (Le nouvel observateur 2013). A decree of the 31st of May 2011 from the Ministers of Interior and Labour aimed to reduce the numbers of permits issued (*d. l. o.-m. Ministère de l’Intérieur, des collectivités territoriales et de l’immigration et Ministère du travail, de l’emploi et de la santé, 2011*). The prefects were instructed to be particularly restrictive regarding those with job offers, which were not particularly skilled, as well as students applying for a temporary residence card in order to search for a job or changing status from student to labour migrant. Furthermore, the shortage occupation list for non-EEA nationals was also reduced from 30 occupations, defined on a regional basis, to 14 occupations for the entire country, by means of a decree from the Interior Ministry (11th of August 2011).

However, the numbers of first work permits issued to non-EU nationals did not fall sharply between 2010 and 2012. They decreased just slightly from 18,759 in 2010 to an estimated 17,354 in 2012 (see Table 1) (Ministère de l’Intérieur 2013).

Table 1 First work-related residence permits issued to non-EU nationals 2006-2012 (in thousands)

2006	2007	2008	2009	2010	2011	2012
12,126	12,154	21,792	20,607	18,759	18,303	17,354 (estimate)

Source: Ministère de l'Intérieur 2013 p. 23

This suggests that the hardening of the RLMT criteria did not have a huge effect on inflows. It may be explained by the fact that there were political rather than economic motives behind the new restrictions imposed on labour immigration and officials were consequently perhaps not under pressure to implement the more restrictive policy in practice. Indeed, the rhetoric was undoubtedly an attempt to siphon some of Marine Le Pen's electorate; opinion polls showed Marine Le Pen (FN) as a serious contender for the 2012 Presidential elections, with a few polls even suggesting that she could win the first round of the election (The Economist, 2012).

This return of a restrictive approach to labour immigration – at least on a rhetorical and policy level – has been tempered during the Presidency of Francois Hollande. On the 6th of May 2012, the Socialist candidate Hollande won the presidential elections runoff with a vote of 51.63% to Sarkozy's 48.37%. A parliamentary debate on immigration took place in April 2013 based on a Ministry of the Interior report on economic and student immigration (Ministère de l'Intérieur, 2013). This report notes the low level of highly skilled migration to France, queries whether the RLMT might be made less onerous and discusses the benefits of student immigration; suggesting that the Socialist government has an expansive approach to economic immigration. An immigration bill to be published in 2014 will introduce pluri-annual permits and is also expected to ease the RLMT (Interview OLI2).

3.2 Indirect labour immigration

Indirect labour immigration, in particular family and student migrants' access to the labour market has been more protected in France than in Britain during the current economic downturn. While the British coalition government examined the question of whether family migrants should be permitted to access the British labour market in the context of the economic downturn, French governments have not – at least transparently – questioned family migrants' participation in the labour market. Furthermore, the Sarkozy government's attempt to restrict student access to the labour market was unsuccessful, unlike that of the British government.

3.2.1 *France*

Family migration is the object of contradictory policy signals in France. On the one hand, centre-right governments have been intent on reducing levels of family migration, on the basis that it is not beneficial to the French economy or society, and on the other, it is recognised by most stakeholders that family migrants represent an important source of labour for French firms. Indeed, regarding the latter, non-labour migrant entries into the labour market more than doubled since 1998, representing over fifty per cent of new active foreigners in 2003 (Bertossi, 2008).

There have been numerous attempts to stem family migration over the past decade, for example a 2007 law introduced a minimum level of French language to be tested when the candidate applies for a visa to France, as well as the demonstration that s/he endorses the main French constitutional principles. Sarkozy recognised that family migrants were often employed in the French labour market, however, he argued that the problem was that they were mainly low-skilled and were thus adding to the low-skilled labour force.

Notably, however, while repeated attempts have been made by centre-right governments to reduce levels of family immigration, the idea of restricting family migrants' access to the labour market has not been examined by government, as it has been in the UK. Indeed, the importance of non-economic migrants in terms of labour market activity in France was noted by the Centre for Strategic Analysis in the Prime Minister's office in 2006, when it maintained that "we cannot restrict the concept of economic immigration to 'direct entries'" (CAS, 2006 p. 65).

French legislation and decrees have facilitated non-EU students' access to the labour market since the 1990s. Student immigration has represented the second largest inflow to France after family immigration since 2006: nearly a third of inflows in 2010. Between 2009 and 2010, the growth rate was particularly high (+12%).

Bertossi maintains that the policy of training foreign elites in order to exert influence on their countries of origin, dominant in the 1990s, has shifted to a new policy, which aims to retain foreign students in order to ensure the competitiveness of the French economy (2008). The law of 2006 established that students can work during their studies with an annual limit of 964 hours (60% of a full-time job, compared to 50% previously). Also, students graduating from a French university with a Masters degree can reside in France for six months in order to search for a job. The number of authorisations to work issued to students increased significantly since

the late 1990s, in tandem with the general rise in numbers of foreign students (from 11,000 to 40,000 between 1998 and 2003).

As discussed above, a decree of the 31st of May 2011 from the Ministers of Interior and Labour instructed prefects to be particularly restrictive towards students applying for jobs on graduation. However, due to protests from students and universities (the “Collectif du 31 mai” movement), a new decree of the 12th of January eased these restrictions, making reference to the need to ensure the attractiveness of the higher education system and competitiveness of French firms (d. l. o.-m. Ministère de l’Intérieur, des collectivités territoriales et de l’immigration, Ministère du travail, de l’emploi et de la santé et Ministère de l’Enseignement Supérieur et de la Recherche 2012). On entering government, the Socialist government annulled the decree. The strength of the opposition to this decree is due to the fact that the majority of people issued with work permits in France are already resident in France with student visas. Indeed, the Hollande government is keen to increase the levels of student migration to France as it is seen as a source of skilled workers (Interview Medef).

3.2.2 *Britain*

In Britain, labour immigrants’ dependants can participate in the labour market provided that the PBS immigrant has been granted more than 12 months’ permission to stay in the UK. Allowing the employment of PBS migrants’ spouses/partners provides employers with additional labour and reduces demand for an opening of Tier 3 of the PBS for temporary low-skilled workers (which has remained closed since the establishment of the PBS). In the second quarter of 2008, 27.3 per cent of the total immigrant stock had entered the UK in the previous five years to join a family or spouse; a larger percentage than those entering for work or study or any other reason. Over half of spouses/ partners were employed (59%) and 81 per cent of spouses/partners were employed in unskilled occupations (MAC, 2009).

In the context of rising concern regarding unemployment and displacement of resident workers with migrant workers, the MAC was asked to assess the economic contribution made by the dependants of PBS migrants and their role in the labour market in February 2009. In its report in August of that year, the MAC maintained that there was no reason to conclude that greater restrictions on working rights for dependants would lead to improved outcomes, either for UK workers or for the UK economy (MAC, 2009).

Student migration has constituted the largest category of migration to

the UK during the current economic downturn. However, a smaller proportion of students participate in the labour market than family migrants. According to LFS data⁵, only about 1 in 4 foreign-born students (both EU and non-EU nationals) have paid employment (UKBA, 2010).

Concerns over foreign students using the student migration system as an entry-way into the labour market prompted the Labour government to restrict the work rights of students on courses below degree level and raise the minimum level of English language study permitted under Tier 4 (the PBS channel for students). However, the 2009 LFS suggests that there is significant working in breach. For those studying below degree level, 53 per cent reported working more than 21 hours per week (UKBA 2010).

In March 2011, following a public consultation on the student immigration system, the Government announced that the Tier 1 Post-study Work visa category would close from April 2012. The Post-study Work visa enabled foreign students to remain in the UK for up to two years after obtaining a UK degree. Since April 2012 international graduates are only able to remain in the UK by switching into Tier 2 of the points-based system or if they have a strong business proposition (under new provisions for student entrepreneurs).

3.3 Substituting labour immigrants with resident workers

The two labour immigration systems aim to ensure that foreign workers are only allowed to enter to take up a job when no suitable resident workers are available for the job. However, over the past five years, British governments have arguably placed more emphasis – at least at the discursive level – on finding alternatives for migrant workers than French governments have. The British MAC has an articulated system for investigating whether employers in different sectors are attempting to find alternatives to bringing in foreign workers and governments have introduced training programmes and schemes which aim to enable/induce resident workers to take up jobs in sectors which employ significant numbers of migrant workers.

3.3.1 Britain

Faced with growing complaints about the impact of Eastern European migration on domestic workers, in June 2007, Prime Minister Gordon Brown (Labour) famously called for “British workers for British jobs” in a speech to the GMB Union (Summers, 2009). While the Conservative leader David Cameron accused Brown of pandering to protectionist fears in 2007-9, the Conservatives in government have emphasised the need to ensure

that resident workers can compete with migrants, with a particular focus on the British low-skilled. In July 2011, referring to new data that more than half of new jobs in the past year had been taken by foreigners, the Work and Pensions Secretary, Iain Duncan Smith, asserted that the welfare-to-work schemes would fail if immigration were not more strictly controlled. Duncan Smith urged employers to give British workers a “fair chance” and not to automatically revert to foreign workers (Sparrow, 2011).

The main substitute for labour immigration discussed in the UK is the training and “upskilling” of the resident labour force in order to provide employers with the skills they need and reduce demand for foreign skills. Other alternatives, in particular raising wages and improving working conditions, are less emphasised in the public debate. The focus on skills can be explained by growing concern about human capital competitiveness in the UK over the past thirty years. The relative unattractiveness of the alternative of improving employment conditions is due to the fear that doing so would reduce profits, employment growth and competitiveness; an unappealing prospect for the economic liberals who dominate the UK political arena.

Since the late 1990s, within the broad consensus on the need to improve human capital competitiveness lay a growing focus on competing for the “best and brightest” migrant workers. However, as numbers of migrant workers grew over the past decade, concern about a reduction in opportunities for the resident labour force led to a political emphasis on producing the skills needed by employers within the UK rather than importing them. This emphasis developed as the approach to immigration shifted from positive to negative from around 2007-8 (Devitt, 2010). The restrictions imposed on recruiting non-EEA foreign workers from 2010 have given further impulse to efforts to produce skills domestically.

The MAC was charged with ascertaining when it was “sensible” to open up to migrant workers by the Labour government in late 2007. In producing the shortage occupation list the MAC approach to the concept of “sensible” is to consider each occupation with reference to whether employers have explored feasible alternatives to employing immigrants such as training resident workers, raising wages and working conditions or changing production processes. It is underlined that not all options are feasible at all times and that the economic and regulatory environment can make certain responses to labour shortages difficult; for example public budgets can limit wage increases. However, despite this in-depth labour market analysis, the “sensible” test is of limited weight; only a handful of occupations are kept off the list if they have already been deemed skilled

and in shortage (Interview MAC). This points, once again, to a disjuncture between discourse – in this case on finding alternatives to labour immigration – and policy outputs in Britain.

In the context of a deepening economic recession, the rise of the extreme right British National Party and upcoming national elections, in late 2008, Gordon Brown announced that when an occupation was put on the shortage occupation list, the government would review whether and how more training of resident workers could reduce the need for migrants (Martin and Ruhs, 2010). However, by November 2009 coordination between immigration and education and training policy had still not occurred, as evidenced in the *Skills for growth: the National skills strategy* report; “Critically, we need to join up their (the MAC’s) work with the remit we are giving the UK Commission to turn intelligence about shortages into national training priorities in the skills system.” (BIS 2009, p.11).

Indeed, according to an official from the Department for Business, Innovation and Skills, it was not until 2010 that a coordinated policy on immigration and skills development was formalised and that this was in large part a reaction to the limits to be imposed on immigration and a concern with ensuring that employers would be able to source skills in a context of a more restrictive immigration policy; “The skills strategy 2010 was the first time we set out formally what we would do; because of the introduction of the cap and the need for some kind of response in that space” (Interview BIS1). Indeed, new qualifications had been designed for ethnic catering at the end of Labour’s period in office in order to attempt to fill chef skill shortages – which accounted for a large proportion of inflows through the shortage occupation route – with resident workers. However, this policy was further strengthened when all but the most highly qualified chefs were taken off the shortage list in 2011.

The Coalition government has also put a lot of rhetorical emphasis on labour competition from Eastern Europe and part of the policy response to this is to stimulate the resident unemployed to take up available jobs, thus reducing intra-EU mobility. The Department for Work and Pensions (DWP) is trying to engage employers to recruit “UK workers” and disabuse the latter of misconceptions they might have about certain sectors (Interview DWP2). Indeed, the impending closure of the Seasonal Agricultural Workers Scheme on the 31st of December 2013 led the DWP to introduce a pilot scheme focusing on training unemployed UK people and persuading them to take up agricultural work (Interview DWP2). However, this policy of substituting migrant workers is still relatively small-scale and levels of

intra-departmental coordination on this issue are limited (Interview BIS2). Furthermore, employers have questioned the feasibility of the policy, arguing that unlike migrant workers, British school leavers do not have the required skills and are less reliable (Interview HO).

3.3.2 *France*

Direct labour migration to France is, as we have seen above, comparatively limited. As such, until very recently, there has been very little debate on how to reduce it. Indeed, the policy of reducing demand for migrant workers by means of upgrading and revalorising jobs refuted by domestic workers or providing domestic workers with the skills required by employers has been dormant in France since the failed attempt made by Lionel Stoléru, Secretary of State for manual labour and immigration, in the 1970s (Interview De Wenden).

The debate between the late 1990s and 2013 has rather been on how much and what type of labour immigration should be facilitated in France in order to respond to labour shortages, in the context of relatively high levels of unemployment. However, while direct labour immigration is relatively insignificant in France, it doubled between 2006 and 2008 and the centre-right government began to emphasise domestic alternatives to migrant workers in 2011 in the context of the current economic downturn. According to the decree of the 31st of May published by the Ministries of Interior and Labour, “The priority has to be given to the employment of jobseekers, of French or foreign nationality, already resident in France.” This was seen as particularly important given the recent estimate of 23% unemployment among non-European nationals resident in France. Among other controls, the prefects were instructed to examine whether it would be possible to quickly train jobseekers resident in France in an occupation for which an employer has requested a work permit for a foreign worker (d. l. o.-m. Ministère de l’Intérieur, des collectivités territoriales et de l’immigration et Ministère du travail, de l’emploi et de la santé, 2011). Furthermore, the constitution of the shortage occupation list for non-EU workers in 2011 took into account not just the relationship between job offers and job seekers in particular occupations but also whether workers could be trained in France in particular occupations. This had been less emphasised in 2008 (Interview OLI1).

There is, nonetheless, a shared understanding among stakeholders that migrant workers cannot be replaced by resident workers. Representatives of two French trade unions, CGT and CFDT maintain that the idea of substituting immigrants with resident unemployed is not taken seriously

in France as the jobs migrants do are mainly low-paid and unattractive to the resident unemployed (CGT₂, CFDT₂). Furthermore a representative from the employers' federation Medef asserted that the high levels of social protection in France reduce incentives to return to work (Medef).

4 Explaining policy choices

A recent Financial Times article entitled "Britain "open for business and closed to foreigners"" exemplifies the strength of the Conservative party's anti-immigration rhetoric (Stephens, 2013). Strong anti-immigrant discourse, along with the imposition of a cap on immigration for the first time, among other restrictive measures, certainly give the impression that Britain has returned to a heavily restrictive immigration regime. However, the reality is of course much more nuanced. Indeed, the comparison of British and French responses to foreign labour demand over the past five years leads me to conclude that both states have protected migrant inflows during the current economic crisis due to on-going (though varying) demand for migrant workers in both states. This is particularly the case of official labour migrants in Britain, especially ICTs, and both official and indirect labour migrants, in particular students, in France. This has not stopped British governments from also attempting – albeit on a small-scale – to substitute migrant workers with resident workers by means of training and persuading people to take up jobs in sectors where migrant workers concentrate. This search for alternatives to migration has been less emphasised in France.

In explaining these policy choices, I emphasise converging and diverging dominant economic and social perspectives. Due to the hegemony of liberalism and the attendant global economic integration, human capital competitiveness has come to be viewed as the lynchpin of economic growth in developed economies, which can no longer compete on the basis of cost (Crouch, 2005). As noted above, highly skilled migrant workers are viewed to be important actors in this global skills competition and most developed economies have been facilitating their entry since the late 1990s, including Britain and France. This perspective is partly fuelled by employer groups, in particular those representing multi-nationals, which lobby for access to skilled mobile workers. It is thus not surprising that, despite restrictive immigration policy rhetoric and attempts to reduce inflows of labour immigrants, the highly skilled migrant categories have been protected in both states. This is best exemplified by the fact that ICTs are

exempt from the numerical cap placed on Tier 2 migrants in 2011, despite the fact that they are the largest group of labour migrants in Britain and are already exempt from the RLMT. Equally exemplary is the fact that the Sarkozy government was unsuccessful in its attempt to restrict non-EU students from being issued with work permits on graduation due to a strong reaction from stakeholders.

There is, however, an important difference between Britain and France in terms of labour immigration; Britain receives far higher numbers every year, approximately 100,000 more than France. This can be partly explained by a more buoyant, flexible labour market and a more globally integrated economy; Britain is the second largest destination for foreign direct investment after the US. Indeed, Britain will continue to be more open to immigration than France due to light touch labour market regulation and a stronger policy focus on courting global financial investment.

The requirements of a globally integrated economy (i.e. highly skilled migrant workers) are at odds with the politics of immigration, which have become progressively contentious in both states. Since the 1980s and emergence of the FN in France, immigration has become highly politicised and due to continuing high levels of unemployment, any significant opening to labour immigration has long been off the agenda. This makes “invisible” indirect labour immigration comparatively important in France. The populist force of the FN also explains the return to restrictive labour immigration policy rhetoric in 2011, while the tension between politics and the economy accounts for the fact that, despite policy change, actual inflows of labour immigrants did not decline. Despite the decade of a positive consensus on labour immigration in Britain between the late 1990s and 2007, immigration has once again become something for everybody to point their finger at. In order to attract disgruntled voters in the general election of 2010, the Conservative party pledged to reduce *net migration* to the tens of thousands. Indeed, politics explains the disjuncture between rhetoric and policy outputs in the British case, as the main focus of the government has been to reduce long-term migration, which contributes to net migration, and consequently temporary migration – for example ICTs coming to the Britain for less than 12 months – has not been restricted to the same degree.

Finally, British attempts to reduce inflows of labour immigrants by training domestic workers in skills perceived to be in shortage is explained elsewhere as having been stimulated by a perceived over-reliance on labour immigration, concerns about the socio-economic impact of labour immigration and more a generalised preoccupation with raising skill levels

in the country (Devitt, 2010). More recent efforts to persuade the resident unemployed to take up jobs in occupations where there are significant proportions of migrant workers is coherent with the development of active labour market policy in Britain since the 1980s. British social protection has become increasingly conditional on efforts to get back to work with the aim of reducing public expenditure and taxation, increasing the labour supply and keeping wages low (Bonoli, 2008; King, 1995). The recent attempts to direct welfare recipients to “migrant jobs” is the other half of the policy of reducing labour immigration by means of immigration controls (Cameron, 2013). A similar attempt to “re-nationalise” migrant jobs occurred in France in the 1970s, however, it is generally deemed to have been a failure. This policy has not been re-activated during the current crisis due to a generalised understanding that the resident unemployed would not accept to do the low paid jobs migrants do. This can be understood within the French tradition of social protection, which is more generous than that of Britain and traditionally more passive, putting less emphasis on stimulating/obliging a return to the labour market (Clasen and Clegg, 2003).

