



# EU-ASIA DIALOGUE

*Shaping a Common Future for Europe and Asia –  
Sharing Policy Innovation and Best Practices in Addressing Common Challenges*

## Migration and Integration

**Common Challenges  
and Responses from  
Europe and Asia**



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from Europe and Asia



Konrad  
Adenauer  
Stiftung

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EAST ASIAN INSTITUTE  
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# CONTENTS

- 7 Preface
- 13 Labour Migration and Integration in ASEAN  
*Brenda S.A. Yeoh, Miriam Ee*
- 31 Recent Migration Trends and Policies in Japan  
*Yasushi Iguchi*
- 51 Managing Immigration and Integration in Singapore  
*Leong Chan-Hoong, Patrick Rueppel, Danielle Hong*
- 73 Immigration Policies in South Korea: On the Focus of Immigration Requirement and Incorporation to Korean Society  
*Dong-Hoon Seol*
- 99 Managing Labour Migration in Times of Crisis — Recent Trends and Open Issues in Selected EU countries  
*Ferruccio Pastore, Ester Salis*
- 119 Managing Labour Migration in Times of Crisis – The Spanish Case  
*Claudia Finotelli*
- 143 Managing Labour Migration in Times of Crisis – The Swedish Case  
*Monica Quirico*
- 169 Managing Labour Migration in Times of Crisis – The UK Case  
*Camilla Devitt*
- 195 EU Integration Policy: An Overview of an Intricate Picture  
*Yves Pascouau*

- 221 Moving Towards a Welcome-Orientated  
Migration Management in Germany?  
*Birte Steller*
- 241 Integration Policies in Italy: A Multi-  
Stakeholder Approach  
*Giovanna Campani*
- 263 The Netherlands: Putting the Dutch  
Integration Policy to a Test  
*Tineke Strik*

# Preface

Migration has always played a crucial role in the history of mankind. Nowadays the intensity and frequency of cross-border mobility are, however, much higher than in previous centuries. This is a consequence of diverse pull and push factors, combined with technological advancement, and is true for Europe and Asia alike. This large-scale movement, however, changes the composition of the societies in the sending and receiving countries and results in some of today's key challenges.

Many European and Asian countries are characterized by ageing and shrinking populations. In order to ensure their economic growths and maintain their welfare systems, they have implemented a series of measures to reduce the demographic effects, among which opening channels to legal migration plays a key role. As these countries try to attract the same group of people, mainly highly skilled professionals and low-skilled workers, increasing competition between the two regions might be observed in the upcoming years. In particular, high-skilled professionals are targeted by receiving societies. They are encouraged to stay for longer periods or even enticed to settle down permanently. This is achieved by providing them with rights and benefits, facilitating their stay, and making them the target of integration policies.

As the status of the countries in Europe and Asia differs greatly in terms of whether they are considered sending, receiving or transit countries of migration, it is hardly possible to generalize both the problems and the policies implemented to resolve them.

## ASIA

The situation in Asia is much more diverse than in Europe. This is due to the huge differences in economic development and governance structures. The Association of Southeast Asian Nations (ASEAN) tries to foster dialogue and exchange on migration, migrant rights and protection. However, its capacities are very limited since it cannot interfere in the domestic issues of its member states. Asia consists of important sending countries, such as the Philippines, Indonesia and Bangladesh, as well as countries whose economic development have transformed them into receiving countries of migration, such as Singapore, Republic of Korea and Malaysia.

In addition, several states, like Thailand, can be considered as transit as well as receiving and sending countries. Due to this diversity, approaches to migration differ greatly within the region. In general, Asian governments are more restrictive in their admission policies, which



also increases the number of irregular migrations dramatically and makes the process more selective. Low-skilled migrants are hardly subject to integration approaches and have very limited rights. It should be clear from the start that they are seen as temporary workers, and are not wanted to stay for good. High-skilled professionals, on the other hand, are, in some countries, encouraged to integrate, contribute to the economy and build roots in the society.

## **EUROPEAN UNION**

While the EU has developed significant rules and tools regarding border management, visa policy and irregular migration, legal migration and integration of non-EU nationals are two policy fields proven to be difficult to harmonize. A number of directives target specific areas of migration, but, until today, no coherent and comprehensive migration policy for people from outside the EU is in place yet. While free movement has been regulated successfully, allowing EU citizens to travel freely and work in other EU countries, the approach towards non-EU nationals has been selective. Some selected categories of legal migration have been addressed, but a comprehensive set of migration rules is missing. This is even more the case where integration policies at the EU level are concerned. With the exception of the family reunification directive and the long-term residents directive, this policy area suffers from legal constraints deriving from the Treaty provision. Indeed, the EU has a purely coordinating power regarding integration issues. This means that the EU is only able to facilitate and enhance the coordination of national policies, as is the case, for instance, regarding language requirements, introductory programmes or civic education courses. Thus, it is impossible to analyse migration and integration rules and policies in Europe without looking at both the level of the EU and the individual Member States.