The stronger focus on substituting migrant workers with domestic workers in Britain is also partly explained by differing levels of labour immigration in the two states. As noted above, Britain has received far higher numbers of immigrants and EU citizens from Central and Eastern Europe over recent years, which has been accompanied by to a rise in anti-immigration sentiment in the country (Boswell, 2008). Indeed, public opinion shows significantly higher levels of closure to immigration in Britain than in France, as exemplified by the 2011 Transatlantic Trends: immigration survey⁶ (Transatlantic Trends, 2012). British governments consequently have stronger incentives to at least appear to be reducing labour immigration than French governments have.

5 Conclusion

A basic premise for this article is that we can expect governments to concern themselves with attempting to ensure that employers – both public and private – have access to supplies of labour. Putting labour supply at the centre of this discussion of labour immigration policy in the context of economic downturns enabled me to bring important, hitherto unexplored aspects of labour immigration and welfare policy into the picture. Existing studies of immigration policy during bad times tend to focus on the devel-

opment of restrictive policies and on the outcomes of those policies. An important finding of previous research is that oftentimes restrictive immigration policy leads to a growth in irregular migration due to on-going employer demand for cheap, compliant labour. This paper supports the basic contention of persisting labour demand during economic downturns and focuses squarely on the role of the state in responding to that demand. It hypothesises and finds evidence for three further policy responses to continuing demand for foreign workers during economic crises; protecting highly skilled labour immigration; facilitating family and student migrants' access to the labour market; and attempts to substitute migrant workers with resident workers.

On this basis, I argue that labour immigration policy theory needs to be updated to take into account how since the late 1990s governments in advanced economies work firmly within a paradigm of global economic integration. Within this interpretive framework, the facilitation of the immigration of highly skilled workers is viewed as a requirement of open competitive economies. As such, we can expect governments to protect highly skilled worker immigration even during economic downturns. Furthermore, labour immigration policy theory needs to expand its perspective to take into account the significance of indirect labour immigration – apart from irregular immigration – in particular, the facilitation of family and student migrant participation in the economy. Finally, theory needs to encompass government attempts to reduce demand for labour immigrants by encouraging resident workers to take up jobs in occupations or sectors with high concentrations of foreign workers; that is immigration control via active labour market policy.

This paper has also uncovered some of the factors, which currently generate the liberal constraint on restrictive immigration policies identified by scholars such as Freeman (1995), Hollifield, (2004) and Joppke, (1998). As regards skilled labour immigration in Britain, employer and diplomatic lobbying in the context of governmental prioritisation of human capital competitiveness ensured that these inflows would be protected. In France, it appears that the political rhetoric around reducing labour immigration was mainly a ploy to siphon votes from the competing FN party and was not reflective of real political will to reduce the already small numbers of foreign workers entering the country each year. Non-EU students' access to the French labour market was protected by protests from universities and students, with a direct interest in retaining this incentive to study in France. Finally, the policy of substituting migrant workers with domestic workers has been constrained in France by a stakeholder

consensus that the policy is not feasible given differing employment expectations of migrants and domestic workers. The policy is still marginal in the UK and its growth has been constrained by similar doubts regarding the viability of the policy as well as by departmental coordination limitations.

Notes

1. Migrant workers refer to foreign nationals based abroad who come to a country in order to work.
2. Employers have to show that the role could not be filled from within the resident labour market.
3. The European Economic Area (EEA) provides for the free movement of goods, persons, services and capital through three of four member states of the European Free Trade Association (EFTA) and 27 of 28 member states of the European Union (EU), with Croatia provisionally applying the agreement pending its ratification by all EEA countries.
4. It is, however, important to note that a significant proportion of non-EU work-related inflows to Britain is composed of people coming to take up low-medium skilled work via the Tier 5 Youth Mobility Scheme and non-PBS work visas for domestic workers in private households, amongst other categories. Scott Blinder, 'Non-European Labour Migration to the UK', (Oxford: Migration Observatory Oxford, 2013). This differs from the French case, where the majority of non-EU work-related flows consist of medium and highly skilled individuals. Ministère De L'intérieur, 'Les Données De L'immigration Professionnelle Et Étudiante Document Préparatoire Au Débat Au Parlement', (Paris, 2013).
5. It is important to note, however, that LFS data probably undercount students, especially those living in dormitories and other communal dwellings.
6. According to the Transatlantic Trends survey, in 2011, 33% of respondents in France and 57% of respondents in the UK perceived that there were too many immigrants in their countries.

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Annex: List of referenced interviews

Organisation	Place & time of interview
Home Office (HO)	Croydon, October 2011
Migration Advisory Committee (MAC)	London, October 2011
Business Innovation and Skills Skills and migration division (BIS1)	London, October 2011
Business Innovation and Skills Labour market division (BIS2)	Phonecall, June 2013
Department for Work and Pensions (DWP)	London, April 2013
British Hospitality Association (BHA)	London, October 2011
Trade Union Congress (TUC)	London, October 2011
Office for Labour Immigration, Ministry of the Interior (OLI1)	Paris, February 2012
Office for Labour Immigration, Ministry of the Interior (OLI2)	Paris, May 2013
Medef	Paris, May 2013
Confédération générale du travail (CGT)	Paris, February 2012
	Paris, May 2013
Confédération française démocratique du travail (CFDT)	Paris, April 2012
	Paris, May 2013
Catherine de Wenden, CNRS	Paris, February 2012

Europeanization and the Negotiation of a New Labour Migration Policy in Germany

The Goodness of Fit Approach Revisited

Barbara Laubenthal

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Abstract

The article focuses on the negotiation of a new labour migration policy in Germany in the years 2011 and 2012, and on the role that actors on both the regional and the European Union levels played in encouraging the introduction of a more open labour migration framework. Up until now, research has highlighted the German use of the European level for introducing more restrictive changes in migration policy. In line with these precedents, during the negotiation of a European policy for admitting highly-skilled migrants, Germany advocated a restrictive framework. However, at the transposition of the EU directive on highly-skilled migrants in national law, the German government used the directive as an opportunity to introduce a paradigm change in labour migration policies, establishing a significantly more open labour migration policy hitherto exclusively associated with Anglo-Saxon countries. The article will analyse the preconditions for this change, assessing the value of the goodness-of-fit approach for understanding processes of Europeanization.

Keywords: Europeanization, labour migration, highly-skilled migration, European Union, federalism

1 The Europeanization of migration policies

(...) We do not see any need for EU regulation at all. This question should remain a national competence. There will be no directive on labour migration, since the *Bundesrat* will not approve (Innenminister der Länder gegen Blue Card, 2007).

With these words, the minister of the interior the federal state of Lower Saxony commented in December 2007 upon the European Commission's project to introduce an EU-wide residence title for highly-skilled migrants. However, five years later, the *Bundesrat* approved of the introduction of the so-called Blue Card, even opting for a more liberal labour migration framework than the European directive stipulated. Also, although Germany was one of the member states that took a sceptic stance towards the introduction of a common labour migration policy, the federal government used the provisions of the directive to significantly liberalize the German labour migration regime.

What happened between 2007 and 2012, and what can be learned about the dynamics and the tensions of Europeanization from this case? These are the questions that this article seeks to answer. At the same time, it aims at addressing the 'limited empirical foundation about European influences on national immigration policies' (Ette and Faist, 2007: 4). Compared to other policy fields, the field of migration policies has been rather neglected by research on Europeanization and on multi-level governance processes in the European Union. This is partly due to the fact that harmonization in the field of migration has only started comparatively late and is still weaker than in other policy fields. It is common knowledge in migration research that migration policies remain a central field of national sovereignty and an area of competence of the nation-state (Bendel, 2011a; Ette and Faist, 2007). Migration is commonly held to be a policy area 'where nation states are least likely to cede control' (Ette and Faist, 2007: 4). Thus '(...) the transfer of sovereignty from the member states to the European Union in decisions about migration and asylum, justice and order, continues to be one of the most surprising task expansions in the European project' (Bendel et al., 2011b: 9).

Still, migration policies have gradually been integrated at the EU level and since the late 1990s have been characterized by a '(...) highly dynamic legislative process' (Bendel, 2011a: 371). Migration has become a field of multi-level governance: '(...) transnational co-operation in the fields of asylum and migration has taken the characteristics of a multilevel governance regime in the sense that the relevant actors (...) can be found in Brussels, in certain national ministries and central agencies, and at the subnational level' (Guiraudon, 2000: 257). A central characteristic of the common migration policy is, however, that much policy-making in this area has overwhelmingly focused on migration control policies and on restricting migration to Europe: 'Since the treaty of Maastricht 1993 (...) the European immigration policy has basically developed emphasizing the

dissuasive/exclusionary axis of its immigration policy' (Gsir, 2013: 91). Only since the year 2000, legal forms of migration and labour migration have been addressed by European legal projects. However, whereas the harmonization of migration control policies has significantly progressed, a further integration of labour migration policies in Europe is met by the majority of member states with a reluctance to give up national steering instruments. At the same time, research points to the role of domestic factors in bringing about a common European immigration policy. National governments have used the EU in the field of migration as an arena for circumventing national constraints, benefitting from operating in international venues and thereby bypassing national constraints (Guiraudon, 2000). This 'escape to Europe' (Geddes, 2003) accounts for a significant part of harmonization in the field of migration.

At first sight, Germany seems to be an exemplary case of this escape to Europe strategy. Research on the relationship between German domestic migration policies and the EU has overwhelmingly shown the use of the European level for introducing more restrictive migration policies. 'Political actors in Germany used developments on the EU level in order to prepare the ground for a domestic policy change' (Prümm and Alscher, 2007: 77). One of the most significant policy changes, the change of the German basic law on asylum towards a significantly more restrictive framework in 1993, was made possible by a partial transfer of competence to the EU. 'This shifting of the asylum and refugee policy was a tactical manoeuvre by the liberal-conservative government in order to be able to overcome the existing domestic asylum and refugee policy (...). Any consequent change to the liberal asylum law in Germany was now no longer a failure of German politics or the breaking of a taboo, but a consequence of decisions at the European level' (Hellmann et al., 2005: 152). The German *Länder*, too, have used the emerging multi-level governance field on migration, although their objective was to prevent an increasing harmonization. In the context of the ratification of the Maastricht treaty, the German federal states' co-determination rights in European matters were increased by the introduction of the so-called Europe article in the German basic law. Thus endowed with more political power and fearing growing financial burdens following from the admission of asylum-seekers, they repeatedly blocked attempts at introducing qualified majority voting, thus effectively preventing a further European integration (Hellmann et al., 2005: 153).

However, the case of the negotiation of a new labour migration policy in Germany goes contrary to these findings. The transposition of the "EU Directive 2009/50 on the conditions of entry and residence of third-country

nationals for highly-qualified employment”, the so-called Blue Card directive, entailing a further harmonization of migration policies, was not only welcomed by federal and regional actors but led to an even more far-reaching liberalization of German labour migration law than the directive stipulates. As the OECD stated in its 2013 report on labour migration, ‘recent reforms have put Germany among the countries with the fewest restrictions on labour migration for highly skilled occupations’ (OECD, 2013: 15). In order to understand this surprising development, this article analyses the development of the public discourse on labour migration and the positions of key actors between 2010 and 2012, the timeframe in which the EU Blue Card directive was supposed to be transposed, and the role that the Blue Card directive played in this process.

In order to conceptualize the preconditions for the transposition of the Blue Card directive into German law, the article uses the goodness of fit approach. In initial research on the influence of the EU on the domestic level, goodness of fit, a concept that will be outlined in more detail below, was one of the most influential approaches for understanding the effects of European policies on domestic settings. However, after its initial success, the approach was increasingly criticized, some voices even arguing that it should be discarded. Contrary to these positions, I argue that the concept of goodness of fit still provides a valuable framework for understanding the interaction of the EU and the national context in bringing about policy change, and appreciating the preconditions for the Europeanization of migration policies. Taking into account both institutional and actor-related factors and analytically linking the national and the European level, this approach is able to capture the complexity of policy change in a multi-level system.

In order to analyse the preconditions for the use of EU policies as a motor for change at the domestic level, this article proceeds in three steps. After outlining the main characteristics of the goodness of fit approach and the criticism that it has raised, it describes the development of a common labour migration policy at the EU level. Then, by analysing positions of key actors and the evolving discourse on labour migration in the German context, the article argues that a trend towards a convergence of policy aims between the EU and the German domestic context in the field of labour migration took place. While up until now a “good fit” between the EU and the domestic context has been held to prevent major policy changes, in my analysis I intend to show that in the German case it was exactly the establishment of a state of goodness of fit that led to a paradigm change in German labour migration policy.

The analysis is based on a mix of qualitative methods: (1) Expert interviews with the confederation of German employer associations (*Bundesvereinigung Deutscher Arbeitgeber* (BDA)); the Federal Ministry of the Interior, Unit of Immigration Law (BMI 1, BMI 2 and BMI 3)¹; the Federal Ministry of Labour and Social Affairs, Department of labour market policy and employment of foreigners (BMAS 1); the Ministry of Labour and Social Affairs, Head of Unit of labour market policy and employment of foreigners (BMAS 2); the Ministry of the Interior of the free state of Saxony (SMI 1 and SMI 2); the Ministry of labour of the free state of Saxony (SMA); the CDU/CSU faction of the German *Bundestag* (CDU/CSU). (2) A qualitative content analysis of articles on labour migration in the national quality newspaper *Süddeutsche Zeitung* (SZ); coverage from 1 January 2010 to 31 December 2011. All articles were analysed that contained the keywords labour migration, (highly)-qualified workers (*hochqualifizierte Fachkräfte*), labour shortage (*Fachkräftemangel*). (3) A document analysis of press releases and statements of political parties, employer associations, trade unions, research institutes and expert bodies on migration.²

2 The dynamics of Europeanization: The goodness of fit approach

Europeanization has been defined as ‘the impact of (...) EU policy measures on the existing policies, political and administrative processes and structures of member states’ (Héritier, 2005: 200). The term Europeanization ‘(...) is most often associated with domestic adaptation to the pressures emanating directly or indirectly from EU membership’ (Featherstone, 2003: 7). In order to understand processes of Europeanization that take place by the transposition and implementation of EU directives, an explanatory model that has been widely used is the goodness of fit (Risse et al., 2001) hypothesis. Originally formulated by Duina (1997), the goodness of fit hypothesis holds that ‘(...) smooth adaptation to EU policies depends on the degree to which these fit existing national policies and institutions’ (Mastenbroek and Kaeding, 2006: 332). The original idea holds that the implementation of EU directives is determined by two nation-specific institutions: the organization of interest groups and policy legacies, i.e. national legal and administrative traditions: ‘Implementation has depended on the relationship between directives and the institutions it targets. When a directive has demanded major transformations in these institutions, implementation has suffered; when a directive has been consistent with or

strengthened current institutional arrangements, implementation has been successful' (Duina, 1997: 157). Thus the key idea of the concept is that the higher the degree of convergence between a directive and the national policy framework, the smoother the directive is transposed into national law. Other research on Europeanization has pointed to the importance of the similarity between EU and domestic projects and policies in order to bring about change, too. Radaelli (2003) states that one outcome of Europeanization can be 'inertia, (...) a situation of lack of change. This may (...) happen when a country finds that EU political architectures, choices, models or policies are too dissimilar domestic practice. Inertia may take the forms of (...) delays in the transposition of directives' (Radaelli, 2003: 37). However, adaptational pressure also serves as a motor for change: 'When adaptational pressure is low, because of the content of EU policy is already present in a member state, there is no need to change domestic institutions. Simply put, there is a good "fit" between national policy and the European Union. (...) At the other extreme, when the distance between EU policies and national ones is very high, member states will find it difficult to 'digest' (...) European policy' (Radaelli, 2003: 45) In other words, a 'bad fit' is the precondition for policy change. However, it also hinders the transposition of a European project on the domestic level.

Further research has gradually extended and modified the goodness of fit hypothesis. The concept has been expanded and several additional variables have been introduced. Windhoff-Héritier, et al. (2001) has stated that the capacity for change is influenced by formal veto positions (institutions) and factual veto positions and supportive coalitions (contending actors). She has conceived of the implementation of EU directives as a policy process of goal-oriented actors in a given political context that may restrict or facilitate implementation (Windhoff-Héritier, et al. 2001: 12). Radaelli (2003) draws attention to the timing and argues that in field of public policy the impact '(...) of EU public policy is contingent on whether a country is already involved in a process of reform or not' (Radaelli, 2003: 47). As additional variables, he conceptualizes modes of legitimation and supporting discourses.

Most importantly, research that has further developed the goodness of fit approach has placed a special emphasis on the role of actors. Critical accounts of the hypothesis have stressed that "fit" is not a static given, but rather depends on positions and perceptions of actors (Radaelli, 2003: 45). From a "static" conception, focusing on the specific institutional arrangements of a nation-state, the focus of the concept has been widened to

actors who perceive a goodness of fit, and/or who use adaptational pressures for promoting their policy aims (Börzel and Risse, 2003): '(...) the misfit between European and domestic processes, policies and institutions provides (...) actors with new opportunities and constraints to pursue their interests' (Börzel and Risse 2003: 58). Duina (2007), too, in a reply to criticism on his original concept by Mastenbroek and Kaeding (2006) emphasizes the role of actors and holds that key actors can push a directive despite misfit, or vice versa (Duina, 2007). He conceptualizes actors (state officials and interest groups) as the link between goodness of fit and ease of adaptation. Thus, both fit and actors matter (Duina, 2007).

Although the idea of "fit" was gradually made more complex and the concept was expanded towards a more dynamic framework taking into account various variables, some radical criticism has been formulated. Thus Mastenbroek and Kaeding (2006), referring to a number of empirical studies that contradict the goodness of fit hypothesis, have diagnosed its 'disappointing empirical results' (Mastenbroek and Kaeding, 2006: 334) and have come to the conclusion that the concept should be discarded. They suggest concentrating on the domestic context and on domestic actors' preferences or beliefs in order to explain the implementation of EU directives. However, in contrast to this view, I argue that goodness of fit is a valuable approach in order to capture the dynamics of the Europeanization of German labour migration policies between 2010 and 2012.

3 The development of a common EU labour migration policy

Much earlier than most of its member states and in particular Germany, the European Union started attempts to develop a common European labour migration policy. In 2000 which saw a Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy, a common EU labour migration policy was proposed for the first time (Gsir, 2013: 94): '(...) the Commission recalled that (...) emphasis was to be placed on the need to develop an immigration policy designed to admit migrants mainly for economic reasons, as well as to address demographic decline (...). This European discourse was different from the dominant discourse of Member States in terms of programmatic ideas and policy solutions at the national level' (Gsir, 2013: 94). In 2001, the EU, 'presenting labour immigration as a solution to demographic problems dramatically highlighted by the United Nations Population Division report'

(Gsir, 2013: 94/95) presented a directive on labour migration. However it was not accepted by the member states. In particular Germany and Austria were against it. Still, in 2005, the European Commission published a “Green paper” on an EU approach to Managing Economic Migration’, reasserting a need for labour migration:

(...) even if the Lisbon employment targets are met by 2010, overall employment levels will fall due to demographic change. Between 2010 and 2030, at current immigration flows, the decline in the EU-25’s working age population will entail a fall in the number of employed people of some 20 million. Such developments will have a huge impact on overall economic growth, the functioning of the internal market and the competitiveness of EU enterprises. (...) while immigration in itself is not a solution to demographic ageing, more sustained immigration flows could increasingly be required to meet the needs of the EU labour market and ensure Europe’s prosperity (European Commission, 2005).