## **INTER-REGIONAL**

However, in the context of increasing mobility between Asia and Europe, such an exchange is timely. While much of the movements in Europe as well as Asia are still intra-regional, an increase in migration between the two regions can be observed. According to the International Organization for Migration (IOM), in 2010, 23 per cent of all Asian migrants resided in Europe and 12 per cent of European migrants did so in Asia. The majority of these migrants are high-skilled professionals and students who settle down temporarily. But in times of labour shortage, a number of European countries attempt to directly attract Asian medium-skilled workers, for instance, nurses. In order to make this process mutually beneficial, it is essential to start the inter-regional dialogue at an early stage and exchange practices and policy approaches. This is exactly what this publication aims to offer.

## THE WAY AHEAD

Both Asia and Europe are facing common problems in terms of demographic change, the need to rebound from the economic crises and worries about their attractiveness in light of projected needs for legal migration. Some in Europe are even expressing concerns that the EU is losing ground in the “global war for talent”. This makes legal migration both a battleground for the best and brightest, but also an opportunity to go beyond continental solutions to migration and foster genuine cooperation so that both continents can reap the rewards.

With this in mind, there is plenty of scope for lessons learned and common approaches between Asia and Europe. Topics for concrete cooperation include skill- and certificate-recognition, cooperation among civil society organizations, governmental responses in engaging migrant communities, integration of returnees, cooperation in the post-university stage of students, migrant rights protection, awareness building, and pre- and post-departure courses. Such cooperation can be achieved through bilateral partnership agreements, multilateral dialogue fora, greater involvement by embassies in the receiving countries and government-to-government discussions.

## ABOUT THIS BOOK

In order to contribute to the understanding of current challenges and implemented solutions, this publication includes papers with perspectives from Europe and Asia. What are the migration and integration policies as well as present challenges in these countries? What can they learn from each other? How do they try to facilitate migration and make it a beneficial process? These and other questions will be addressed by this publication.

The first paper by **Brenda S.A. Yeoh** and **Miriam Ee** analyzes regional approaches within the ASEAN framework. It discusses the migration regime in Southeast Asia, with a particular focus on low-skilled and undocumented migrants. The authors argue that the attempts to establish a regional framework are hindered by the economic diversity, the preference for value-adding high-skilled migrants and the “ASEAN way” of doing things.

**Yasushi Iguchi** looks at the migration trends and policies in Japan. He shows that, despite economic improvements in neighbouring countries, Japan has remained attractive to immigrants, who move not only to the big cities, but also the countryside. In the context of a missing national integration policy, Iguchi introduces several local initiatives which might fill this gap.

**Leong Chan-Hoong**, **Patrick Rueppel** and **Danielle Hong** discuss the migration and integration policies in Singapore. Being one of the few traditional immigration countries in Asia, Singapore has a comparatively comprehensive approach to migration and integration.

However, recent public discussions have led to some tightening of the open-door policy in the city state.

**Dong-Hoon Seol** takes a closer look at migration policies in South Korea. Once a major sending country of migration, the Republic of Korea's economic transition has transformed it into a receiving society. Various immigrant groups are analyzed in this paper and the interaction between locals and immigrants is of particular interest.

**Ferruccio Pastore** and **Ester Salis** provide a comparative overview of the European policy landscape in the field of labour migration. They focus on six key countries, comparing the decade before the current economic crisis with recent developments. They highlight the heterogeneity among EU Member States and illustrate how the crisis has resulted in an opening process in some countries and more restrictive approaches in others.

**Claudia Finotelli** analyzes how the successful labour migration regime in Spain was changed by the economic crisis. After providing an overview on recruitment mechanisms and instruments, she argues that efficient migration management does not only depend on well-designed admission policies.

**Monica Quirico** discusses the migration policy in Sweden. Often considered as a success story, the paper examines changes in the Swedish migration approach over the past years and addresses the supposed increasing feeling of xenophobia as a consequence of the economic crisis.

**Camilla Devitt** takes a closer look at the migration regime in the United Kingdom, which is clearly biased towards skilled workers. In particular, the enlargement of the EU in 2004 had a huge impact on the British labour market. After discussing the policies targeting certain groups of migrants, the strengths and weaknesses of the approach are considered.

**Yves Pascouau** analyzes the attempts at integration policies at the EU level. The paper takes into account the fact that the EU has no harmonizing function in this policy area, but uses soft tools to establish a de facto EU approach. The author shows that such attempts are, to a certain degree, successful in forging some convergence.

**Birte Steller** addresses migration management in Germany. The illustrated changes in recent years show the reform of the German integration policy and the importance that understanding and dialogue plays in it. The paper examines a possible way to achieve benefits for sending and receiving countries.

**Giovanna Campani** discusses the multi-stakeholder approach to integration in Italy. The paper shows how the topic influenced domestic politics and how the local authorities, who are mainly responsible for integration, deal with it. She argues that the public sector relies on the private and non-governmental sector to implement successful integration policies.

**Tineke Strik** looks at integration policies in the Netherlands. The paper illustrates the impact integration requirements have on migrants of various backgrounds, and argues that recent cuts in the provision of integration courses and emphasizing of the migrants' responsibility to integrate can, however, impact the earlier successes.

This book is part of the “EU-Asia Dialogue” project, which is co-funded by the European Union and Konrad-Adenauer Stiftung Germany. In the context of this project, the implementing consortium will publish seven books. More information on the “EU-Asia Dialogue” can be found on the website [www.eu-asia.eu](http://www.eu-asia.eu).



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# Labour Migration and Integration in ASEAN

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## ABSTRACT

With the signing of the ASEAN Framework Agreement for the Integration of Priority Sectors (FA) in 2004, migration and integration issues gained significance on the agenda. Primarily concerned with increasing economic growth, this framework excludes the integration of low and unskilled migrant workers; instead, ASEAN efforts to address migration and integration issues have been limited to Mutual Recognition Agreements for skilled labour and professionals. After an analysis of migration policy in the region, we highlight specific barriers to the integration of labour migrants in two priority sectors – nursing, which is highly regulated by the state, and Information, Communications and Technology (ICT), which is typically self-regulated and privately run. Despite a MRA for nursing allowing registered nurses to practice in another ASEAN country under supervision of local nurses without registering with the host country's nursing regulatory authority, in practice, there are major barriers to the free movement of nurses within ASEAN in terms of skills recognition, licensure requirements and other protectionist measures. Although regulations governing the inflow of ICT professionals are not as stringent as those for healthcare professionals, private costs associated with job search and gaining foreign employment are higher in the ICT sector, largely due to limited information on international mobility within the industry. Three sets of barriers to greater integration are discussed. First, the economic and political diversity within ASEAN makes integration more problematic than in the European Union. Second, the primary concern with value-adding economic growth means that regional agreements are focused on skilled and professional labour migration only. Third, the “ASEAN way” of doing things – via a strong emphasis on consensus and non-interference with domestic policies – often means that the FA provision for the free movement of labour is usually trumped by domestic policies that do not reflect the same desire for labour integration.

## 1. INTRODUCTION

The Association of Southeast Asian Nations (ASEAN) was established in 1967 for the purpose of accelerating economic growth, social progress and cultural development in the region as well as to promote regional peace and stability (ASEAN 2012). Migration and integration issues became significant items on the agenda only much later in 2004 with the signing of the ASEAN Framework Agreement for the Integration of Priority Sectors (FA). The FA identified trade in services and the movement of “business persons, experts, professionals, skilled labour and talents” as two areas which concern the movement of people in the region (ASEAN 2004: 7). As a product of the ASEAN founding purpose of accelerating economic growth, this framework for migration is primarily concerned with value-adding economic growth and thus, excludes the integration of low and unskilled migrant workers, who form the bulk of intra-ASEAN flows, especially in service sectors such as construction and domestic work (Bhatnagar, P & Manning, C 2005; Manning, C & Bhatnagar, P 2004).

Although labour migration came onto the agenda only recently, in many ways, it is not a new issue to the region. In the late nineteenth and early twentieth centuries, mass labour migration from China and India to Southeast Asia led to eventual settlement and the creation of immigrant communities and plural societies in the region (Lai, AE et al. 2012). Today, the disparate levels of economic development and income in ASEAN have created new socio-economic factors that strongly influence the corridors of migrant flows as well as the direction of flows (Chavez, JJ 2007). Intra-regional flows are asymmetrical and the ten ASEAN states may be categorized according to whether they are primarily labour receiving or sending (Kaur, A 2007). Net labour receiving countries include the wealthier Singapore and Brunei, while net labour sending countries are the poorer states of Indonesia, the Philippines, Myanmar, Vietnam, Cambodia and Laos. The two middle-income states of Malaysia and Thailand are both labour receiving as well as labour sending countries.

In addition to the heterogeneous economic landscape, ASEAN nations also reflect a mix-bag of political and cultural conditions. Myanmar, for one, has only recently opened its borders to foreign investment and its government is still predominantly backed by the military. Patron-client networks, on the other hand, dominate politics in the Philippines; and in Singapore, one dominant political party has consistently led the country since independence in 1965 (cf. Kerkvliet, BJT 1995). This diversity among ASEAN states is “unlike the relatively homogenous western European nations that formed the early European Community” noted by Pasadilla (2011: 8). The uneven political and economic conditions render integration more problematic in the ASEAN context. Furthermore, ASEAN places a high premium on sovereignty and non-interference, which may be traced to a fundamental principle adopted in 1976 by all member states to mutually respect the “independence, sovereignty, equality, territorial integrity, and national identity” of all nations (ASEAN 2012; cf. Chavez, JJ 2007). ASEAN countries have demonstrated a preference for bilateral agreements and/or Memorandums of Understanding (MOUs) (Hugo, G 2009). Few multilateral agreements have been ratified and there has also been a very low level of ratification of international conventions, including rights-based approaches to labour governance such as that embodied in International Labour

Organization's (ILO) Domestic Worker Convention. This follows Bhatnagar and Manning's (2005: 171) observation that, "unilateral, national policies rather than regional or multilateral commitments dominate in [ASEAN] policies towards temporary foreign workers".