Several other reports and communications on the EU level assessed the importance of labour immigration and diagnosed a need because of decreasing fertility rates and demographic change:

(...) In a context of an ageing Europe, the potential contribution of immigration to EU economic performance is significant (...). According to the latest population projections, by 2060, the working age population of the EU is projected to fall by almost 50 million even with continued net immigration similar to historical levels and by around 110 million without such immigration. Such evolutions present risks for the sustainability of pensions, health and social protection systems and require increased public spending (European Commission, 2008).

Also, the EU’s positions on immigration correlated with its Lisbon Agenda and the goal to become the world’s most competitive economy in 2010: ‘(...) this [Blue Card] legislation aims to make Europe a player on the emerging global labour market, enhancing its competitiveness and luring highly skilled workers to Europe – and away from countries like the United States and Australia’ (Collett, 2008).

In 2005, the policy plan on legal migration re-presented arguments for labour migration. However, based on the failure of a comprehensive approach, in its policy proposals the European Commission opted for a sectoral approach, proposing three different directives. In 2007 the Blue Card

directive was presented. The directive provided common rules on entry and residence for highly-qualified workers and their families. Workers who meet certain criteria (the existence of an employment offer or job contract; higher professional qualifications; compliance with a minimum salary threshold (at least 1.5 times the average of the gross annual salary of the state) may take up an employment in any EU member state (Gonzalez et al., 2013; von Weizsäcker, 2006). Although it was expected that the approval of the directive would take place rather smoothly, in reality it proved to be controversial. Especially Germany formulated doubts and stressed that first national labour potential should be exhausted (Meyer, 2010). The admission criteria and salary threshold proposed by the EC also raised controversy, and '(...) a major opponent to the level proposed by the Commission was Germany' (Meyer, 2010: 22).

4 The evolution of German labour migration policies between 2000 and 2010: small changes, small effects

While during the negotiations of the Blue Card in Brussels some changes in German labour migration policy took place, the German model still remained rather restrictive, prioritizing the national work force: 'Every university graduate with a degree that is recognised in Germany can work in Germany, if no national is available. That is the German immigration law in one sentence' (BMAS, 18.11.2011). This statement summarizes the basic principle of the German labour migration policy until the year 2010, when Germany was expected to transpose the EU Blue Card directive into national law. Despite some changes towards an opening of the labour market for highly-skilled migrants, the German labour migration law represented a demand-driven model based on a concrete job offer, and albeit with exceptions for a very narrow group of people, an overall restrictive framework with a reluctance to create permanent settlement possibilities: 'The permanent settlement permit means that if the day after you got it you become unemployed, you can work as a taxi driver. Then you can kill the person who gave it to you, and you can still stay. It is as if you meet somebody and you marry him on the same day, in a country that does not have a divorce law. I would not do that' (BMAS, 19.11.2011).

From the beginning of the 1970s until the year 2000, the country's policy on labour migration was guided by the principle of recruitment ban and focused on preventing labour migration to Germany. Although since the end of the 1980s channels for labour migration from outside the EU have

existed, only temporary labour migration was admitted. The guiding principle of “Germany is no immigration country” was not only reflected in the lack of integration policies, but also in a restrictive framework on labour migration, aiming, albeit with a few exceptions, at preventing labour migration to Germany. Until the passing of the first immigration law in 2005, only channels for temporary labour migration into specific labour market segments existed.

In 2005, a change in labour migration policies took place, and in the following years the preconditions for the access to the German labour market for highly-skilled migrants were gradually lowered. The ‘Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of EU citizens and Foreigners’ (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern*) for the first time established channels for permanent labour immigration that were conceptualized as a regular option and not as an exception. Specific channels for the access of highly-skilled migrants to the labour market were created. This group could now obtain a permanent settlement permit. However, a high salary threshold (86,400 Euro) for taking up employment in Germany still restricted the immigration of highly-skilled migrants. Also, the new immigration law maintained the principle of a general recruitment stop.

In 2007 and 2009, further legal and administrative changes took place that liberalized the channels for highly-skilled migration. The Law for the management of labour migration that came into force on 1. January 2009 lowered the required minimum income for highly-skilled migrants under paragraph 19 from 86,400 to 63,600 Euro.³ However, the legal provisions for highly-skilled migration had more a symbolic than a material effect. Between 2007 and 2011, less than one-thousand migrants used the paragraph 19 to take up employment in Germany.

All in all, until the transposition of the Blue Card directive, the overall framework remained restrictive and prioritized the national workforce. Changes towards a more open labour migration regime still took place within a system whose main feature was a conditional labour market access for third-state migrants. Apart from those using the legal channel for highly-skilled migrants, all labour migrants were subjected to the so-called priority check (*Vorrangprüfung*) that is carried out on a case-by-case basis for each single job application. In this process, the Federal Employment Agency and the foreigner’s office examine if a national or an EU citizen is available for the job. Citizens from outside the EU can only take up the position if no national worker is available.

5 The transposition of the EU Blue Card directive into German law: conflicts and opportunities

However, during the phase of the transposition of the Blue Card directive, the restrictive German framework was more and more challenged by some government actors and a new discourse that centered on Germany's need to remain economically competitive. The transposition of the Blue Card directive was supposed to take place in December 2010, in the context of the transposition of several EU directives, i.e. the returns directive and the employer sanctions directive. A law project comprising the three directives had been prepared by the Ministry of the Interior at the end of 2009. However, in 2010 the Blue Card directive was taken out again of the second Directives Implementation Law (*Zweites Richtlinienumsetzungsgesetz*) (Basse et al., 2011). 'Against the background of public debates on skilled labour, and debates on the topic within the governing coalition, the directive on highly-skilled migrants was excluded from the law project' (Basse et al., 2011: 363). The reason lay in conflicts within the government, and the opposition of the Bavarian conservative CSU against the EU Blue Card (BMI, 22.11.2013). One reason given by the CSU for its opposition was the fear that the realization of the full freedom of movement for the EU accession countries in May 2011 would lead to a high amount of immigrants from these countries (BMI, 22.11.2013). The CSU also embedded its position in a discourse generally critical of non-EU foreigners. In September 2010 its chairman stated that 'Germany is not an immigration country'. Also, he explicitly positioned himself against a points-based system and against the introduction of quotas for certain sectors or professions. He demanded that the evaluation procedure of requests for residence permits should not only evaluate the qualification of the potential labour migrant, but also his or her 'willingness to integrate' (Die Welt, 16.10. 2010). On the opposite side, the liberal party FDP was against the transposition of the directive in the form foreseen by the legal project, arguing that the Blue Card directive should be used for the introduction of a more comprehensive labour migration framework. Thus for very different reasons, both smaller coalition partners opposed transposing the directive at this point.

5.1 A changing discourse on labour migration

However, while the transposition of the Blue Card directive became the object of a controversial debate within the government, the public discussion about a need for foreign skilled labour intensified. Since the year 2010, various actors have diagnosed the so-called *Fachkräftemangel*, a shortage

of skilled labour, and it has become a topic of growing importance both in the media coverage and in the political sphere. A number of studies and expert reports were published on the issue, and interest groups increasingly brought the subject into the public sphere. National actors, such as the Association of German Engineers (*Verein Deutscher Ingenieure*) and the Federal Association of Information Services, Telecommunication and New Media (*Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.* (Bitkom)) issued reports stating that their sectors lacked several tens of thousands of qualified workers. Regional actors, too, published figures on labour shortages. The Chamber of Commerce of Stuttgart declared that in 2014, up to 85,000 skilled workers would be lacking in Baden-Württemberg (IHK Region Stuttgart, 2011). The Bavarian economic association (*Vereinigung der bayerischen Wirtschaft*) identified a lack of more than 500,000 qualified workers that in 2030 would increase to more than one million (Scharnitzky, 2011). In the same vein, the Cologne Institute for Economic Research (*Institut der Deutschen Wirtschaft Köln*) calculated that in 2020 the shortage in the so-called MINT⁴ professions would amount to 426,000. Also, a number of government bodies and research institutions published projections on the future development of the German work force and figures on the immigration level needed to compensate losses due to demographic change. According to the German Institute for Economic Research (*Deutsches Institut für Wirtschaftsforschung*) Germany needed a net immigration of 500,000 per year in order to secure its economic force (Newsletter Migration und Bevölkerung, 2010). In February 2011 the Federal Employment Agency (*Bundesagentur für Arbeit*) published a report on the ongoing *Fachkräftemangel*, stating that Germany needed to establish a “welcoming culture” and that a short-term immigration of 0.4 million to 0.8 million foreign workers would be necessary (Bundesagentur für Arbeit, 2011). Actors such as the *Sachverständigenrat deutscher Stiftungen für Integration und Migration*, an expert body founded by several foundations, elaborated a projection on the future evolution of the German work force. According to this calculation, without any immigration, between 2008 and 2060 the labour force would decrease by 373,000 per year; with a medium-level immigration, it would decrease by 313,000 and with a high level of immigration (plus 200,000 yearly, starting in the year 2020), by 247,000 (SVR, 2011: 44).

At the same time, a consensual discourse emerged that acknowledged Germany’s need for labour migration. Although positions on which instruments should be introduced sometimes widely differed, key state and non-state actors all agreed that Germany needed a “welcoming culture” and hat

to successfully participate in the ongoing “global competition for the brightest minds”: “The competition for the brightest minds is intensifying (...) Especially regarding the establishment of a welcoming culture, many things need to be done. Where can the accompanying spouse work, where are schools for the children, these are important questions for migrants. (...). At the universities, for scientists, these issues are already well-taken care of, but in the economic sector, much remains to be done’ (BMI 1, 17.11.2011). ‘German companies are part of a global competition for the brightest minds (...). It is clear that we need qualified workers in order to secure our welfare in the global competition’ (Bundesministerium für Arbeit und Soziales, 2010): ‘If you have a look at the EU, the competition for the brightest minds is in full process, and we are already lagging behind because we have lost the first immigration waves from the EU 8, others have been faster’ (BDA, 17.11.2011).

5.2 Controversies and pro-liberalization positions within the federal government

The preparation of the transposition of the EU Blue card into German law took place during a time when a new dynamic in the political and public negotiation of German labour migration policies developed. The debate was characterized by attempts of part of the governing coalition to significantly liberalize the existing labour migration framework, and ensuing conflicts both within and between the governing parties. The controversy centered on the preconditions that should be attached to the granting of a settlement permit to highly-skilled migrants.

At the end of 2010 a controversy started between the governing parties CDU/CSU on one side and the FDP on the other side (Höll and Öchsner, 2010). The liberal party FDP wanted to lower the income threshold for highly-qualified migrants. The liberal minister of justice criticized its coalition partner: ‘The reluctance of the CDU to tackle the issue of labour migration management is not proof of a rational immigration policy’ (Preuß, 2011b). ‘Who do we want to invite to Germany? Who can be a motor for our society? (...) Currently Germany is losing in the competition for the brightest minds’. Within the CDU, opposing positions on the issue existed. Both the Minister of Labour and the Minister of Science demanded, against the positions of their own party faction in the *Bundestag*, the introduction of a points-based system and a lower income threshold for the highly-qualified. The CDU/CSU faction of the *Bundestag* and the CDU Minister of Interior were against these plans (Preuß, 2011a).

Another factor that influenced the debate on the liberalization of labour

migration was the issue of freedom of movement for citizens of the new 2007 accession countries. Germany had restricted the freedom of movement of citizens from these countries until the 01.05.2011. An important argument of those actors with a restrictive position was the “fear” of a mass immigration after the opening towards the EU-8. After the establishment of the full freedom of movement in May 2011, however, immigration numbers remained low. Key labour migration actors agree that these low immigration numbers helped to bring about the change towards a less restrictive labour migration model (BDA, 17.11.2011; BMI 2, 2.04.2012; SMI 1, 7.07.2012; SMA, 21.07.2012):

The first May 2011 certainly demystified the issue (...) In fact everybody knows that Germany is not a country where qualified foreigners are queuing up and where we just have to open the borders and masses will stream in. And one has seen that now at the opening for the EU-8. The low immigration figures from the new EU member states have brought a new dynamic into the debate, making it easier for the government to adopt a more liberal approach, since fears of being “overrun” have not been justified. (BMAS, 9.02.2012)

Also, the favourable economic situation and the comparatively low unemployment figures served as a window of opportunity for change: ‘The labour market situation has considerably changed during the last two years. We have much less unemployed people. And the need for migration depends on the labour market’ (CDU/CSU, 10.02.2012).

Finally, those parts of the government who were in favour of a more open labour migration policy gradually were successful. In June 2011, on the initiative of the Christian-Democratic Minister of Labour, the government issued a so-called positive list of professions (*Positivliste*) that would not be subject to the priority check anymore. The list included mechanical engineers, electronic engineers and doctors.⁵ On 6 November 2011, the government agreed to yet again reform paragraph 19 Residence Law and to lower the required minimum income for university graduates to 48,000 Euro.

5.3 The *Länder* as actors in labour migration policy

During the negotiation of a new labour migration framework and during the phase in which the transposition of the EU Blue Card directive was discussed, the position of the representation of the German *Länder* changed from a restrictive position towards demands for a significant liberalization of the German labour migration regime. In the German political

system, the representation of the *Länder* has several competences in the political process. Legislative projects by the federal government must be first presented to the *Bundesrat*; also, it can introduce its own legislative projects. The *Bundesrat* must approve those laws that have a direct effect on the financial or administrative structure of the *Länder*. It can veto all other laws; however, this veto can be overridden by the national parliament. In 2007, confronted with the proposal on the EU Blue Card directive, it had rejected the idea of a common residence title: 'The *Bundesrat* demands to ensure that the principle of subsidiarity is upheld and stresses (...) the competencies of the member states to regulate the access to their national labour markets (...)' (Bundesrat, 2007). It also rejected the idea to allow immigration based on compliance with a minimum salary threshold.

However, in the following years, the representation of the German regions gradually changed its position. One of the first and most active actors who demanded better and more generous immigration channels for skilled labour was the free state of Saxony. Saxony is an instance of an Eastern German federal state where since the reunification the population has rapidly decreased, and where at the same time a significant economic growth is taking place. Since 1990, the population has decreased by 15 percent, and projections show that until 2025, it will decrease by another 12 percent. In 2014, more people will leave the employment sector than will take up an employment. Due to historical reasons, Saxony has a specific, non-EU migration profile. While in the western federal states a tradition of intra-EU labour migration from Italy and Spain exists that encourages new migration from these countries, the Eastern German *Länder's* historical migration ties with Eastern European countries who until recently have not been in the EU, or who still are not EU members. The main countries of origin of migrants living in Saxony are Vietnam, Russia, Ukraine and Poland (Landtag Sachsen, n.d.).

Confronted with the pressure of a lack of skilled workers and the danger of companies not expanding because of this situation, in 2008 the government of Saxony defined and established a new policy field, "Gaining by migration" (*Zugewinn durch Zuwanderung*), and set up a corresponding department in the Ministry of Interior. The existing legal provisions for the immigration of skilled labour were considered to be ineffective: 'The law of 2005 was useless because the salary threshold was too high' (SMI 1, 7.07.2012). In 2009, Saxony commissioned a study on the future of labour migration by the research institute *Institut der Zukunft der Arbeit* (IZA). The study recommended the introduction of a system with a yearly quota for immigration, combined with a points system that would take into

account qualification, language skills and professional experience (Hinte et al., 2011). In April 2011 the federal state of Saxony brought an initiative based on the IZA report to the *Bundesrat*. Although also governed by the CDU, the proposition of Saxony was contrary to the position of the federal government and of the CDU on the federal level. However, '(...) that is federalism for you. The interests of the region overpowers party interests' (SMA, 21.07.2012).

The Blue Card directive both provided a "blueprint" for the initiative of the Saxon government and helped to draw attention to Saxony's initiative. One motive to introduce the *Bundesrat* initiative was that the Blue Card directive was not being transposed (SMI, 17.07.2012): 'We have built our *Bundesrat* initiative knowing the Blue Card directive, and we have adapted elements of the Blue Card directive' (SMI, 17.07.2012). However, at first Saxony could not find allies for its proposal amongst other regions. In this situation, the Blue Card directive served as an opportunity for underlining the demands of the Saxon government 'The EU initiative helped us (...). In the context of its negotiation, we could draw attention again to our initiative in the *Bundesrat*' (SMA 21.07.2012). When Germany was lagging behind with the transposition, the directive became a "catalyst" (SMI, 17.07.2012).

Gradually, other federal states also developed positions in favour of a more open labour migration regime. In December 2011 the conference of the ministers of economy of the 16 *Länder* demanded a paradigm change in labour migration policy, towards a welcoming culture and the attraction of skilled foreign workers (Beschluss der Wirtschaftsministerkonferenz, 2011). Hamburg established a welcome centre for labour migrants at its aliens' office. 'Between 2007 and 2012, it became widely accepted that we will be confronted with a lack of skilled workers that cannot be addressed by the national workforce or solely by EU labour migrants. It took the *Länder* a bit longer to realize this, but they did' (BMI, 3 24.02.2014). 2012, in its note on the federal government's Blue Card legislative project, the *Bundesrat* had, compared to 2007, significantly changed its position on the Blue Card. It 'explicitly welcomed the introduction of the Blue Card' and demanded even more far-reaching changes than the Blue Card directive contained. The *Bundesrat* proposed to allow labour immigration of migrants who are not university graduates but who have a comparable five years professional experience. It also suggested the introduction of a skills-based labour immigration channel, namely the introduction of a 'job search visa', a proposition that was taken up by the federal government when it transposed the Blue Card directive (Bundesrat, 2012).

5.4 The transposition of the Blue Card directive

In December 2011 the federal government decided on a draft legislation transposing the EU Blue Card directive into German law. In March 2012 it announced that it had come to an agreement on the way of transposing the Blue Card directive, and on the further measures that would accompany the introduction of the Blue Card. 'Basically the Blue Card directive only provided a general framework, and it was up to the national governments to decide on how attractive they would make this new residence title for highly-skilled migrants. For us, the EU directive was an opportunity. We wanted to lower the minimum income threshold anyway (...)' (BMI 3, 24.02.2014). At the time of the transposition of the directive, the existing national legal provisions regarding the required minimum salary for highly-skilled migration were already almost identical to the provisions of the Blue Card: 'It was the national decision-making process that was decisive for the introduction of the Blue Card' (BMI 3, 24.02.2014). The Blue Card directive served as a "vehicle" (BMI, 24.02.2014; SMI 2, 01.03.2014) for bringing about a policy change that already was intended by the federal government.