The challenge of achieving regional cooperation is also exemplified by the more recent deadlock over negotiations experienced by the Task Force on ASEAN Migrant Workers (TF-AMW). The Task Force was formed in April 2006, comprising trade unions, human rights and migrant rights NGOs, and migrant worker associations, to work towards a "rights-based framework for the protection and promotion of the rights of migrant workers" in ASEAN (TF-AMW 2007). Notably, in January 2007, leaders of the 10 ASEAN countries met in Cebu, Philippines to sign a Declaration on the Protection and Promotion of the Rights of Migrant Workers that commits labour sending and receiving states to cooperate to protect the rights of migrant workers (Martin, P 2009). The Declaration was seen as an "important first step" to developing and implementing a "binding instrument on the promotion and protection of the rights of migrant workers in the region" (TF-AMW 2007). Since then, the Task Force has held several national and regional consultations and has prepared the *ASEAN Framework Instrument on the Promotion and Protection of the Rights of Migrant Workers*, which it formally proposed to the ASEAN Secretariat in May 2009 (Huguet, JW 2010). However, progress has not been entirely smooth sailing. The latest update provided by the Task Force revealed that negotiations on the draft have reached a deadlock, with Malaysia refusing to agree on key points concerning the inclusion of undocumented migrant workers and whether the instrument should be legally binding (TF-AMW 2010).

The migration framework in ASEAN is thus characterized by a fundamental concern with accelerating economic growth and integration efforts are hindered by the economic and political diversity in the region as well as the "ASEAN way" of doing things, that is, via a strong emphasis on consensus and non-interference with domestic policies (cf. Katsumata, H 2003). The rest of this paper looks at three categories of labour migration within ASEAN countries – skilled migration, low and unskilled migration and to a lesser extent, undocumented labour migration. The first section that follows examines country-specific policies for these three groups of workers and analyses them within the broad strokes of the ASEAN migration framework. The second section highlights specific barriers to integration of labour migrants in two priority sectors – nursing, and Information, Communications and Technology (ICT). These two sectors are chosen as they make an interesting comparison – the former is typically highly regulated by the state, while the latter is almost entirely self-regulated and privately run (cf. Manning, C & Sidorenko, A 2007). The third and final section concludes with some policy implications of creating a freer movement of labour within ASEAN.

## 2. THE MIGRATION REGIME IN SOUTHEAST ASIA

Over the last decade, the movement of people between ASEAN nations has had an increasing impact on the economic, social and demographic development of virtually all ASEAN states. Not only have the numbers of people moving increased, but the types of mobility have also become more complex (Hugo, G 2005b). According to Hugo (2005b: 94), this may



be attributed to the forces of “globalization, increased levels of education, proliferation of international media, improved transport systems and the internationalization of business and labour markets”. Indeed, increased levels of education and affluence in the richer ASEAN states have led citizens to eschew 3D (dirty, dangerous and demeaning) jobs. For example, plantation work in Malaysia is dominated by temporary labour migrants, as are jobs in the construction and domestic sectors in Singapore and Malaysia (Hugo, G 2009). This segmentation of the labour market into skilled and unskilled jobs has led to a two-tier immigration policy, where skilled foreigners, such as professional, managerial and business elites, are often given preferential treatment and even encouraged to settle in the host country; while low and unskilled foreigners are employed on temporary contract terms on a “use and discard” basis (Yeoh, BSA et al. 1999; Yeoh, BSA & Lin, W 2012).

## Skilled Labour Migration in ASEAN

The movement of skilled labour flows mainly from the poorer to richer ASEAN countries. While the integration of skilled labour is clearly valued over low and unskilled labour, the three major labour receiving countries, Singapore, Malaysia and Thailand, differ significantly in their policies, with Singapore being the most aggressive in attracting and retaining skilled foreign labour. Singapore places strong emphasis on importing and integrating highly skilled labour, such as business investors and professionals, who are referred to as “foreign talents” and differentiated from the low and unskilled “foreign workers”. Given a labour-short economy, the Singapore government has maintained that migrants contribute to the nation’s economic growth, even as the rapidly ageing population and declining fertility rates threaten to derail the country’s long-term economic growth trajectory (National Population and Talent Division 2012). In the new millennium, the country has demonstrated its desire to attract and retain foreign talents with offerings of employment passes with attached privileges of bringing dependents into the country, permanent residency and citizenship<sup>1</sup>.

Unlike Singapore, the importing and integration of foreign migrants is not an explicit part of Malaysia’s national development strategy (Bhatnagar, P & Manning, C 2005). With its larger population base of citizens less prone to the ravages of rapid ageing, Malaysia is not as aggressive in seeking skilled immigrants. While the country has always pursued a relatively open policy for foreign employees in FDI firms, the admission of foreign professionals in other segments of the economy have been less open (Bhatnagar, P & Manning, C 2005). The government places restrictions on the number of positions that may be filled by expatriates – only companies with a foreign paid-up capital of at least RM500,000 may be granted a limited number of permanent posts for foreigners (Malaysian Investment Development Authority (MIDA) 2012).

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<sup>1</sup> More recently, the government has tightened the inflow of foreigners in response to public discontentment over issues such as rising costs of housing and overcrowding on public transport infrastructure. With effect from July 2012, the Singapore government reduced the Dependency Ratio Ceiling, which specifies the maximum proportion of foreign workers that companies in various industries can employ (Chan, R 2012). S-Pass and employment pass criteria have also been raised to make it harder for companies to hire foreign professionals.

In Thailand, the recruitment of skilled workers is even more centralized – the process integrates the immigration, labour and foreign investment arms of the government and is closely monitored (Manning, C & Bhatnagar, P 2004: 185). However, this looks set to change as the International Organization for Migration (IOM 2011) reports that Thailand has started to consider loosening the recruitment process of highly skilled workers in response to its commitment to realizing the ASEAN Economic Community (AEC) by 2015. According to IOM (2011), Thailand is likely to attract a significant number of professionals from other ASEAN countries, leading to a direct positive effect on the Thai economy. Yet, in practice, the “ASEAN way” of non-interference means that multilateral agreements are often subordinated to domestic policies and it is uncertain as to how soon policy changes would have an impact in Thailand. IOM (2011) recognizes that this is a problem that may not be overcome quickly and acknowledges that the recruitment of highly skilled foreigners remains a sensitive issue among the Thai in view of national security claims.

### **Low and Unskilled Labour Migration in ASEAN**

As with the movement of skilled labour, low and unskilled labour also flows mainly from poorer to richer ASEAN countries. Among the three major labour receiving states that attract migrants from different ASEAN countries, Thailand draws in labour migrants mainly from the neighbouring Mekong region states of Cambodia, Laos, Myanmar and Vietnam (Manning, C & Bhatnagar, P 2004); while Singapore and Malaysia act as magnets for migrants from less-developed countries in the region, namely Indonesia and the Philippines, and beyond. Of these labour sending countries, the Philippines stands out as one of the world's major labour exporters. The majority of Filipino labour migrants leave for countries outside ASEAN – to the United States (over 2 million permanent migrants), Canada (over 500,000), Australia (over 200,000) and Japan (over 100,000) (Pasadilla, GO 2011). The Middle East is also another major destination, where over a million Filipinos migrants work on fixed contracts in Saudi Arabia. Comparatively, ASEAN is not an important destination: there are just over 60,000 Filipino labour migrants in Singapore and over 80,000 in Malaysia (Pasadilla, GO 2011).

Many low skilled Filipinos in Singapore are employed as domestic workers. As “foreign workers” on short-term work permits, they are prohibited from taking up permanent residency or citizenship. They are also neither permitted to bring dependents into Singapore nor to marry and settle down in Singapore. The 206,000-strong foreign domestic workforce in Singapore is entirely female (Tan, A 2012). About half of them come from Indonesia and the Philippines is the second largest country of origin. Low and unskilled male migrants, on the other hand, are found mainly in the construction industry. These men come from other Asian countries, namely Thailand, Bangladesh, India and China. Low and unskilled Thai workers tend to migrate to stronger economies in East and Southeast Asia, the Middle East as well as other parts of the world. About 84 per cent of Thai workers overseas are male and employed in construction, manufacturing and agriculture (Department of Employment 2010, cited in IOM 2011: 39). As of 2010, there were about 20,074 Thais deployed through

official channels and working in ASEAN countries, namely Brunei, Singapore and Malaysia (IOM 2011: 13).

Similar to Singapore, Malaysia also distinguishes between the recruitment of skilled and unskilled labour. Unskilled workers are referred to as *perkerja asing* (foreign contract workers) and they dominate the plantation, construction and domestic work sectors (Kaur, A 2007; Leigh, M 2007). Settlement is also not permitted for these workers, who are typically employed on temporary contracts, and the Malaysian government imposes a levy on the employers of these workers.