In August 2012, the law on the transposition of the EU directive on highly-skilled migration (*Gesetz zur Umsetzung der Hochqualifizierten-Richtlinie der Europäischen Union*) came into force. With it, the federal government agreed on a new legal framework with far-reaching consequences for the German labour migration regime. The EU Blue Card that was introduced became a new residence title, replacing paragraph 19 of the Residence Act. The Blue Card can be granted to university graduates from outside the EU who earn more than 44,800 Euro/year. For the MINT professions, the required minimum income is set at 34,900 Euro. In its transposition, the German government lowered the minimum salary threshold as far as it is made possible by the Blue Card directive. Also, the German transposition foresees the shortest time frame for processing the Blue Card (14 days) (Kosc, 2013: 8).⁶ As opposed to the regulations of the former paragraph 19 Residence Act, holders of the Blue Card at first only get a temporary residence title. This can be viewed as a concession to the Bavarian CSU and parts of the CDU. After three years of continuous employment in Germany, however, the residence title can be transformed into a permanent settlement permit. Blue Card holders with very good German language skills may be granted a permanent settlement permit after two years. Another new regulation that was introduced with the Blue Card transposition is a so-called job search visa. It gives university graduates from every country in the world the possibility to obtain a six-month visa

for a job search in Germany. The introduction of this instrument was suggested by the *Bundesrat* and taken up by the federal government. The only precondition is that they can prove that they have the financial means to sustain themselves during their stay in Germany. The introduction of this instrument as §18c into the new immigration act introduces a human capital based instrument, up until now associated with Canada and the USA, into the previously solely employment-driven German system (Kolb, 2014b). This represents not only a departure from the long prevailing philosophy that labour immigration to Germany was only possible with a work contract. It also means that in fact a very basic points system consisting of two accession criteria, i.e. an academic qualification and adequate means of subsistence during the stay in Germany, was introduced into the German labour migration regime (Kolb, 2014b: 66).

Furthermore, the law also abolishes the regulation of paragraph 19 Residence Act according to which self-employed foreigners must invest 250,000 Euro and create five jobs in order to obtain a settlement permit in Germany. Finally, the legislation also entails a change for foreign students. From now on, foreign university graduates may take up any job during the “search year” in which they are entitled to look for an employment in Germany (and not only if it is considered to be corresponding to their degree of qualification). After having been employed for two years, they can be granted a permanent settlement permit. Also, foreigners who have been doing their vocational training in Germany may take up employment in Germany after their training.

6 Conclusion: Preconditions for the Europeanization of German labour migration policy

With the transposition of the EU Blue Card directive, the German labour migration regime has been significantly liberalized and has undergone a paradigm change. By lowering the salary threshold for taking up employment in Germany as far as made possible by the Blue Card directive, the concept of “highly-qualified” was redefined and now means migrants with a salary that is only slightly higher than the national average gross salary. Furthermore, with the transposition, a skills-based, offer-oriented labour migration instrument was introduced into the up until now exclusively demand-oriented German legal framework. The reform significantly increases the possibility of access of third-state migrants to the German labour market. In fact, in European comparison, in 2012 Germany was the

country that had issued the highest amount of Blue Cards in the EU (2584), thus having delivered 86 percent of all Blue Cards (Kosc, 2013: 15).

This transposition of the Blue Card directive must be seen as the final point of a national development towards a more open labour migration regime. Since 2010, the debate about the need for skilled foreign labour gained momentum. In 2010, at the time when Blue Card directive was supposed to be implemented, a controversial debate on labour migration took place. Ultimately, those actors who were in favour of a further opening of the German labour market to third-state migrants were successful. Both key actors on the federal level and at the subnational level demanded a liberalization of the German migration law. At the same time, a public discourse on Germany's need to remain internationally competitive intensified, strongly mirroring the discourse on labour migration at the EU level. In the German case, some actors used the Blue Card directive as an opportunity for promoting their ideas. However, at the same time, and maybe more importantly, a development towards a convergence of political discourses and policy goals between the EU and the German political context took place. The directive was transposed when the policy preferences by national key actors and the domestic discourse on the subject had become almost identical with the content of the Blue Card directive. Then not only the directive was transposed; rather, EU legislation was used to bring about a major policy change that represents a paradigmatic shift in German labour migration policy. In an internationally comparative perspective, regarding its management of labour migration Germany has changed from a 'restrictive maverick to a liberal role model' (Kolb, 2014a: 91). With the most recent reforms, a rapid policy change in German labour migration policy has taken place: 'After many years of a reluctant position towards labour migration at best, Germany since 2012 has introduced immigration channels that in an internationally comparative perspective are liberal and open' (SVR, 2014: 15). The German development also fits into a general international trend towards hybrid models of labour migration regulation that combine both employer-based and human-capital oriented instruments (Kolb, 2014a; Papademetriou and Sumption, 2011). Austria, which in the negotiation of the Blue Card on the EU level also took a sceptic stance, in 2011 introduced a human capital based approach, too. The *Rot-Weiß-Rote Karte* is a points system for highly-qualified workers and workers in shortage professions. With the red-white-red card, highly-skilled migrants can obtain a six month visa to look for employment in Austria.

In order to understand the rapid and paradigmatic change in German labour migration policy, this article has discussed the concept of goodness

of fit with the aim of evaluating how valuable the approach still is for understanding processes of Europeanization and the impact of the EU level on the domestic context. The case of the German Blue Card transposition confirms two of the central hypothesis of the goodness of fit approach: that directives are smoothly transposed if they fit the domestic institutions and policies; and that actors perceive and use an EU legal project for promoting their ideas. The German case shows that “goodness of fit” can (or should) be understood as a process rather than a static concept: as a precondition for the transposition, EU and domestic policy aims first had to reach a degree of conformity. Then, this “good fit” encouraged a significant policy change in the field of German migration policies, even transcending the aims of the EU directive. Thus, the German case shows that an EU directive can also be a vehicle for a broader policy change. It is another instance of how a government seeking reform uses the European level (Radaelli, 2003). However, it is also worth noting that an emphasis on a low degree of (intra-EU) migration (the low immigration rates after the establishment of the freedom of movement for the 2004 accession countries in 2011) served as an important precondition for the opening of the German labour migration regime.

The case of the German Blue Card transposition shows that the concept of goodness of fit, understood as a framework for understanding the interaction and the interdependency of the EU and the national level, still is a useful concept that should not be discarded. Focusing exclusively, as some authors have proposed, on the national context for understanding the impact of European politics and policies on the domestic level, would mean a return to a methodological nationalism that would block the view for the processes of multi-level governance that undoubtedly take place in the field of European labour migration. All in all, the case of the German Blue Card transposition provides a valuable instance to understand processes of Europeanization, from a policy field hitherto comparatively neglected by Europeanization research.

Notes

1. Three interviews took place with representatives of the Ministry of the Interior: one interview with a civil servant of the unit immigration law (BMI 1) and two interviews with the head of the unit immigration law (BMI 2 and BMI 3).
2. Most of this empirical material was generated in the framework of the research project “Labour Migration Governance in Contemporary Europe” (2012 to 2014), directed by Dr. Ferruccio Pastore, FIERI, Torino and has also been presented in Laubenthal (2012).

3. Now the salary had to at least correspond to the income threshold to the pension insurance scheme. In 2012, the income threshold to the pension insurance scheme was at 67,200 Euro/year in Western Germany and at 57,600 Euro in Eastern Germany.
4. Mathematics, information technology, natural sciences, technology.
5. It is however interesting to note that the already existing law would have permitted the same, too: professions could have been exempted from the priority check by applying paragraph 39 (2) Residence Act which states that the Federal Employment Agency of Labour can agree to the issuing of a residence permit under paragraph 18 if this appears to be necessary for certain professions or economic sectors.

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In the Name of Human Capital

The International Recruitment of Physicians in Germany and Spain

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Abstract

The international migration of physicians is considered an effective response to ageing societies. However, the international recruitment of physicians may be challenged by the protectionist rationale of the medical profession in many countries. How is the potential contradiction between open recruitment policies and exclusive professional regulations managed in Europe? What is the role played by foreign credential recognition or language knowledge in the recruitment process? Are there differences among countries? These questions are analysed by comparing Germany and Spain, which possess not only two divergent migration regimes but also two completely different health care systems. The main goal of the article is to explore how the capacity of national health care sectors to attract and integrate foreign physicians may affect Europe's quest for highly skilled health professionals in the long term.

Keywords: Germany, Spain, labour migration, highly skilled migration, health care system, physicians, foreign credential recognition, human capital

1 Introduction

Immigration is often suggested as the best possible way to meet the growing demand for highly skilled professionals in ageing societies. In view of this, the formerly restrictive immigration policies prevailing in European immigration countries have given way to increasing efforts to respond to economic and demographic needs through active labour migration policies. However, as with many types of migration processes, the interna-

tional migration of highly skilled workers is a multifaceted process involving several actors interacting at the state level. Employers' strategies, labour market structures, language skills and foreign credential recognition processes must be taken into account when assessing a nation state's capacity to attract (and integrate) highly skilled foreign labour (Jinks et al., 2000; Peixoto, 2001; Bommès et al., 2004; Hoesch, 2012).

This article analyses to which extent internal barriers to workers' selection such as foreign credential recognition, assessment of professional qualifications or language knowledge may challenge increasing openness toward the recruitment of highly skilled workers in the European Union. To do this, the analysis focuses on the recruitment of foreign physicians in Germany and in Spain. The reasons for this choice are twofold. First, the medical profession is one of the professions with the most restrictive access in comparative perspective (Freidson, 1970; Tousjin, 2009). In addition, health care markets have "unique characteristics" that "imply great complexity in developed economies involving government intervention, licensure, regulation, and (quasi-) union activity" (Grignon et al., 2012:3). Second, the choice of Germany and Spain as suitable comparative cases is based on their divergent migration histories (an old versus a new immigration country) and the different structure of their health care systems (a social security financed system in Germany versus a tax-financed system in Spain).

The first objective of the article is to assess to what extent the international demand for high-skilled health professionals can be fulfilled in a highly regulated sector, such as health care, and which factors may hamper recruitment procedures and labour market insertion. The second objective is to shed light on the reasons for divergence in recruitment policies in the European Union, where 27 different health care systems coexist in different socio-economic contexts with different professional regulations. The analysis focuses on structural conditions such as foreign credential recognition, language requirements or salary standards without disregarding the influence of other contextual variables such as a country's economic situation, which is considered particularly relevant to the Spanish case.

The empirical material collected for the analysis consists of a series of expert interviews conducted with professional and institutional representatives in Spain and in Germany between the spring and summer of 2013 as part of the project 'Labour Migration Governance in Contemporary Europe' (LabMigGOv) (Finotelli, 2014). The interviewees include in particular representatives of organisations indirectly involved in the design and/or implementation of labour migration policies such as regulation bodies in Germany and trade unions in Spain. The interviews are comple-

mented by administrative memos, which have been particularly useful for the German case.

The first section provides a brief overview of the existing debates on foreign recruitment of physicians. The second and third sections of the article analyse the recent evolution in the health care regimes of Germany and Spain respectively, focusing on those factors that contributed to “opening” the medical profession over the past few years. In the fourth and fifth sections, the analysis considers which types of inclusion barriers persist in Germany and Spain despite more open recruitment regimes. The final discussion explores the ways in which the recruitment and integration of foreign physicians into national health care systems can affect Europe’s quest for human capital.

2 The International Recruitment of Foreign Physicians: A Brief Overview of Policies and Challenges

It is widely acknowledged that ageing populations, new technologies and the unattractiveness of health care professions to young doctors represent major challenges for European health care. The international recruitment of physicians is seen not only as the most effective way to respond to demographic challenges but also as an opportunity to improve healthcare systems and enhance their competitiveness (Forcier et al., 2004; Buchan, 2006). As declared by the EU Commission in its “Green Paper on the European Workforce for Health”, “to respond adequately to these challenges requires health systems to have efficient and effective work forces of the highest quality as health services are very labour intensive” (EU Commission, 2008:1).

In accordance with this goal, the recruitment and integration chances of foreign physicians have been improved in the European Union within the regulation framework approved to foster the intra- and extra-EU mobility of academics. Since 1975, EU members almost automatically recognise academic degrees obtained at any officially recognised university in the European Union. The EU directive 2005/36/EG of 7 September 2005 regulates the recognition of specialty training after a degree in medicine, allowing automatic recognition of specialty training carried out in an EU member state and so lifting a further labour market barrier to the intra-European circulation of EU physicians and other professional practitioners.¹

Recruitment opportunities for non-EU physicians and other highly

skilled professionals have been also recently improved by approving the so-called ‘Blue Card’ directive, n. 2009/50/EC, which allows recruitment of highly skilled workers (including physicians) from non-EU countries and defines common employment conditions across Europe. Undoubtedly, the directive represents a milestone of the new European migration regime after 25 years of restrictive orthodoxy. The directive’s principal aim is to increase EU attractiveness to highly skilled non-EU migrants to enhance Europe’s “international strength” (EU Commission, 2007: 1) and consolidate Europe’s transformation into a “competition state” (Lavenex, 2006). Notwithstanding the remarkable progress achieved by EU regulation in the last decade, the mechanisms that promote the international mobility of foreign physicians remain an underresearched topic. As Wismar et al., (2011) highlight, little is known about the dimensions of health professional mobility, its driving forces and the corresponding country responses. In fact, much scholarly attention has been devoted to the ‘brain drain’ effects of physician recruitment on the immigrants’ countries of origin (Docquier and Bhargava 2006).

In contrast, knowledge is more limited on policies and obstacles related to physician recruitment and labour market inclusion in host countries (Dussault et al, 2010; Glinos, 2014). In this respect, Den Adel et al, (2004) have been among the first to argue that international recruitment in the health care sector is deeply embedded in the structural conditions of destination countries. Different sources of financing and degrees of corporatism can, for instance, explain why some countries are more reluctant than others in recruiting non EU-physicians (Hoesch, 2012). Other scholarly works have focused on the relevance of the recognition of foreign credentials, showing that Member States traditionally have fewer possibilities to create employment barriers in the non-regulated ICT sector (Kolb et al, 2004) while the recognition of foreign credentials of non-EU foreigners is very relevant to practice in regulated professions (Bommes et al., 2004; Ribeiro, 2008a). In most countries, engineers, lawyers and physicians must indeed pass strict foreign credential assessments (Sumpton, 2013; Dixon, 2013). Despite this, physicians seem to have a special status among them since medicine, as Eliot Freidson noted, “even in circumstances where it is not fully free of state control, it is at the very least formally free to control the content if not the terms of its own work” (Freidson, 1970: 18). The medical community has developed several methods of regulation, such as ethical codes or credential recognition procedures, to keep a certain level of trust in the medical profession and protect recognised community members from the “infiltration” of unqualified candidates.

Scholars have highlighted that the high degree of protectionism affecting the health care sector may have a negative impact on the labour market integration of foreign physicians, who may be considered “system outsiders” by national medical communities. A noteworthy example in this respect are Canada and Australia, where the strict norms of licensing bodies in health professions have long constituted a barrier to the employment of physicians, despite the openness of their internationally praised human capital models (Iredale, 2001; McGrath, 2004; Boyd and Schellenberg, 2007). Besides foreign credential recognition, the knowledge of the host country language is considered particularly relevant for performance in the health care sector while in the high-tech or engineering sector, interaction is often possible in English. However, the question of language proficiency has been often analysed as a barrier to access to health care services (Kale and Raza Syed, 2010) but seldom as a barrier to recruitment and successful labour market inclusion of foreign physicians.

Overall, this brief overview of the existing debates on foreign recruitment in the health care sectors reveals that there is an increasing need to deepen knowledge on the potential contradiction between inclusive recruitment policies for third-country nationals in the European Union with exclusionary practices related to credential recognition or language requirements. A comparison between the Spanish and the German recruitment models is expected to provide some insight into this particular policy field.

3 International Recruitment in the German Health Care Sector

Germany has a statutory social-security-based health care system, where state health insurance (*gesetzliche Krankenversicherung*) is financed by social security contributions to different insurance companies, which covered two-thirds of health care spending in 2011 while the remaining one-third is mainly privately financed (Paris et al, 2010). Organisationally, the German health care sector is characterised by a high degree of corporatism and self-administration, in which representatives of social insurance and doctors negotiate contributions and performance at the margins of the national state budget. The high level of autonomy of professional corporations and the independence from state budget concerns have transformed this sector into an independent sub-system in which physicians' corporations are particularly well-organised (Hoesch, 2012). Physicians can work

either in a hospital or in independent practices, for which the number, type and distribution are stipulated by the regional organisations of independent physicians (*Kassenärztliche Vereinigungen*). Individual physicians charge social insurance for their services and thus, many German medical practices function as small enterprises mainly interested in financial benefit (Hoesch, 2012).

Access to the medical profession is regulated by each *Land*, the German federal unit. To work in Germany, physicians need a full licence to practice (*Approbation*) issued by the state health authorities (*Oberste Landesgesundheitsbehörde*) of the respective federal unit. The full licence to practice is *conditio sine qua non* to practice as a generic doctor, start medical training and to practice then as a specialist. Until 2012, however, §3 of the German regulation of the medical profession (*Bundesärzteordnung*) stated that only German and EU citizens could apply for the full licence to practice. In addition, Germans or EU citizens that had studied in a non-EU country or ethnic Germans had to pass a state of knowledge exam (*Kenntnisstandprüfung*) to get a full licence (Englmann and Müller, 2007). Issuing the full licence to non-EU citizens was only possible under a restricted number of exceptional circumstances, whose interpretation was highly discretionary and almost always ended with the application's withdrawal (Schiller, 2010). The nationality criterion was considered a matter of "national interest" because physicians practicing in Germany were expected to understand the way of life and the needs of their patients and to know about customary therapies as well as to possess knowledge about the juridical norms regulating the practice of the medical profession (Espeler, 2000). However, restrictions also applied to non-EU citizens that had been studying at a German university and to third-country nationals that had undergone specialty training in Germany, all of whom could be assumed to be familiar with German medical practice but did not have the right to apply for a full licence (Yamamura, 2009). The power of medical corporations, the independence of the German health care system from politics and the long-lasting German non-immigration dogma all contributed to maintaining the nationality requirement for many decades. In this period, non-EU physicians could practice only on the basis of a temporary licence to practice (*Berufserlaubnis*) that was geographically and temporally limited. It was generally issued for a maximum of seven years and could only be renewed under a limited number of exceptional circumstances (Yamamura, 2009). Temporary licences were limited to the activities of an assistant doctor and did not allow foreign physicians to open their own clinics on German territory. In addition, the issuance of a temporary licence was

not dependent upon a comprehensive state of knowledge examination but only on the individual assessment of certified information about medical training abroad.

Overall, the temporary licence helped to solve the problem of the demand for physicians in hospitals and some rural areas, accomplishing at the same time an immigration policy based on temporal and geographical limitations to avoid immigrants' permanent settlement. Clearly, the international migration of physicians was seen as a temporary phenomenon to fill gaps in hospitals, but the same were excluded from the possibility of settling in the country and participating in the medical business by opening their own practices (Hoesch, 2012).