In view of the less-favourable policies for low and unskilled workers in the host countries, some sending countries have in recent years stepped up efforts to protect their citizens overseas. The Philippines has long been the leader in developing a sophisticated policy regime to encourage and regulate its Overseas Foreign Workers (OFWs), both skilled and unskilled. Migration has been employed as a two-pronged development strategy for the Philippines since the mid-1970s – firstly to generate remittances, and secondly as an explicit response to double-digit unemployment rates (O’Neil, K 2004). First, remittances from OFWs are a major contributor to the Philippine economy. In 2011, USD20.1 billion was remitted from overseas Filipinos via formal channels, accounting for about nine per cent of the country’s GDP (Bangko Sentral ng Pilipinas (BSP) 2012; The World Bank 2012). This helped to sustain economic growth even as export income declined due to weak demand from the Euro zone and the United States (Remo, MV 2012).

Second, unlike most ASEAN countries, the Philippines trains many of its citizens for the explicit purpose of sending them overseas. The rationale for this is partly derived from arguments that the Philippine economy cannot effectively absorb its labour force; hence, its citizens can make a greater contribution by seeking employment overseas and remitting earnings home (Hugo, G 2005b). For example, econometric analysis conducted by Goldfarb et al. (1984) found that the Philippines would gain a net benefit by training physicians for export. As a result of their strategic importance to the vitality of the economy, OFWs are highly valued in the Philippines. Each year, the president awards the *Bagong Bayani* (modern-day hero) award to honour outstanding migrant workers for demonstrating competence, responsibility and showing a track record of contributing to the country’s foreign exchange earnings (Bagong Bayani Foundation (BBFI) 2011).

Indonesia appears to be closely following in the footsteps of the Philippines. However, at present, efforts are concentrated on protecting its low and unskilled migrants. Recent developments in Indonesia’s foreign policy have focused on the need to better protect the rights of its citizens working overseas (known as *Tenga Kerja Indonesia* or TKI). Particular attention has been paid to Indonesian women who work as foreign domestic workers overseas. Previously, foreign domestic workers working in Singapore were subjected to a placement fee of about eight months’ salary – this meant that they only received a meagre monthly allowance of SGD10 or SGD20 for the first eight months of their two-year contract, as their salary went towards debt repayment (Tan, A 2012). Since mid-2012, however, the Indonesian government has stepped in to reduce the loan amount from about eight to four months’ salary.

The loan is now disbursed by an Indonesian bank, instead of an employment agency, thereby increasing the amount of regulatory surveillance over the recruitment process.

It is important to note that unlike the Philippines, where remittance is a significant contributor to the economy, Indonesia is not overwhelmingly dependent on remittances. In 2007, USD1.1 billion was remitted via the formal banking sector, but according to Bank Indonesia's (2009) estimates, total remittance via formal and informal channels was approximately USD6.1 billion. This corroborates Hugo's (2005a) point that remittances in Asia are often underreported and underestimated. More recently, figures from Bank Indonesia estimate that total remittance via formal channels in rose to USD6.1 billion in 2011. Although this figure pales in comparison with the USD20.1 billion remitted from overseas Filipinos via formal channels in the same year, it is significant that remittances to Indonesia have steadily been increasing since 2001. Furthermore, it is notable that since 2005, remittances have been higher than inflows of development aid (Bank Indonesia 2009: 8). This is particularly significant given the centrality of remittances to household survival strategies among Indonesia's poor (Bank Indonesia 2009; Hugo, G 2005a).

Another ASEAN country in which remittances are playing an increasing role in the economy is Vietnam. Hugo (2005b: 107) presents figures to show how in 2002, remittances from the Vietnamese diaspora reached USD2.4 billion, double the USD1.2 billion recorded just four years earlier. It is estimated, however, that this official figure underestimates the total remittance flow, which is closer to USD4 billion. Cohen (2003) argues that the remittances, which were equivalent to 11 per cent of Vietnam's GDP, were crucial in helping the country manage its USD2.77 billion trade deficit as well as to reduce pressure on the local currency and stimulate private investment. More recently, figures from the World Bank estimate total remittances via formal channels to be about USD8 billion in 2010 – representing 7 per cent of GDP and almost double net official development assistance (Migration Policy Institute 2011). All these remittance trends point to the growing importance of labour migration within ASEAN nations.

## **Undocumented Labour Migration in ASEAN**

Undocumented labour migration – the causes of irregular migration, state control of (or failure to control) the presence of undocumented migrants, and its links to documented flows – is a major force in the region that has attracted scholarly attention (Asis, MMB 2004). Data obtained from official channels for migration in ASEAN often differ significantly from unofficial channels for migration. In response to legal and physical barriers to labour migration, many Asian workers have adopted undocumented migration strategies (Hugo, G 2005b). Unofficial channels allow workers to bypass high transaction costs, as official channels for migration are almost always more expensive and time-consuming. Brokers and middle-men are significant mediators of migration in Asia, helping would-be migrants to navigate through the often complicated and bureaucratic process of recruitment (Lindquist, J et al. 2012). Although these operations are not entirely separate from the state and are in fact crucial even in official channels of migration, they are particularly indispensable in unofficial channels of migration.