The strict regulation of the medical profession contrasted with the growing debate on (and concern for) the shortage of physicians in Germany. In 2001, the Federal Chamber of Physicians (*Bundesärztekammer*) declared that the increasing number of retiring doctors, the high emigration figures for German specialists (by 2010, 17,000 doctors had already left Germany, mainly to work in Switzerland or the USA) and the growing feminisation of the medical profession were enhancing the demand for certain specialties (especially general practitioners) in Eastern German *Länder* and rural areas (Kopetsch, 2010; Blüm and Löffert, 2010). The contradiction between an oversupply in metropolitan areas and an undersupply in rural areas explains why German scholars were increasingly worried about shortages, despite a ratio of 3.84 doctors to 1,000 inhabitants in 2011, one of the highest in Europe (OECD, 2011). No consideration, however, was devoted to the question of international recruitment. Rather, the Federal Chamber focused on the search for functional alternatives, such as increasing the attractiveness of a medical career to young students, improving working conditions for doctors in German hospitals or enhancing intra-EU circulation.

Only since 2010 have the restrictions on the entry of foreign physicians started to relax. The idea that the health care sector should be open to non-EU physicians was supported by the new German immigration *Zeitgeist*. In 2012, the German government ratified the 'Blue Card' directive, allowing highly skilled professionals to enter the country if minimum salary conditions were fulfilled. 'Blue Card' applicants in MINT professions (Mathematics, Informatics, Natural Sciences and Technology) and physicians were exempted from the labour market check. Moreover, for MINT professionals and physicians, Germany lowered the minimum salary requirements to 36,192 euros (instead of the 46,400 euros for other highly skilled occupations). Such a salary, which is far below the amount that many

German (but also EU) physicians would accept to work in Germany, allows the hiring of young doctors in their first year of specialty, which would not have been possible under the previous salary requirements.² Further, the new law for the recognition of foreign credentials (*Berufsqualifikationsanerkennungsgesetz, BQFG*) established the right of every non-EU citizen to apply for foreign qualifications in Germany. This goal was achieved by transposing the recognition rules for EU citizens, as regulated by directive no. 36/2005/EU, onto the new German recognition law, extending their validity to third-country nationals. Since then, foreign credential recognition in Germany has no longer depended on the applicant's nationality but on the country in which the applicant has obtained his or her medical degree. Finally, German legislation declares that doctors must possess "necessary knowledge of the German language" but does not provide information on what level of language is required or how such knowledge is to be assessed. The German *Länder* have informally agreed on the intermediate level B2 as a minimum level for foreign physicians. Then, it is up to the recognition office to decide whether a simple language certificate suffices or if an additional language test is required.

The new provisions were particularly significant for foreign physicians because, for the first time, doctors from non-EU countries had the right to apply for foreign credential recognition and therefore obtain a full licence to practice in Germany. Clearly, as the president of the Federal Chamber noted, the new recognition law could not coexist with the old §3 of the Federal Medical Regulation, where nationality (and not the country where the degree was obtained) was the main criterion to apply for a full license in Germany (Bundesärztekammer, 2011a).

The approval of the new recognition law, however, should not be considered a surprise but rather the outcome of the interplay between deep changes affecting the German migration and health care sectors. First, a widespread consensus on the need for highly skilled migrants had grown in Germany (Laubentahl, 2012; Kolb, 2014). Second, as Döhler and Manow (1995: 151) highlighted, federal intervention had increasingly put the German health care sector "under stress" since the health system reform of 1992 (see also Hoesch, 2009). Third, European integration had contributed to the development of a "dual" recognition system with respect to medical careers equalising the medical degrees and medical training of EU citizens to German degrees if obtained in an EU country. Moreover, since 2007, medical degrees obtained in Australia, Israel, Japan, Canada and New Zealand were considered objectively equivalent (*objektive Gleichwertigkeit*) to German degrees. In view of the aforementioned changes, it is

therefore no surprise that applications for credential recognition by non-EU physicians were accepted as the inevitable consequence of the evolution towards a more open immigration approach, from which non-EU physicians could hardly be excluded.

4 The Internationalisation of the Spanish Health Care Sector

The Spanish National Health System, created in 1986, is based on universal insurance and is financed through tax allocations and assignments from general state budgets. Nonetheless, Spanish citizens are allowed to obtain private insurance. Tax funding and a very low degree of professional corporatism make the health care system highly dependent on state politics (De Miguel, 1982). Although health competencies have almost completely been transferred to the Autonomous Communities (the Spanish federal units), the organisation and development of medical careers lie within the power of the central government and, in particular, the Ministry of Health. In fact, the central government in Spain still plays a major role in designing access to medical training and in regulating foreign credential recognition, whereas the employment of health professionals after specialty training is a function of the Autonomous Communities. The central administration organises the medical profession and decides who may practice. This control inevitably weakens physicians' control over the profession and makes recruitment more dependent on general immigration policy concerns than in Germany (Rodriguez, 1981).

Before being employed as physicians in the Spanish health care system, young graduates must complete a five-year medical training period at a Spanish hospital. Physicians' access to medical training to become an "internal resident doctor" (*medico interno residente, MIR*) depends on their rank after taking a state examination (the so-called MIR exam). Training slots are assigned by the Ministry of Health to each university hospital based on requests presented by the Autonomous Communities. The state examination results determine the choice of specialty: the higher the score on the state examination, the greater the chances the candidate will be able to pursue the desired specialty in the desired hospital. In contrast to Germany, third-country nationals have been allowed to apply for their degree recognition to take the state exam. However, the access of non-EU foreigners to medical training has been formally limited by a "cap for

foreigners" (*cupo de extranjeros*) on the total slots available, which could not exceed 10 per cent of all available training slots.

The nationality criterion clearly had a limiting function that started to be questioned only at the beginning of the new century because of the growing "feeling" that Spain needed more doctors (Confederación Española de Sindicatos Médicos (CESM), medical trade union, personal communication, October 17, 2011). Such "feeling" was embedded in a deep mismatch. On the one hand, Spain has a ratio of 4.1 practising physicians for 1,000 inhabitants, one of the highest in the European Union (OECD, 2011). On the other hand, physicians in Spain tended to concentrate in Madrid or in other important urban centres, while hospitals in the interior regions and on the islands remained understaffed because they were unattractively located (Amaya Pombo and García Pérez, 2005). Such disparity was exacerbated by autonomous governments profiting from the "spending euphoria" during the economic boom by building new hospitals in rather isolated regions without increasing human resources. Moreover, a sizeable number of Spanish physicians had left Spain to practice or do their medical training in other countries such as Portugal (Ribeiro, 2008b). Family and Community Medicine (FCM) was particularly undersupplied, because it was considered less prestigious than other specialties; it also provided fewer chances for professional development (González López-Valcárcel et al., 2011).³

As a result, several training slots in unattractive specialties, often located in isolated regions of the Spanish interior, remained vacant. Consequently, the Spanish Ministry of Health in 2007 modified the regulation of the medical training exam, eliminating the *cupo* for non-EU citizens after increasing the number of training slots from 5,200 in 2003 to 6,388 in 2007. The only requirement was to have a valid residence or study permit and foreign credential recognition being processed at the time of the exam. Moreover, non-Spanish speaking applicants were requested to certify sufficient knowledge of the Spanish language. If successful, the applicant was required to legalise his or her position according to the requirements of each Autonomous Community. The new regulation triggered substantial growth in foreign credential recognitions processed by the Ministry of Education. In 2010, 34 per cent of the applicants for available training slots were foreigners, most of them from non-EU countries.

Apart from the recruitment of resident doctors, it was possible to recruit non-EU specialists abroad because certain types of medical specialties had been included in the Catalogue-of-Hard-to-Find-Occupations.⁴ In such cases, labour market insertion also depended on specialty recognition.

The recognition procedure for specialists, possible only for applicants with a recognised academic degree in medicine, was centrally regulated and carried out by an evaluation commission of specialists whose members are chosen by the Spanish Ministry of Health (R.D. no. 459/2010). Several observers agree that specialty recognition was more time-consuming than degree recognition; the general tendency is to reject the application of non-EU citizens if their specialisation is not equivalent to European standards. Currently, no statistics about specialty recognition are available. However, the Ministry of Health seems to have a large application backlog, which confirms that specialty recognition is a particularly burdensome channel to practicing medicine in Spain (Ramirez, 2013; Consejo General de Colegios Oficiales de Médicos (CGCOM), professional corporation, personal communication, Madrid, July 24, 2013).

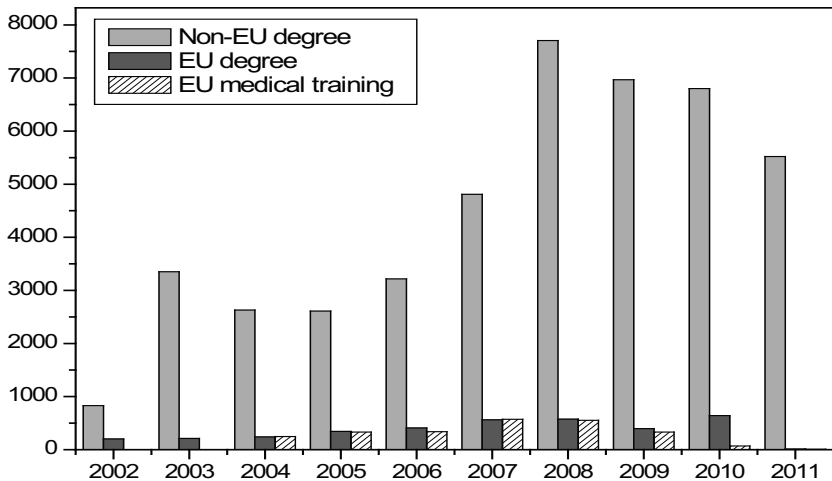


Figure 1: Recognition of foreign medical degrees in Spain (excluding specialty recognition)

Overall, the opening process experienced by the Spanish health care sector is remarkable considering that the Spanish immigration model has been mainly targeted at attracting low-skilled workers. As with other types of highly skilled migration, Spanish policy-makers, aware of the widespread criticism about the recruitment of foreign physicians, preferred to avoid a public debate on the issue. Scholars had warned of the consequences of increasing the number of training slots without carrying out structural reforms, warning that it would be difficult to absorb the larger number of medical school graduates in the long term (Amaya Pombo and Garcia

Perez, 2005). Trade unions were also against the new recruitment scheme. According to a representative of the Spanish physician trade unions, the solution for structural problems did not rest in the recruitment of professionals from non-EU countries (Confederación Española de Sindicatos Médicos (CESM), medical trade union, personal communication, Madrid, October 17, 2011). Similarly, the representative of the Spanish “General Workers’ Union” (*Unión General de Trabajadores, UGT*) expressed serious concerns about the recruitment of non-EU physicians, arguing that they would not be employed in hospitals or ambulatories but rather in private centres for the care of elderly or dependent people “as a way to reduce costs” (Unión General de Trabajadores, trade union, personal communication, Madrid, May 27, 2011). Finally, it was argued that the Spanish health care system could not solely rely on the recruitment and employment of resident doctors often endorsed with duties far beyond their actual competence and a gross salary, which ranged from 900 to 1,500 euros, depending on the Autonomous Community (Consejo General de Colegios Oficiales de Médicos, professional corporation, telephone interview, July 24, 2013). However, as with many other issues related to labour migration in Spain, any criticism was overshadowed by euphoria about the economic boom, which was reflected by an annual GDP growth rate of 4 per cent in 2006 (<http://data.worldbank.org>). Only the economic crisis brought to light the contradictions and shortcomings of international labour recruitment in the Spanish health care sector and, with it, the barriers to the recruitment and insertion of foreign workers.

5 International Recruitment of Health Professionals in the Crisis

During the economic boom, the Spanish health care sector developed into an “employment bubble” without taking into account the long-term consequences of training an increasing number of physicians. In this context, the decision to attract resident doctors from third countries can be seen more as a “reactive” measure, which was used to correct the symptoms of labour market dysfunction without addressing the causes. Little consideration was given to the possibilities of long-term employment after medical training. Permanent employment in the Spanish public health sector, as with all permanent positions in the Spanish civil service, is usually limited to Spanish nationals and EU citizens. Therefore, for non-EU physicians, employment in the public sector was often limited to temporary employ-

ment as long as the medical profession was included in the Catalogue of Hard-to-Find Occupations; the only possibility of getting a permanent contract was in the private sector. In this respect, the position of non-EU doctors in Spain was not very different from that of many non-EU doctors in Germany before 2012, who could be employed only with a temporary licence to practice.

The situation worsened with the economic crisis in 2009, when GDP growth rate plummeted to -3.8 per cent and unemployment increased to 16.8 per cent (www.ine.es, www.worldbank.org). Budgetary restrictions reduced the possibilities of employment in Spanish hospitals for specialists, while the fear of unemployment made unattractive specialties, such as Family Medicine, more attractive to young natives (Harris et al, 2013). Consequently, the Spanish government decided to restrict again the access of non-EU physicians to the Spanish health care sector by eliminating physicians from the Catalogue and limiting the access of non-EU foreigners to medical training. Not surprisingly, the decision had a reactive character, as an interviewee of the Spanish doctors' trade union commented: "Now that the ministry has decided to return to the previous situation, the feeling is that there are too many doctors in Spain" (Confederación Española de Sindicatos Médicos (CESM), medical trade union, personal communication, Madrid October 17, 2011). However, the cap on third-country nationals has been re-introduced and it has been considerably reduced in comparison with the past. According to the current regulation, only four per cent of non-EU citizens who pass the state examination are allowed to choose a medical training slot in Spain. This means that non-EU citizens may be denied access to medical training despite having a recognised degree and achieving a good ranking position on the state examination. The cap also applies to non-EU citizens who obtained their medical degree at a Spanish university, a decision that has been sharply criticised by professional bodies, such as the CGCOM, and whose exclusionary character is similar to the German provisions *before* the recent legislation changes. The CGCOM officially complained about this restrictive rule, to which the Ministry of Health reacted, stating that coming to Spain for medical training is an immigration matter and therefore depends on the applicant's nationality, not on where the degree was obtained (Consejo General de Colegios Oficiales de Médicos, professional corporation, telephone interview, September 13, 2013).

After the recent reforms, non-EU physicians have very few possibilities of working in Spain. In fact, they not only have limited access to medical training but also few chances to work in the public and private sectors.

First, the employment of non-EU physicians in private and public institutions is now subject to a foregoing labour market check. Second, the few permanent positions offered in the public sector are still restricted to Spanish and EU citizens. The nationality criterion inevitably draws attention to the role of naturalisation and the discriminatory character this requirement may have on the general recruitment of non-EU physicians in Spain. According to current citizenship law, Spanish nationality can be obtained after ten years of legal residence. However, citizens of South American countries, Portugal, Equatorial Guinea and the Philippines can apply for Spanish citizenship after two years of legal residence. The asymmetrical treatment in favour of Latin Americans may turn naturalisation into a strategy to access the medical profession despite unfavourable labour immigration rules. Positive discrimination in favour of Latin Americans may also be strengthened by recent language requirements. Since 2011, physicians from a country whose official language is not Spanish must demonstrate sufficient knowledge of Spanish (Level C1 or C2) according to either the classification of the Cervantes Institute or the official language institute in the applicant's country of origin. This novelty has been explained by the need to improve communication skills between doctors and patients and the necessity to adapt to requirements set by the EU directive on the recognition of professional qualifications. With this new rule, however, language requirements may turn into a further instrument of positive discrimination favouring the recruitment of naturalised Latin Americans to the detriment of other national groups, including, paradoxically, EU citizens.

As recent developments show, new nationality-based restrictions to select residents in Spain were introduced *despite* the new European *Zeitgeist* in favour of highly skilled migration; this shows how Spanish health care reform (and its selection mechanisms) was deeply embedded in national contingencies and structures. In this regard, Spain experienced a reverse trend with respect to Germany: Spain became more restrictive by strengthening nationality requirements for medical training, while Germany lifted its nationality-based entry barriers for physicians and other highly skilled foreign workers. Nevertheless, enthusiasm about the ground-breaking character of any new recruitment opportunities should not prevent a serious reflection on hidden shortcomings and contradictions to assess to what extent new forms of control *a posteriori* may emerge in the future German immigration model.

6 Germany: The New Promised Land for Foreign Physicians?

Germany's new immigration regime represents one of the most recent significant novelties in the European migration panorama. As a recent OECD report observes, Germany now belongs to "the OECD countries with the fewest restrictions on labour migration for highly skilled occupations" (OECD, 2013: 15). Such a shift is particularly relevant for non-EU physicians, in a sector where the high degree of corporatism was considered a major obstacle to the opening of the health care sector to foreigners (Hoesch, 2012). German physicians' organisations viewed with scepticism the recruitment of non-EU physicians. Still, in 2008, the *Marburger Bund*, the German non-governmental organisation of hospital physicians, argued against the recruitment of non-EU doctors, "since this professional group is urgently needed in their country of origin to take care of the native population" (Marburger Bund 2008: 4-5). Few, however, would have imagined that three years later, the German law would allow foreign recruitment of non-EU doctors *without* the need for a previous labour market check and, at the same time, lift the nationality requirement for non-EU doctors to apply for a full licence.

However, this shift did not prevent the Federal Chamber from demanding more restrictive recognition procedures for applicants from non-EU countries. In particular, the Chamber suggested that non-EU physicians must pass the complete state of knowledge examination in the case of major differences between German medical training and the applicant's training. In a subsequent letter, the Chamber reiterated its request, stating that stricter recognition requirements for degrees obtained in non-EU countries would be useful to preserve the quality and level of the German education system (Bundesärztekammer, 2011b). Clearly, the Federal Chamber requested the adoption of different evaluation criteria depending on the country where the degree was issued to keep control over the inclusion of outsiders.

The Chamber prevailed in its claim. Degrees obtained in an EU country are automatically recognised if the applicant provides an "education certificate" (*Ausbildungsnachweis*) issued by the country where he or she obtained the degree. In the case of degrees obtained before 20 December 1976 and only if deficits are observed, applicants with an EU degree have to pass a partial examination. By contrast, all non-EU citizens must pass a complete examination if deficits are detected.⁵ In this way, state chambers and state governments keep control a posteriori of the recognition of foreign

credentials of non-EU physicians. Even though the number of foreign doctors has been increasing since 2010 (figure 2), very few data have been provided about recognition procedures to date.

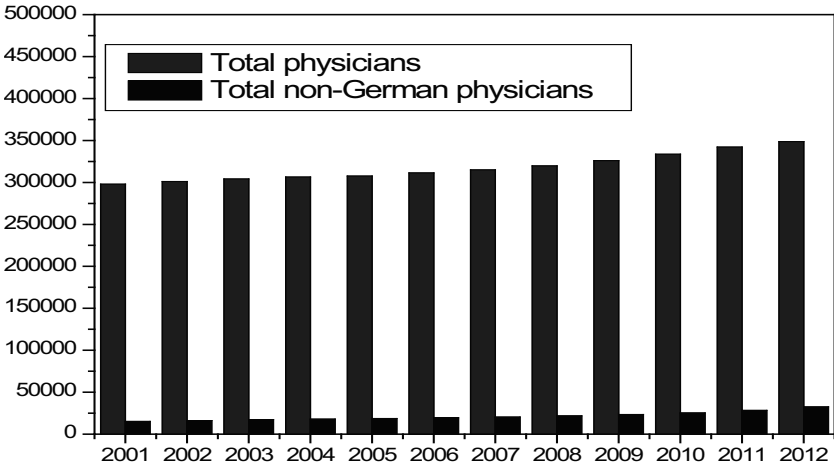


Figure 2 Evolution of the number of physicians in Germany

Hence, it is too early to assess whether the requirement to pass the state of knowledge exam could become a new barrier for the labour market integration of non-EU doctors in Germany. However, interviews suggest that such a possibility cannot be excluded because education and specialty training of non-EU doctors are usually considered incomplete by the institutions in charge of evaluating credentials. As a member of a German Integration for Qualification Network noted regarding the case of non-EU applicants, “Deficits are almost always identified, so that to compensate for such deficits, it is necessary to pass a state of knowledge exam, which is comparable to the German state exam and concerns the subjects Medicine, Surgery and a subject of free choice” (Integration durch Qualifikation Netzwerk, personal communication, Eastern Germany, April 16, 2013). With respect to specialty training, a member of a State Chamber noted that training carried out in non-EU countries is usually one or two years shorter than the training period expected by German authorities, which always implies that the applicant is required to do complementary training or to pass the specialty exam (Physicians Chamber, personal communication, Northern Germany, April 19, 2013).

While the specialty recognition of EU-citizens from old EU countries is based on a “38-year-long recognition practice”, there seems to be concern about automatic recognition of specialty degrees obtained in new EU

Member States: “Despite the formally recognised equivalence of medical training in the European Union, the content of medical training in EU Member States is still not known in full, nor compared or coordinated. Equivalence with respect to duration and content cannot always be investigated or guessed” (Physicians Chamber, personal communication, Northern Germany, April 19, 2013). Finally, information suggests that some administrations are more restrictive than others in regard to assessing applicants’ foreign credentials. The vice-director of the human resources department of a large hospital in Northern Germany, for instance, seemed very concerned about the attitude of the public office responsible for credential recognition,

They say that they are overworked, but our feeling is that arbitrariness also plays a role ... and ... and I do not think that they do not check carefully ... I think that they check more over-carefully ... But it is such a bureaucratic structure ... if they had a service attitude, then it would be easier for them and for us, too. They are often impossible to reach and only at limited times ... They do not respond to e-mails ... It takes about five days for a *Berufserlaubnis* to be sent by ordinary mail, and when we ask them to fax it, they say they don’t do that ... (Human Resources Department, Hospital, personal communication, Northern Germany, April 18, 2013).

The hospital manager’s statement contrasted with information provided by a representative of the office concerned, who responded that such differences had mainly to do with the staff available and that some *Länder* are more lax than others. In this respect, he noted that while his office assessed the authenticity of a document requiring certain forms of authentication, other *Länder* accepted a copy of the document. Such different practices are reflected in the numbers because the number of applicants increased more in some *Länder* than in others (State Health Ministry, Department responsible for degree recognition, Northern Germany, telephone interview, July, 15, 2013). Apart from foreign credential recognition, other factors may challenge the labour market inclusion of foreign doctors. For instance, it remains to be seen to what extent the new rules will affect the number of self-employed foreign doctors with their own practice in Germany.

Taking over a practice not only represents a significant financial investment (even for German doctors) but also requires a certain degree of integration into informal medical networks. A recent study conducted on the professional expectations of young doctors in Germany indicates that more than half of the survey participants had already collected some prac-

tice experience in the health sector before beginning their medical studies while almost 60 per cent had parents that were physicians themselves or had other physician relatives (Gibis et al., 2012). In view of this, the possibility for foreign doctors (including those coming from EU countries) to take over an attractive practice in an urban area is more limited in comparison to German citizens or foreigners who have conducted their medical studies in Germany and who already have an established network within the German health care sector.

For the time being, the only possibility to be a self-employed doctor is to take over a practice refused by German natives; these businesses are cheaper and far less attractive because they are often located in rural areas. This may also explain why in 2012, only 3,652 of 26,034 practicing foreign doctors were self-employed (*niedergelassen*) and more than half of them (2,124) were European citizens (Bundesärztekammer, 2012). Finally, the language issue is now hotly debated by policy makers and scholars in Germany. Particularly in the case of doctors, the ambiguity of the language requirement has been perceived as an important contradiction in the current immigration approach. As an interviewee of the state recognition office noted, it is difficult to explain why it is necessary to have a proficiency level corresponding to C2 to study in Germany while it suffices to have B2 to work as a physician (State Health Ministry, Department responsible for degree recognition, Northern Germany, telephone interview, July 15, 2013). In addition, experts observe that many B2 certificates are often only graded 'sufficient', meaning that foreign doctors do not possess good language abilities despite passing the required language exam,

There is the requirement to pass the B2 examination, preferably at the Goethe-Institute ... I think that, despite what they ask ... I think that most of them really learn to understand and talk, and have the courage to talk, here ... With some people, you think, "Have they understood me? Have they not understood me? Then you find out that they understood something completely differently, but did not want to talk about it ... I was often under the impression that we use figures of speech they do not know. If somebody comes to Germany, he or she has a lot to face (Human Resources Department, Hospital, Northern Germany, personal communication, April 18, 2013).

As a consequence of the increasing debate on this issue, several State Chambers have initiated programmes to improve German language skills. The individual state ministries of health have also agreed on introducing a common evaluation mechanism to check the language proficiency of full

licence applicants. However, talk about increasing language requirements is characterised by widespread inertia that, so far, contrasts with the growing concern for the problem (Laubenthal, 2012). According to a civil servant of the Federal Office for Immigration and Refugees, postponement of increasing language requirements relates to the fear that increased requirements could affect Germany's attractiveness to foreign physicians (Bundesamt für Migration und Flüchtlinge, telephone interview, September 17, 2013). Similarly, another state government official observed that the language issue may cut two ways because no one will come to Germany if the prerequisites are too high (State health ministry, Department responsible for degree recognition, Northern Germany, telephone interview, July 15, 2013). In any case, the slowness of German authorities in tackling this problem is striking considering the relevance of the language factor in the overall integration debate in Germany and Europe.

7 Discussion and Conclusion

This article analysed how recruitment of highly skilled foreign workers can be managed in a traditionally exclusive field such as the medical profession, using Germany and Spain as comparative examples. As was seen, both countries allow the entry of non-EU physicians. This notwithstanding, the analysis showed that structural factors play a major role in determining to what extent a more open immigration process occurs.

The centralized organisation of the Spanish training system, together with the weak corporatism of the medical profession, allowed for quick reaction to the entry of highly skilled migrants as the cap for specialty training access was lifted during the economic boom. The same centralized organisation was also fundamental when it came to restrict, though not forbid, medical training for non-EU foreigners after the economic crisis. In this respect, the Spanish case reflects the expected relationship between international recruitment and strong economic fluctuations usually assumed in the case of tax-based systems (Hoesch, 2012). The German case, by contrast, experienced an unexpected evolution. Social-insurance-based systems such as Germany's, where individual financial turnover plays a major role, are generally considered less favourable in promoting international recruitment. However, the strong corporatist character could not prevent the exceptional opening of the immigration policy that Germany experienced after years of closure, which also affected the health care sector.

Analysis has also shown that health care systems always keep control of their workers despite more flexible recruitment channels. Before the economic crisis, specialty recognition represented a difficult obstacle for those who had carried out their medical training abroad and wanted it recognised in Spain. Moreover, employment in the public health care sector has always been “reserved” for Spanish natives and non-EU citizens, similar to many other positions in the public administration. This outcome suggests that the medical profession in Spain is still linked to the idea of “national service” and “national interest”, which is, at least for now, not the case in Germany anymore. However, German licensing bodies still keep considerable power in the process of foreign credential recognition. The different recognition practices implemented in the German *Länder*, after lifting the nationality requirements, may turn foreign credential recognition into an important recruitment barrier to labour market integration. The requirement to pass a state of knowledge exam in the case of assessed education gaps may considerably delay the recruitment process and challenge an efficient match of demand and supply. In addition to the use of nationality requirements and credential recognition as *ex ante* and *ex post* control instruments, respectively, the impact of less debated factors, such as language, on the employment of foreign physicians has been taken into account. It has been shown that scant knowledge of German is considered one of the reasons for the difficult labour market integration of foreign doctors and is currently one of the most debated challenges to Germany’s attractiveness to highly skilled foreign workers. By contrast, language in Spain has never represented an obstacle to full access to the medical profession due to the high presence of Latin Americans among resident physicians.

Clearly, the internationalisation of the Spanish and German health care sectors, although in different stages, experienced a reverse trend in which national citizenship and foreign credential recognition represent the main instruments to “ration” the access of non-EU foreigners. Another less evident limitation of these recruitment regimes concerns the type of workers to be recruited. As was seen, in both countries, the demand for foreign physicians is limited to certain geographic regions of destination and certain specialties. Family medicine represents by far the least attractive medical specialty in both countries because it is less prestigious and has fewer opportunities for additional income compared to other specialties. In Germany, family doctors receive the lowest premiums from German insurance, whereas in Spain, they earn less than other types of specialists and have fewer possibilities to open their own private practice. In other words,

the demand for physicians in both countries exists in the less attractive positions, which also influences the types of positions offered. As was seen, Spanish international recruitment schemes are mainly focused on specialty training while Spanish and EU nationals have always had priority in obtaining the “good” permanent positions in the public system both before and after the economic crisis. In this respect, Spanish recruitment reform was not an avenue to attract human capital for long-term employment but was rather an avenue to bring the least expensive category of physicians into the country. It is also legitimate to question to what extent the current reforms in Germany will contribute to human capital enhancement or simply “fill in the blanks” of unattractive positions since the reduction of the minimum salary requirement mainly favours the recruitment of young non-specialised doctors rather than that of more experienced (and expensive) specialised doctors.⁶

This result suggests that Germany is following a pattern similar to Spain, where the opening of the health care sector to non-EU foreigners mainly concerns medical training. Second, the emergence of internal barriers based on foreign credential recognition may put the German case closer to Canada, where effective integration into the labour market is difficult despite the existence of more generous entry rules. It also remains to be seen to what extent foreign doctors will be able to open their own practice as self-employed specialists, considering the relevance that private networks have in the process of “practice-takeover”, which represents the more profitable business in the German health sector (Hoesch, 2012). In view of all this, it could eventually be argued that the recruitment policies in these countries are not aimed at attracting valuable human capital but rather at responding to the “segmented” structure of the respective health care systems where immigrants, most of them from third countries, have to fill the less attractive niches while the most attractive positions remain concentrated in the hands of natives and privileged nationals.

Notes

1. Academic recognition refers to the university degree obtained after the study of medicine while the recognition of professional qualification refers to specialty training carried out after having obtained a degree in medicine. In Germany and Spain, physicians are allowed to practice as specialists only after having concluded their specialty training.
2. According to the current wage agreements, the minimum gross salary for resident doctors to earn in their first year of training is of 4,023 euros monthly.

3. In fact, candidates with a poor ranking position in the state examination repeated the training exam, hoping to achieve a better score instead of starting medical training in less attractive specialties, such as FCM.
4. The immigration reform of 2004 in Spain introduced the possibility of circumventing labour market checks for occupations included in the "Catalogue of Hard-to-Fill Occupations" (*Catalogo de ocupaciones de difícil cobertura*). According to this new procedure, if a vacancy refers to a type of job listed in the Catalogue, an employer can immediately initiate the hiring process without the need for a labour market check. For further details, see Finotelli (2012).
5. See § 3 of the current Regulation of the Medical Profession.
6. It may also be argued that such a low minimum salary may favour international recruitment in Eastern German regions, where doctors in hospitals are supposed to earn less than in the Western part of Germany; opening a practice in Eastern Germany is less lucrative because of a lower number of private patients.

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A Crucial Testing Ground

The Governance of Labour Migration in the Long-Term Care Sector

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Abstract

European societies are currently facing serious challenges in responding to a large and growing demand of long-term care services. To a varying, but overall substantial, extent this increasing demand is satisfied through migration, with migrant women workers representing everywhere a considerable share of the workforce available in the care sector. In this paper two key questions arising from these observations will be addressed: What has been the specific role of migration in addressing labour shortages in the care sector across Europe? And, secondly, what are the drivers of the different immigration policy approaches adopted? Drawing on EU-LFS data I will describe the main entry channels of migrant care workers, also distinguished by skill and occupational level, to highlight the specific immigrant labour supply policy mix adopted by national governments. Recent theories of managed migration policies will be critically assessed to ultimately discuss their ability to explain the immigrant labour supply policy mix in the care sector.

Keywords: care, migrant workers, immigration policies, managed migration, care regimes, Italy, Europe

1 Introduction¹

Population ageing resulting from deep and long-lasting demographic and socio-cultural transformations currently represents one of the major challenges for most European societies. Beside a steadily shrinking workforce, and its consequences on labour markets dynamism and on welfare state sustainability, the rapid and massive increase of older cohorts is also hav-

ing (and will increasingly have) important consequences in terms of growing demand of personal and household care services to support dependent people and their families. Indeed, demographic ageing is among the causes of the crisis of traditional informal care systems, revolving around the central role of family members, and primarily women among them: declining size of households and families, transformation in family structures and living arrangements, increasing female participation in labour markets have jointly resulted in a reduction of available caregivers within families. At the same time, European welfare states are undergoing an enduring process of restructuring and withdrawal, gradually downsizing the direct provision of care services. As a consequence of this complex mix of societal processes, new markets for care services have emerged and developed. The development of professional care and personal services has even been lately identified by the European Commission as one of the sectors with the highest job creation potential: 'The size and fast growth of these sectors (twice the employment growth overall) suggests they will remain a key driver in providing new jobs in the years to come' (European Commission, 2012, p. 6).² A large part of the emerging care needs concerns, in particular, people in their old-age (over-65), namely the demographic group showing the most rapid and remarkable growth. Therefore the long-term care (LTC) sector (encompassing both health as well as personal and social care activities) is the one displaying the greater expansion (Colombo et al., 2011).

During the last decades, migrant labour has substantially contributed to the expansion of employment in this sector, although to a different extent and in various forms across European countries. This trend has persisted throughout the current economic crisis: in a general context of rising unemployment, especially for migrant workers, employment of foreign-born workers in domestic or residential care services has increased respectively by 20% and 44.5% between 2008 and 2012 in the European OECD countries (OECD, 2013).

The growing contribution of migrant labour to LTC workforce has attracted increasing attention of scholars and researchers with different disciplinary backgrounds. Much scholarly work has been focused at explaining the emerging demand for care labour by looking at the intersection between care and employment regimes in determining labour shortages in the care sector in a macro perspective (Kilkey et al., 2010; Williams, 2010), or by comparing the micro-determinants of migrant care labour demand by type of employers and by country (Anderson, 2007; Moriarty, 2010). Less attention has been devoted at explaining the characteristics of the labour supply and the role of migration policies in determining these features.

This contribution aims at filling this gap by looking at the articulation of Immigrant Labour Supply policies in the care sector across Europe, and more specifically in the LAB-MIG-GOV research project's target countries. What has been the specific role of migration in addressing labour shortages in the LTC sector across Europe? Which specific policy mixes for Immigrant Labour Supply have been adopted in response to an expanding demand for LTC services? And which factors may explain the different policy approaches adopted? These are the key questions that this contribution will attempt to answer.

I will first review the existing literature that has focused on explaining the emerging demand for migrant care labour in Europe to highlight its inadequate consideration of immigration policymaking. Therefore, starting from a critical assessment of recent immigration policy theories, I will propose an analytical framework centred upon the concept of Immigrant Labour Supply policy mix and I will explain why and how it can better explain the differentiated contribution of migrant labour to the LTC workforce across Europe; secondly, I will draw on original estimates produced in the context of the LAB-MIG-GOV project³ to describe the recent contributions of migrant workers in the care labour markets across Europe, giving special attention to the distribution of migrant labour across the skill spectrum in LTC labour markets; I will then describe the main entry categories of migrant care workers (MCWs) in the main target countries, as a proxy indicator for immigrant labour supply policies across Europe; finally, I will advance some hypothesis on the main drivers of the different policy choices adopted.

2 The internationalization of European care regimes: an analytical framework

The key contribution of migrant workers to the labour markets for care in Europe has not gone unnoticed to scholars and researchers. The scientific interest for the increasing internationalization of care labour has soared in the latest decades, prompted by feminist research on the racialised and gendered divisions of care in contemporary western societies. Global care chains linking the poor global south and the affluent ageing north in an international division of reproductive labour (Parreñas, 2000) have been analyzed in depth by a wealth of feminist studies (Yeates, 2012).

More recently, scholars of comparative welfare studies have claimed the importance to look at the dynamic intersection of care, employment and

migration regimes to explain the emerging care deficit in European welfare states and the increasing contribution of migrant labour in tackling care needs. Authors in this body of research have thus highlighted the specificities of national contexts in framing and shaping the different forms of migrant care labour: indeed, as Williams, (2012: 370-1) stressed, it is important to look at 'specific forms of migrant care labour that any individual care regime generates'. European care regimes greatly vary in the organisation, provision and financing of care⁴. At a first level, European care regimes differ in the relative weight and respective roles of State, family, market and no-profit actors in providing care to people in need. Other major interconnected dimensions on which variations emerge are: settings of care, namely whether care is mainly provided at home or in some kind of residential settings (Colombo et al., 2011), and funding, where care may be publicly funded (through in-kind services or some form of monetary support), resort on private resources of families or, as in actual arrangements, rely on a mix of public and private resources (Da Roit et al., 2007). Furthermore, important differences are found on the regulation and provision of care for different types of recipients, namely childcare or long-term care for elderly or disabled: in particular, whereas childcare has been included in the framework of the new 'social investment' strategy underpinning welfare reforms in most European countries, elderly care has remained largely excluded from this framework.

At the same time, despite still substantial differentiation across European care regimes, more recent contributions have instead highlighted the emergence of 'converging variations' towards the marketization of care as well as the appearance of 'routed wages' in care work (Ungerson 2003; Williams 2010; Williams and Brennan, 2012). In particular, Bettio and Verashcaghina (2010), identify the main developments of (western) European care regimes in progressive shifts i) away from institutionalized care towards home care; ii) away from public provision and towards private or mixed services backed up by cash transfers; iii) in favour of services that complement rather than replace informal care. The marketization process has targeted long-term care to a greater extent than childcare: in line with the social investment approach adopted in the Lisbon Strategy, decreasing public investments in care for older people compared to childcare are observed and, consequently, a greater marketization of elderly care work (Brennan, Cass et al., 2012). These processes, inspired by neo-liberal ideologies and urged by rising public budgets constraints, have been creating markets, or 'quasi-markets' (Le Grand, 1991), for care services: it is precisely

here that a new space for the employment of migrant workers in the care sector has been opening in many European countries.

In fact, the interaction between care and employment regimes largely explains the existing segmentation within and outside care labour markets and the magnitude of care labour shortages in each national context. Simonazzi (2009) describes 'national employment models' in the care sector by complementing characteristics of the care regimes with specific labour market regulations concerning pay, working and employment conditions or skills, training and credentials in the care sector: these aspects largely determine the attractiveness of this kind of work for native workers, who tend to shun those jobs with poorer employment and working conditions, lower wages, and bad social recognition. And long-term care is a typical example of a marginal labour market sector where low pay⁵, poor working conditions, little opportunity for career development, and high vacancy and turnover rates prevail (Fujisawa and Colombo, 2009). In general terms, a greater role of state-provided care services, either in institutional or domiciliary settings, usually entails better employment and working conditions (in terms of wages, employment protection, working hours, etc.), a greater labour supply by native (women) workers and a limited role of migrant labour. Conversely, the widespread use of cash transfers, with no or low conditionality upon their use, lower employment protection or poor regulation of care work, creates strong incentives towards the often irregular employment of care workers and makes care work unattractive for native workers: this is where the role of migrant care labour is greater.