With the exception of Singapore, the problem of undocumented labour migration is a significant one in the main labour receiving ASEAN states, namely Malaysia and Thailand. It is estimated that there are at least 1 million undocumented workers in Malaysia, mostly from neighbouring Indonesia but also some from the Philippines (Hugo, G 2009: 29). The problem has been particularly severe in the state of Sabah from as early as in the 1970s. Newspaper reports estimate that in 2010, there were more than 500,000 undocumented immigrants in Sabah, which has a total population of about 3.1 million (*New Straits Times* 2012). In 2011, Malaysia announced that it will grant amnesty to some 2 million undocumented migrants (Allard, T 2011).

Thailand is one step ahead in this area and has already in place a more definite policy for regularizing undocumented migrants. Since the early 1990s, Thailand had an almost yearly amnesty programme to allow undocumented migrants to register legally for one to two years to work as labourers or domestic workers (IOM 2011). However, this kind of amnesty programme is not without flaws – as IOM (2011: 18) points out, it serves only as a quasi-regularisation of migration as the worker's status remains as “illegal, pending deportation”. In recognition of this problem, in 2004, Thailand devised the Nationality Verification (NV) process for the purpose of providing a more definite means of regularizing migration. As part of the process, undocumented migrants who are already in Thailand must provide personal data to their home countries for verification in exchange for a temporary passport or a certificate of identity, a visa to remain in Thailand for two years (extendable for two years before they must return home for at least three years) and a legal work status (IOM 2011: 19). Alternatively, would-be migrants from neighbouring countries may seek employment in Thailand directly with temporary passports.

While these regularization processes may have increased migrants' confidence and access to rights, the inability to develop efficient bilateral systems to facilitate labour movement with other countries in the Mekong region, lack of transparency and high costs from unregulated brokers are some challenges that continue to hinder the progress of regularization (IOM 2011). Once again, integration efforts are hindered by the economic and political diversity in the region as well as the “ASEAN way” of doing things, that is, via a strong emphasis on consensus and non-interference with domestic policies.

### **3. THE ASEAN REGIONAL FRAMEWORK FOR MIGRATION AND INTEGRATION**

The 2004 ASEAN FA is a regional effort to promote labour mobility and integration. The FA identified trade in services and the movement of “business persons, experts, professionals, skilled labour and talents” as two areas that concern the movement of labour in the region. The member states agreed to achieve freer flow of trade in services, develop Mutual Recognition Agreements (MRAs) to facilitate the movement of skilled workers and to promote joint ventures and cooperation. However, it is important to note that the MRAs do not override domestic regulations. This is unlike the European Union (EU), where regional policies play a dominant role in shaping labour movement. An EU national is entitled to

work and live in any EU country without the need for a work permit; and upon legally residing in another EU country for five continuous years, one automatically acquires the right of permanent residence (EUROPA 2012). In ASEAN countries, as illustrated in the previous section, the right of permanent residence is only granted selectively to migrants whose skills are in demand. Another notable difference concerns labour market segmentation – within the EU, there is no explicit restriction on the movement and integration of low and unskilled EU nationals within the EU. However, within ASEAN, as the FA is primarily concerned with value-adding economic growth, emphasis is placed only on the movement and integration of skilled workers and professionals.

Priority service sectors identified by the ASEAN FA for integration include e-ASEAN, healthcare, air transport and tourism (ASEAN 2009b). In order to facilitate the movement of skilled workers in these sectors, negotiations on MRAs were first mandated at the seventh ASEAN Summit held in 2001. As of 2009, seven MRAs have been signed by the ASEAN Economic Ministers for engineering, nursing, architecture, surveying, accountancy, and medical and dental practitioners (ASEAN 2009a). The aim of MRAs, as the ASEAN (2009a) report explains, is to “facilitate the flow of foreign professionals taking into account relevant domestic regulations and market demand conditions”. For example, the MRA for nursing allows a registered nurse to practice in another ASEAN country under supervision of a local nurse without the need to be fully registered with the host country’s nursing regulatory authority (Manning, C & Sidorenko, A 2007). However, in practice, there are still barriers to the free movement of nurses within ASEAN in terms of skills recognition, licensure requirements and other protectionist measures, as domestic policies still override the MRAs (cf. Matsuno, A 2008).

## **Specific Barriers in Nursing**

Domestic policies governing the recruitment of foreign nurses in ASEAN are as diverse as the region’s economic and political conditions. Yet, it is possible to generalize that the wealthier countries have more liberal policies, whereas the lower income countries have more stringent regulations to restrict the inflow of foreign medical professionals (Manning, C & Sidorenko, A 2007). Driving these policies are domestic demand and supply factors. In the case of Singapore, the country has one of Asia’s most rapidly ageing population and consequently, a high demand for quality health services (Huang, S et al. 2012; IOM 2008). This high demand, however, far outstrips supply as few Singaporeans train as nurses. Manning and Sidorenko (2007: 1092) report that although the number of health science graduates from Singapore’s polytechnics grew about ten per cent per annum between 1998 to 2003, the implied growth in demand for healthcare was 20 per cent over the same period. As such, the country is dependent on foreign nurses to meet the shortage.