In this complex and dynamic context, authors in this thread underline the key role of migration regimes in shaping migrant care labour force characteristics and affecting patterns of labour market integration of MCWs. Shutes and Chiatti (2012), drawing on a comparison between elderly care systems in UK and Italy, reveal how trends towards marketization of care – although starting from two very different models – and specific configurations of immigration policies have converged towards a wide use of migrant labour in LTC services. In particular, the authors highlight the role of immigration policies in shaping the employment of migrant care workforce. Thus, irregular migrants can only enter the informal labour markets where low wages and poor or exploitative working conditions are widespread and, at the same time, holders of regular residence permits face different sets of constraints and restrictions in their occupational mobility (Cangiano, 2014b). As a result of the different intersection of care and migration regimes, employment of migrant care labour is concentrated in the private sector (including private hospitals and residential care

homes in particular) in the UK and in private households in Italy, where it is shaped both by irregular status and by the terms and conditions under which regular immigration status can be obtained. Similarly, in another comparative study on UK, Italy and the Netherlands, Van Hooren (2012) has identified three different models of migrant care labour, originating from specific features of the national care regimes that shape the labour demand in the sector: Italy, where a 'migrant-in-the-family' model of care has emerged (Bettio, Simonazzi et al., 2006) as a consequence (among other factors) of the prevalence of unconditional cash allowances; UK, with a 'migrant-in-the-market' model, explained by the larger use of means-tested cash allowances and outsourcing of public domiciliary care services by local authorities to private service providers, and the Netherlands where none of the two has been observed and the employment of migrant workers in the care sector remains negligible. Van Hooren (2012), also looks at the role of immigration policies in setting up these three different models and she concludes that 'labour migration policies for care workers only had a limited impact on the employment of migrant workers' since 'many migrants employed in the social care sector rely on residence permits unrelated to employment or [...] are already living in the country as irregular migrants' (p. 143).

The literature on comparative analysis of care regimes has thus considerably contributed to explain why and how labour shortages in the care sector have emerged as well as the peculiar characteristics of the labour demand in this labour market sector and the main variations observed across European States. Potential employers of care workers greatly vary from public sector agencies to non profit voluntary associations, from for-profit service providers to private households. In the latter case it is even problematic to speak of 'employers' since, as much research has showed, 'the employers of domestic [and care] labourers often do not see themselves as employers' rather declaring to pay for *some help* or to buy services instead of labour (Pannell and Altman, 2009, p. 5; see also Ambrosini and Cominelli, 2005). Demand for care labour is thus highly diffuse, atomized and fragmented across a wide range of actors, with little opportunities to access the venues of policy-making or to effectively influence decision-making processes, especially as far as immigration policies are concerned.

However, and most importantly for the goals of this contribution, one critical element of comparative care regimes analysis is that it lacks a sound analysis of immigration policy-making and the extent to which this is shaped by specific features of national care and employment regimes. In most cases, immigration regimes are in fact introduced in the analysis as a

static and independent factor that care and employment regimes adapt to. The emergence of labour and skill shortages in the care sector, stemming from actual care and employment policies and their dynamic evolution, is indeed a powerful factor to explain relative openness or closure of national labour immigration policies. Nonetheless, it is not the sole factor to account for and immigration policies are typically the outcome of complex mediations between competing interests and concerns. Recent evolutions towards the revival of labour migration in the pre-crisis decade have been reflected in significant changes in immigration policies that have favoured economic migration inflows over allegedly unproductive family or humanitarian categories (Pastore, 2010). Aiming at explaining this revival, recent theoretical approaches have explained the shift from a 'zero-immigration' to a 'managed migration' policy approach by looking at specific features of national 'varieties of capitalism', or models of political economy (Menz, 2008; Menz and Caviedes, 2010). According to this literature, the neo-liberal competition state would aim at maximising its 'competitiveness' by ensuring a *business-friendly* climate (Lavenex, 2006): managed migration fits into this new framework by framing migrants as potentially valuable human resources (Menz and Caviedes, 2010). Labour migration policies have consequently revived as a key tool to source labour and skills deemed useful for the national economy, through the key lobbying and mediation efforts of labour market interest associations (i.e. employers' and workers' organizations). As Menz (2008) argues, the more employers organizations are internally united and structured the more effective and successful their policy demands for open immigration policies will be. Therefore, in general terms, coordinated market economies (CMEs) and, to some extent, mixed market economies (MMEs) tend to accept only skilled and highly skilled labour migrants and to close their doors to low-skilled migration, while liberal market economies (LMEs) need labour migrants at both ends of the skills spectrum. Among our target countries, Germany and UK represent paradigmatic cases of, respectively, CME and LME whereas France is typically classified among mixed market economies, combining elements of both ideal-types.

Nevertheless, the analysis of the (lack of) management of care migration contributes to raise some criticism on the ability of the political economy of managed migration approach to give full and accurate account of the strategies through which European States source their labour needs abroad while, at the same time, enriching the analytical framework. In fact its restrictive focus on labour migration policies *stricto sensu* (i.e. those regulating the admission of third-country nationals for employment

purposes) as part of a competitiveness strategy do not allow to understand how and why States admit a substantial share of their migrant workforce through alternative channels. Consistently with the analytical framework used in the LAB-MIG-GOV research project, I will instead adopt here a broader focus on the complex and dynamic policy mix in what may be defined as a *migrant labour supply (MLS) policy field* (Pastore, 2014 and 2010). I will therefore look at both *official labour migration policies* addressing MCWs and at what we have defined as their '*functional equivalents*', i.e. policies regulating other relevant entry channels. With the latter I essentially refer to national policies managing the admission and labour market access of EU newly accession countries' nationals and other profiles as diverse as family migrants, different types of humanitarian migrants, international students, so-called co-ethnics (e.g. *Aussiedler* in Germany or descendents of emigrants in Italy). Some attention will be also given to what we have called '*functional alternatives to labour migration policies*', defined as all policies and measures (mainly situated in the labour market, education or training policy fields) which are explicitly meant to reduce the dependency on migrant labour and increase the presence of resident workers in given employment sectors. My argument here is that this broader analytical framework is particularly suitable to account for the management of care migration due to the specific characteristics of this labour market sector. On the one hand, as previously highlighted, the demand for care labour is highly dispersed and fragmented across a wide range of actors and private households hold a primary role here. This makes the translation of care labour demand into effective lobbying efforts for more open labour migration policies towards care workers a particularly challenging task. Hence, we can expect that alternative admission channels are more relevant for MCWs than for other more 'valuable' categories. On the other hand the traditional depiction of care work as unskilled or low skilled work prevent its inclusion into the framework of managed migration as a competitiveness strategy aimed at sourcing skills and talents useful for the national economy (Kofman, 2013).

A second source of criticism is more related to the empirical grounds on which theories on the political economy of managed migration are based. In fact, the southern European cases hardly fit in the framework proposed by Menz and his colleagues: even if EU Mediterranean countries have been among the forerunners in the revitalization of labour migration policies in the pre-crisis decade, this has in no way been framed as part of a competitiveness strategy. Southern European countries have not participated in the 'global race for talents', competing to attract highly skilled immigrants

deemed beneficial for their economies. Rather, they included loosen elements of skill selectivity in their official labour migration policies, de facto admitting huge inflows of low skilled labour. Mass immigration for working purposes has been driven mainly by demographic rather than economic competitiveness factors: in other words, migrant workers have been admitted to substitute for a native workforce that was shrinking in absolute terms rather than to contribute to enhancing the productivity of a fast-growing economy. Immigration has been part more of a survival rather than a growth-oriented strategy and, I argue, care migration has significantly contributed to this.

3 The growing contribution of migrant care labour in European care regimes: empirical evidence

The main focus of this paper is on the overall long-term care migrant workforce, primarily differentiated by skill level rather than sub-segment of the care labour market (i.e. whether in institutional, residential or domiciliary activities). Since the main goal of this article is to analyse the Immigrant Labour Supply Policy mix adopted in selected EU countries and thereby critically assess recent immigration policy theories, I believe that a fine-grained distinction between different categories of care workers across sub-sectors is not particularly relevant here. The analysis will draw on data provided by EU-LFS and in particular by information contained in the 2008 ad-hoc module (AHM) on labour market situation of migrants on reason for migration, used as a proxy indicator for entry channels. Thanks to information provided in the 2008 AHM of the EU-LFS it is thus possible to provide data on the main recruitment pools of MCWs relative to main entry routes in the various EU countries⁶ (Cangiano, 2014b). As for the geographical scope of the comparative analysis, this will be limited to the five largest European countries, namely Germany, France, Italy, the United Kingdom and Spain, plus Sweden. These were in fact the target countries of the LAB-MIG-GOV research project from which this article originates (see Pastore, 2014).

Although highly differentiated in forms and extent, the contribution of migrant labour to care labour markets across Europe has been everywhere significant, and it has increasingly been so in the past decade. Empirical description and analysis of the LTC workforce and of migrant labour involvement in it in comparative perspective is a highly challenging task. Researchers in this field are in fact confronted with serious methodological

constraints: first, significant differences in labour market structures, skills or classification of occupations within LTC sector in different European countries make a sound comparison difficult to achieve (Fujisawa and Colombo 2009; Simonazzi 2009); secondly, a straightforward identification of MCWs is made difficult by existing shortcomings in the definitions of who is a migrant in each individual country (Cangiano, 2012); finally, care work is often carried out in irregular forms (and by irregular migrants), especially when performed in private homes, which makes it difficult if not impossible to fully detect it in official statistics (Schwenken and Heimeshoff, 2011; Ambrosini, 2013a; Triandafyllidou, 2013). Despite acknowledging all these methodological challenges, Geerts (2011) proposes to identify LTC workers using data from the EU-LFS by singling out four occupational groups on the basis of the ISCO-88 groupings at 3 digits level: nursing and midwifery professionals (ISCO-88 category 223), nursing and midwifery associate professionals (ISCO-88 category 323), personal care and related workers (ISCO-88 category 513) and domestic and related helpers (ISCO-88 category 913) (see also Cangiano, 2014a for further discussion of methodological constraints). However, it must be noticed that these four categories are likely to overestimate LTC workers since they encompass a larger spectrum of occupations also related to child-care, health-care or home-care work. At the same time, EU-LFS is likely to underestimate the immigrant workforce due to well-known methodological limits such as the exclusion of irregular migrants from the sample or the different definitions of immigrants adopted in different EU countries (Cangiano, 2012).

In this contribution I adopt the same approach proposed by Geerts (2011) for the identification and analysis of the care workforce, while I draw on the method proposed by Cangiano (2012) to identify migrant workers in the 2008 EU-LFS sample⁷: in the context of this paper, then, migrant workers are individuals born outside their countries of residence, with both parents born abroad, and who have entered the host country when they were 15 or older.

With all these caveats in mind, here below I will sketch a picture of the migrant labour contribution in care labour markets across Europe in the last decade. Figure 1 shows that in 2009 the share of the migrant workforce in the LTC sector was substantial in all the target countries considered, exceeding 15% everywhere up to nearly 50% of the total workforce in the sector in Italy. Besides, the percentage of MCWs over total has considerably increased, though with important cross-national differences in the extent of the change: in Italy migrant workers represented around 3% of the overall workforce of the sector in 1999 while their increase in the

following decade has been dramatic, to reach 48% in 2009; a similar, though slightly weaker, increase is observed in Spain (from 6% to 31%). Conversely, France and Germany have not witnessed significant changes, with the share of the migrant care workforce over total increasing only by 2 percentage points in both cases (respectively from 14 to 16% and from 20 to 22%). The UK and Sweden represent intermediate cases where the weight of the migrant care workforce has nearly doubled though remaining at lower levels than in Italy and Spain (respectively from 9 to 17% and from 11 to 21%).

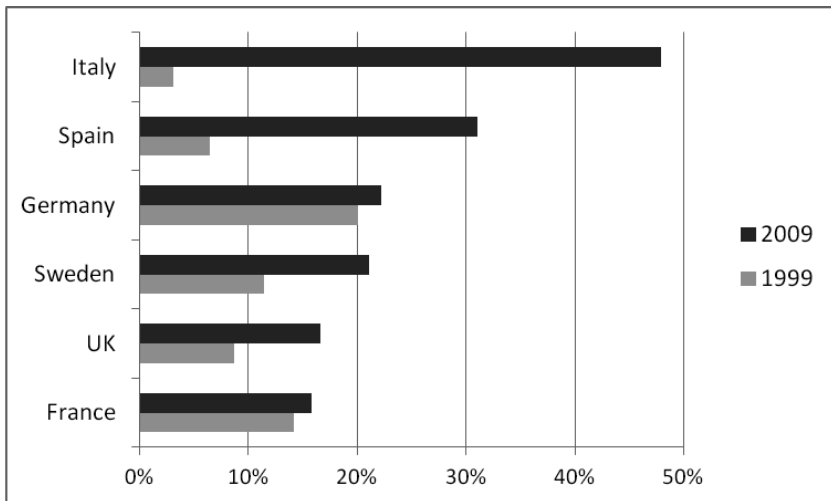


Figure 1 Migrant share (%) of the care workforce in LAB-MIG-GOV countries, all occupational categories included, 1999 and 2009

Source: Courtesy of Alessio Cangiano; calculations based on the EU Labour Force Survey

If the contribution of MCWs has been substantial, in purely quantitative terms, it is also important to look at more qualitative aspects of care migrant workforce, namely the positions occupied by migrants across the occupational spectrum in the care sector. We may then ask what has been the role of migrant workers in the different occupational categories within the LTC labour market across EU countries. The table 1 below describes the distribution of MCWs in the six LAB-MIG-GOV target countries across the three main broad ISCO-88 occupational groups in 2008: nursing and midwifery professionals and associate professionals (highly and medium skilled), personal and related care workers (low-skilled), and domestic workers (unskilled), also distinguishing between those who entered the

host country before 1998 (old migrants) or in the 1998-2008 decade (recent migrants).

Table 1 Relative share of migrant workers across broad occupational groups in the care sector, EU-15 and LAB-MIG-GOV countries, 2008 (%)

		Nursing and midwifery professionals (ISCO-88 223+323)	Personal care and related workers (ISCO-88 513)	Domestic and related helpers (ISCO-88 913)
GER	recent migrant ^a	1%	5%	12%
	old migrant ^b	10%	9%	33%
	Total	11%	14%	45%
SPA	recent migrant	0%	14%	39%
	old migrant	2%	4%	6%
	Total	2%	17%	45%
FRA	recent migrant	1%	1%	6%
	old migrant	5%	8%	18%
	Total	5%	10%	23%
ITA	recent migrant	...	15%	37%
	old migrant	...	10%	23%
	Total	...	25%	60%
SWE	recent migrant	2%	4%	16%
	old migrant	7%	11%	15%
	Total	9%	15%	30%
UK	recent migrant	11%	8%	18%
	old migrant	9%	5%	6%
	Total	20%	13%	24%
Tot EU15 ^c	recent migrant	3%	6%	21%
	old migrant	7%	7%	16%
	Total	11%	14%	37%

Source: Courtesy of Alessio Cangiano; calculations based on the EU Labour Force Survey

^a 'Recent migrants' are those arrived in the period between 1998 and 2008.

^b 'Old migrant' are those arrived before 1998.

^c Excluding Finland.

In general terms, migrants are concentrated in the lower ladders of the care labour markets while they are underrepresented in highly skilled occupations. In the EU-15 overall, migrants represented over a third of total unskilled care workers (ISCO-88 category 913), around 14 per cent of the medium category of personal care workers (ISCO-88 category 513) and 11 per cent of the highly skilled care workers (ISCO-88 categories 223+323). The share of migrant domestic workers exceeded the EU average only in Italy, Spain and Germany, representing respectively 60%, 45% and 45% of

the total workforce in the subgroup. In Italy and Spain most of migrant domestic workers have arrived after 1998 while the opposite is observed in Germany. Albeit UK and Sweden display a weaker role of migrant workers as domestic helpers, it has to be noticed that migrants' share in the subgroup has grown considerably in the 1998-2008 decade: 18% and 16% of migrant domestic workers in the UK and Sweden respectively have entered the countries after 1998. The share of personal care and related workers significantly exceeds the EU-15 average in Italy and Spain (respectively 25 and 17% against 14%) while in the remaining four countries the weight of migrant workers in this category is roughly in line with the EU-15 average. Finally, the UK is the only country where the share of migrant nurses and associate nursing professionals exceeds 20% of the total workforce in the sub-group, most of which arrived after 1998, whereas in Germany and Sweden the relative share remains in line with the EU-15 average and in France, Italy and Spain migrant nurses only represent a small to negligible part of the total.

4 Migrant care workers and migration policies: main entry channels

Whether migrant workers have entered the host countries for reasons of employment, either with or without a job offer in hands, family reunification, as a freely circulating EU citizen or as an asylum-seeker is likely to have a strong impact on their capacities to get a job, to change employer or sector of employment or to move upward in the occupational ladder (Cangiano, 2012; Büchel and Frick, 2005). Indeed the State, through its policies on immigration and in other domains, plays a major role in the recruitment of migrant workers, by categorizing migrant workers on the basis of their skills sets or national origin. Furthermore, by constraining migrant mobility through different means, State regulations contribute to create and maintain labour market stratification and segmentation along ethnic lines (Anderson 2010; McGovern, 2012).

Figure 2 below allows to describe the main recruitment pools of MCWs in the year 2008. At the EU-15 level, around 15% of the migrant care workforce is represented by EU mobile citizens, over a third of MCWs has entered the host country for reasons of employment and another third for family reasons; all other entry categories are only represented in minor percentages. Unsurprisingly, entry routes related to employment seem to have been more important for care workers in Italy, Spain and, to a lesser

extent, in UK, namely the three large EU countries that have showed a greater openness to labour migration in the pre-crisis decade (Pastore and Salis, 2013). On the contrary, given their generalized closure to economic migration until very recently, France, Germany and Sweden have sourced MCWs from alternative entry routes (i.e. functional equivalents), especially family reunification, intra-EU mobility and humanitarian migration. Also, ancestry-based immigration has had a greater role in Germany.

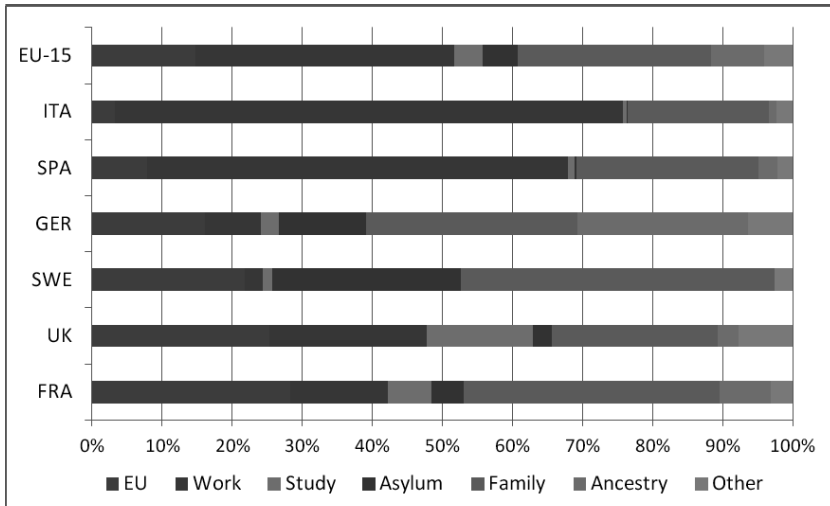


Figure 2 Composition of the migrant care workforce by entry category.^(a) EU-15 and LAB-MIG-GOV countries (2008)

Note: (a) The category EU includes nationals of EU-15 countries and post-enlargement EU-10 migrants (nationals of EU accession countries who moved to the selected destination countries in or after 2004). Migrants from Central and Eastern Europe who moved before 2004 are included in one of the other entry categories for non-EU nationals.

Source: Courtesy of Alessio Cangiano; calculations based on the EU Labour Force Survey

Unfortunately, given the limited size of national samples, it is not possible to disaggregate MCWs simultaneously by occupational category and entry routes in individual countries. However, a look at the pooled sample at the EU-15 level allows us to see what have been the main entry categories in each occupational sub-group of care workers at the EU level (see figure 3): around a quarter of skilled and highly skilled MCWs have entered the host country for employment reasons, often upon the availability of a job offer before entry (in around 23% of cases), while intra-EU mobility, family reunification or ancestry-based immigration have been other relevant entry channels. It is worth noting that within this sub-group, the share of

workers entered for study reasons and of intra-EU-15 citizens, is greater than for the other two sub-groups implying that most of them have probably gained training and credentials for the exercise of their profession while already in the EU.



Figure 3 Distribution of care migrant workers at the EU-15 level, by occupational category and entry route, 2008 (%)

Source: Courtesy of Alessio Cangiano; calculations based on the EU Labour Force Survey

Entry routes for employment reasons have been much more relevant for unskilled MCWs in the ‘domestic and related helpers’ sub-group. However, the vast majority of them have entered the host country without a job offer, therefore presumably through irregular avenues⁸. Compared to the other two occupational sub-groups, post-enlargement intra-EU mobility has been more significant for migrant domestic workers. Within the intermediate positions of ‘personal and related care workers’ the mix of entry channels has been more varied, although with a greater role of family migration routes.

5 The immigrant labour supply policy mix in the care sector: what drives it?

The picture sketched through data presented above largely mirrors the actual configuration of immigrant labour supply policies adopted by major EU countries in the pre-crisis decade. In the first place, these data confirm that labour migration admission channels have only had a secondary role in the growth of migrant labour supply in the LTC sector (Van Hooren, 2012). Alternative migration channels such as family, humanitarian or study entry routes or intra-EU mobility (especially post-enlargement waves) have contributed to a larger degree to increase the ranks of migrant care labour in the EU as a whole. However, the relative weight of alternative immigration routes is not homogeneous across the various EU countries. Indeed, as expected, southern European countries are those which have showed a greater openness to MCWs. Italy represents here as an exemplary case where the labour market for domestic and care services has rapidly become the main entry door of labour migration into the country with the adoption of ad-hoc entry quotas and mass regularizations for domestic and care workers during the most recent years (Salis 2012; Castagnone, Salis et al., 2013). Since the early phases of the Italian immigration experience migrant domestic workers have benefited from preferential provisions in admission procedures (Einaudi, 2007). Between 2005 and 2010 a considerable share of new work permits issued through annual quotas targeted jobs in the domestic and home care sector: from around a third of the total in 2005 to over 70% in 2008. After the 2002 ‘great regularization’ through which around 300,000 irregular domestic workers obtained legal status (i.e. almost half of the total regularized population), an ad hoc regularization for domestic and care workers was adopted in 2009, despite the rising unemployment caused by the economic crisis. Although less noticeably, Spain as well made the domestic sector a major entry door into the national labour market by either opening up job-search entry routes for domestic workers or through its general regime and mass or individual regularization schemes (i.e. so-called *arraigo*) (Arango and Finotelli, 2009). At the opposite end, among the LAB-MIG-GOV target countries, France stands out as a case where job vacancies in the care sector have been scarcely filled by migrant labour and, in most cases, MCWs did not enter France for employment reasons. Indeed, this is in line with the general closure to labour migration adopted by France since the late 1970s to the mid-2000s, when a shift from ‘*immigration subie*’ to ‘*immigration choisie*’ was claimed by the then President Sarkozy (Devitt, 2012). There-

fore, as Condon et al., (2013, p. 16) effectively put it, social care policies in France have in no way relied upon immigration policies. Other major destination countries lie somewhere in between these two extremes, with only small avenues open to MCWs, usually at the higher skill levels, and a relative openness to care labour migration from new EU member states after 2004: in the UK pre-2008 work permit system, senior care workers (with qualifications at level 3 of the National Qualification Framework) were eligible for admission and in the period between 2001 and 2006 over 22,000 new work permits were issued to migrants meeting the established criteria⁹. At the same time, a fairly high number of low skilled jobs in the social care sector was filled by citizens from the A8 countries between 2004 and 2009. In Germany a pilot program of ‘controlled migration’ for home helpers was introduced in 2002 but only 3,000 workers were sourced through it, whereas the overall number of migrant elderly care workers was estimated to be between 150,000 and 200,000 (Lutz and Palengal-Möllenbeck 2010). Most of these foreign care workers were nationals of the newly accessed Eastern European Member States entering with tourist visas or exploiting the loopholes of EU mobility regulations by working as self-employed or employment agency care workers (Shire, 2014).

What does explain the diversity of the policy approaches adopted? The varieties of care and employment regimes and their effects in terms of size and characteristics of emerging shortages are certainly a powerful, although partial, explaining factor. Thus the still relevant role of publicly provided care services or, alternatively, a still strong regulation of care work, as observed in Nordic or Western Europe’s care regimes translates into a still limited demand for migrant care labour. Here labour migration policies have therefore remained overall closed to care workers, by sourcing the few necessary ones through less visible and politically controversial entry channels. At the opposite end, strongly familialistic care regimes as those characterizing Mediterranean EU countries, with their reliance on unconditional cash-for-care schemes and poor regulation of professional care work are characterized by huge unmet labour needs in the care sector: immigration policies here have addressed this new labour demand by opening their front (and back) doors to care migrant workers.

However, a closer look at the variation of entry routes across the different occupational categories allows to provide a more accurate account of the different degrees of openness or closure to care workers migration. As predicted by the political economy of managed migration accounts, LMEs such as the UK have opened their doors to both highly skilled MCWs, through official labour migration channels, and low skilled or unskilled

workers, preferably recruited among freely circulating new EU citizens from Eastern countries or other 'functional equivalents' of labour migrants. Conversely, CMEs, such as Germany, and MMEs, such as France, have remained overall close to low skilled MCWs while opening some narrow avenues for qualified care workers. Both countries have addressed their care deficits either through 'functional equivalents' to labour migrants such as commuter migration or posted workers from neighbouring Eastern countries, as in Germany (Morokvasic, 2004; Shire, 2014), or by developing strategies ultimately engendering 'functional alternatives' to labour migration, as in France (Devitt, 2014). In the latter case, personal and household care services have been the object of various waves of reform since the early 1990s, explicitly framed as a strategy to enhance the high employment creation potential of this sector, thereby investing in the regularization and professionalization of care work. This has resulted in a reduced dependence on migrant care labour compared to other national care regimes (Condon et al., 2013).

Drawing on the analytical framework proposed by political economy accounts of the managed migration paradigm (Menz, 2008; Menz and Caviedes, 2010), this general closure to immigration of care workers, except for small segments in the upper skill levels, is largely explained by two main elements. On the one hand by the still lacking recognition of care work as skilled work. Despite remarkable pressures and efforts made to enhance the professionalization and qualification of care work in the most recent years, throughout Europe (although with differences) it generally remains framed and depicted as unskilled or low-skilled work, as a traditional 'women's work' for which no specific or technical skills are required (Anderson, 2012). As Kofman (2013) argues, this is based on gendered differences in the configurations of knowledge and skills in the contemporary circuits of globalization, exemplified by two emblematic figures: domestic and care workers are mainly bearers of different types of skills, defined as *embodied* and *encultured*, which are valued differently from *encoded* or *embrained* skills¹⁰ associated with ICT workers. Therefore, in managed migration policy approaches different types of skills are arguably assessed differently and 'soft' or '*embodied*' skills, such as those crucially used in care work, are by no means considered in official immigration policies (Cangiano and Walsh, 2013). On the other hand, the general closure of labour migration policies to MCWs is also explained by the specific features of the labour demand that they are deemed to meet, that I have defined above as diffuse, atomized and fragmented across a wide and diverse range of actors (e.g. public or private hospitals, nursing homes,

labour agencies or households). This makes particularly hard to effectively translate a labour demand into a policy demand for more open labour migration policies. The relative exception represented by relative openness to highly skilled care workers (i.e. professional nurses or nursing associate professionals) in some countries actually seems to confirm the rule: indeed professional nurses are more often employed by public or private hospitals or residential homes, that is large employers that could find themselves in better positions for political lobbying.

What does not seem to fit easily in the analytical framework proposed by the political economy literature on labour migration are the Mediterranean cases, and especially the Italian one. As a matter of fact, Italy has made the care sector the main entry door into the Italian labour market, by granting preferential access to migrant domestic and care work through both its official immigration policies (i.e. annual entry quotas) and their main functional equivalent (i.e. mass regularizations). And, quite surprisingly, this has continued even during the most recent years throughout the crisis. Latest estimates show that over half of migrant women active in the Italian labour market are employed as domestic and care workers (Ministero del Lavoro e delle Politiche Sociali, 2012). I argue that this may be explained as a legitimization and consensus-building strategy adopted by State authorities. Indeed, care work provided by migrant women has been an effective and low-priced response to the structural deficiencies of the Italian elderly care system, which has allowed the State to recurrently postpone the necessary and highly expensive reforms that demographic ageing would have imposed (Sciortino, 2004; Naldini and Saraceno, 2008). MCWs have been recurrently depicted as *good* and *useful* for the Italian society and economy, thereby increasing their acceptability on the general public opinion (Ambrosini, 2013b). This has been and still is a key element of what has been described as a 'low-cost' immigration model, that is one in which immigration has been part of a sort of survival strategy instead of being used to enhance the productivity of the system: it has allowed to maintain the status quo and postpone the necessary structural reforms at a quite low price in political and economic terms (Da Roit and Sabbatinelli, 2013; Pastore, Salis and Villosio, 2012; Naldini and Saraceno, 2008). Furthermore, although ad hoc research on this is still lacking, there is the reasonable doubt that a great number of those admitted or regularized as domestic or care workers in the recent years are de facto employed in other economic sectors and working in irregular forms while officially registered as domestic and care workers. In fact, not only opportunities were greater in this sector through ad hoc quotas or regularizations, but the regulariza-

tion costs, often borne by the workers themselves, were lower there. Some partial evidence to support this hypothesis can be drawn from data on the applications presented during the 2009 regularization campaign, a large number of which concerned nationalities of countries such as Morocco (around 36,000 applications), China (around 21,600 applications) or Senegal (around 13,600 applications) that are only marginally represented among officially registered or surveyed domestic workers. Furthermore, in many cases applicant employers were immigrants themselves: around 8,000 Moroccans, 5,000 Senegalese or 3,000 Chinese (Pasquinelli and Rusmini, 2010). Similar clues emerge from official data relative to the 2012 regularization campaign: among the almost 116,000 applications concerning domestic workers (two-thirds of the total), almost 70% concerned male workers, especially from Bangladesh (14,279), Pakistan (10,369) or Morocco (10,285) while migrant men only represented around 10% of officially registered domestic workers in 2011. Therefore, the openness towards MCWs has, at least partially, allowed the Italian authorities to open the doors to all other labour migrants while presenting them as *good* and *useful* for the Italian society.

The Italian case, with its use of labour migration policies addressing MCWs as part of a legitimization and survival strategy rather than a competitiveness strategy, is therefore strongly questioning the extent of the validity of theoretical accounts based on an overarching managed migration paradigm.

6 Conclusion

The original data presented in this paper have shown the complex mix of Immigrant Labour Supply policies adopted by different European countries to meet a growing labour demand in national markets of care. This has represented a first attempt to apply a more articulated analytical framework to the study of labour migration governance across Europe in a crucial labour market sector. I have critically assessed the ability of recent theoretical accounts of managed migration approaches to provide a sound explanation of the diversity of policy mixes adopted across Europe, by pointing out strengths and weaknesses. The overall picture stemming from the analysis helps me to point out three different issues, with both important theoretical and policy implications, that will need further consideration in future research. First, the key and controversial role of skills in official labour migration policies design. In the pre-crisis decade but,

although less vocally (Devitt, 2014), also in more recent years, the latter have been increasingly framed as a tool for enhancing the competitiveness of national economies, in line with the goal of a knowledge economy promoted by the Lisbon strategy. In this framework, soft and embodied skills such as those that are key for the quality of care work have been downplayed and neglected, determining the general closure of official labour migration channels to care migrant workers. However, the trends towards the professionalization of care work, including a growing recognition of formal and non-formal competences, could contribute to change the consideration of care work as low-skilled. Combined with persistent labour shortages related to demographic processes this could also impact on the design of labour migration policies by redefining the notion of skills and its use in labour market analysis underpinning immigration policy-making.

Secondly, the consequences of the different immigrant labour supply policy mixes adopted in each national context on socio-economic integration paths and outcomes of MCWs should be addressed in future research. Indeed, entry routes and admission procedures, with the diversified set of constraints attached to each immigration status, seem to be relevant factors in influencing subsequent integration trajectories of migrant workers (not only in the care sector): for instance, as recent research has shown, entry through irregular immigration avenues, often used by MCWs not only in Southern European countries, force many of them to accept employment in the most labour-intensive segments in the care labour market (e.g. live-in care work) whereas the shift towards regular status typically imply an improvement in labour conditions (e.g. in domestic services on an hourly basis) (Castagnone, Salis et al., 2013; Gallotti and Mertens, 2013). Besides, immigration regulations in combination with broader care, education and labour market policies, concerning for instance recognition of credentials and qualifications, access to training or support to career development, are likely to have a significant impact on the possibilities offered to MCWs to upgrade their skills, change employment sector and, ultimately, achieve a reasonable level of integration in host societies.

Finally, the specificities of the Mediterranean models of labour migration management, inadequately addressed by theoretical accounts of managed migration, need to be further investigated. On the one hand, the hypothesis advanced in this paper concerning the use of labour migration policies for care workers as a legitimization or consensus-building strategy has to be refined and tested with more robust methodological tools. On the other hand, cross-country comparative analyses within the Mediterranean

region could help to highlight existing variations in a supposedly homogeneous immigration model, especially as far as care labour migration management is concerned. Furthermore, recent evolutions related to the differentiated effects of the economic crisis and of different paces in the immigrants' settlement processes across southern European countries will need further investigation.

Notes

1. This article stems from original research produced in the framework of the LAB-MIG-GOV research project (2011-2014) funded by the Europe and Global Challenges funding initiative promoted by three European foundations: the Italian Compagnia di San Paolo, the German Volkswagen Stiftung and the Swedish Riksbankens Jubileumsfond. More detailed information on the project may be found at www.labmiggov.eu
2. In two separate accompanying documents to the referred EC Communication, challenges for job-creation in professional healthcare and personal and household services are addressed. With respect to the expansion of the healthcare workforce, the European Commission suggests to: (i) improve forecasting mechanisms, (ii) anticipate new skills needs in the health professions related to changes in care delivery models, (iii) develop good practices on effective recruitment and retention of health professionals and (iv) address issues of ethical recruitment of third country nationals health professionals. In relation to personal and household services the main policy challenges identified are (i) to improve work-life balance mechanisms, hence women's employment, (ii) to exploit the potential of job-creation in this sector with a low cost for public finance (iii) to improve the quality of services and the quality of work.
3. I am grateful to Alessio Cangiano, member of the LAB-MIG-GOV research team, for providing me with these original estimates on the migrant care workforce.
4. Various typologies of European care regimes have been proposed that largely echo the families of welfare states identified in the path-breaking work of Esping-Andersen (1990); See for instance Bettio and Plantenga, 2004; Antonnen and Sipilä, 1996; Lister et al., 2007; Kraus et al., 2010.
5. In most EU countries the wage of care workers with basic formal skills is found to be 50-70% of the average comparable salary. The main exception is Denmark where the care workers' wage is aligned to the average salary. Skilled care workers are generally better paid but a pay gap relatively to workers with comparable skills is however found in most Western and Southern European countries (Bettio and Verashchagina 2010: Tab. A5 pp. 162-4)
6. Entry categories used here are derived by the methodology used by Cangiano (2012) in its analysis of the 2008 AHM of the EU Labour Force Survey (EU-LFS). The variable relative to the immigration category was built by combining information provided by the core LFS module on country of birth, nationality and years of residence, with AHM 2008 variables on the country of birth of parents (COBMOTH and COBFATH), main reason for (last) migration (MIGREAS) and the year of acquisition of citizenship (YEARCITI). Thus nine immigration categories were identified: *Descendants of emigrants* (i.e. individuals born abroad but citizens of the country of destination from birth; and migrants whose father and/or mother were born in the country of destination); *EU-15*

- / *EFTA* (i.e. migrants born in another EU-15 or EFTA country, including both foreign nationals and those who have acquired citizenship of the country of destination); *Post-Enlargement EU-12* (i.e. individuals born in the EU-12 who moved to the country of destination between 2004 and 2008); *Employment, job found* before migrating (including intra-company transfers); *Employment, no job* found before migrating; *Study*; *Asylum* (international protection); *Family* (including both marriage and family reunification); *Other*.
7. Identification of migrant workers here is based on the methodology proposed by Cangiano (2012). Here country of birth was preferred to nationality as the operational criterion to identify migrants combined with information on the year of (last) entry, country of birth of parents and, for naturalized citizens, the year when citizenship was acquired. As a consequence, the target population here is only first-generation immigrants, namely foreign-born individuals who migrated to the country of destination when they were 15 or older.
 8. Given the predominant use of demand-driven admission policies granting access only to individuals explicitly requested by a specific employers, our assumption is that those entered for employment purposes but *without a job offer* have entered irregularly and have subsequently been regularized, either through mass regularization campaigns or individual regularization procedure.
 9. However, eligibility criteria for senior care workers' admission were restricted after 2008 (Cangiano, Shutes et al., 2009).
 10. Drawing on a typology proposed by Williams (2006), Eleonore Kofman (2013, p. 584) discusses different types of knowledge to explore their unequal valorization in the global economy and the consequences in terms of immigration regulations. She then distinguishes between *embrained* knowledge, i.e. that dependent on conceptual skills and cognitive abilities, encoded knowledge, i.e. that embedded in signs or symbols to be found in books, manuals, codes of practice etc., *embodied* knowledge, i.e. that resulting from experience gained from physical presence, practical thinking, material objects, sensory information and learning-by-doing, and, finally, *encultured* knowledge, i.e. 'soft skills' based on shared understandings, responses, ways of behaving and communicating.

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