## **Skills Recognition**

While foreign nurses make up about 20 per cent of Singapore’s nursing force and the country aggressively seeks to attract and retain them, a considerable amount of de-skilling takes place for foreign nurses seeking employment in Singapore. Foreign nurses who were mid-level



skilled workers, such as Registered Nurses in their home countries, often have to downgrade to low and unskilled workers, such as Enrolled Nurses or even to Nursing Aides in Singapore (Huang, S et al. 2012). Enrolled Nurses and Nursing Aides who earn less than SGD2,000 per month enter Singapore under the work permit system like foreign domestic workers; and they are prohibited from bringing their families and excluded from permanent residency and citizenship considerations. The more skilled and qualified nurses who earn a fixed monthly salary of at least SGD2,000 are eligible for the “S-pass” (Ministry of Manpower 2012). This is an intermediate level work pass that was introduced in 2004 to facilitate the employment of foreign mid-level skilled workers (Huang, S et al. 2012). Only S-pass holders who earn more than SGD4,000 per month are allowed to bring in dependents, a benefit that is also extended to the higher-level skilled employment pass holders, that is, foreign professionals working in managerial, executive or specialised jobs.

Although the ASEAN nursing MRA accepts qualifications obtained in recognized institutions in the home country, it does not override the receiving country’s domestic regulations. Therefore, the Singapore government is permitted to actively control the registration and enrolment of nurses, even downgrading their professional ranks, in order to maintain what it deems to be desired healthcare standards. While the state permits Enrolled Nurses and Nursing Aides to upgrade their skills to become Registered Nurses during the course of their work in Singapore, employers’ approval is required in order to apply for the examination. Unfortunately, in practice, there is little upward mobility as many employers prefer to keep their staff as Enrolled Nurses and Nursing Aides in order to keep salary costs down (Huang, S et al. 2012).

## **Licensure Requirements**

The shortage of nurses is not unique to Singapore. In its 2010 report, the International Council of Nurses projected a continued shortage of nurses in Thailand and Malaysia, which is expected to continue over the next five and ten years respectively. Like Singapore, Malaysia has taken steps to attract foreign nurses. It offers a separate examination for foreign and/or foreign-trained nurses to help ease their entry (Matsuno, A 2008). Thailand, on the other hand, despite the (projected) shortage, has not resorted to having an open policy for foreign health professionals, even though the ASEAN FA makes provision for the free movement of nurses. Instead, Thailand shields its professional health services from foreign competition by imposing strict registration procedures and tries instead to improve the retention rate of its local nurses (Matsuno, A 2008).

To practice as a nurse in Thailand, one is required to pass the national licensure examination. However, the examination is conducted only in the national language, Thai. This poses a very high barrier to the entry of foreign nurses, who must first master Thai. In fact, so unwelcoming is this requirement that in the few years leading up to 2008, only one foreigner received a license to practice nursing in Thailand (Matsuno, A 2008). Language thus remains a significant barrier within the nursing sector in ASEAN. It is only in Singapore, Malaysia and the Philippines, where English is widely spoken, that the movement of nurses is relatively unhindered.

## Other Protectionist Measures

Other barriers in the nursing sector include citizenship requirements and cross-sectoral quantitative restrictions (Manning, C & Sidorenko, A 2007). Citizenship requirements apply in Indonesia and the Philippines. In Indonesia, foreign doctors and nurses are not allowed to practice in local hospitals except on a temporary basis as senior medical officers or as medical specialists in corporations in the oil, gas and mining sectors (Manning, C & Sidorenko, A 2007). Likewise, professional health practice in the Philippines is restricted to Filipinos alone (Manning, C & Sidorenko, A 2007: 1102). This, however, is understandable because the Philippines has a surplus of nurses, which is projected to continue until at least 2020 (International Council of Nurses 2010).

Cross-sectoral quantitative restrictions, on the other hand, are common in the Mekong region countries. Thailand, Vietnam and Cambodia impose stringent restrictions on the number of foreign workers in a firm. Vietnam limits the number of full-time foreign workers in a firm to three per cent; Thailand caps the number at five foreign workers per company; and Cambodia restricts it to ten per cent (Manning, C & Sidorenko, A 2007: 1102). Although these quantitative restrictions are not specific to the healthcare sector, they limit foreign hospitals from establishing themselves in the local market, as they are unable to recruit sufficient local health professionals with the necessary level of skills.

## Individual Migration Trajectories

In addition to regulatory barriers to movement within the nursing sector, it is also worth noting that for some nurses, moving within ASEAN is just the first step in a chain of migration ambitions. Countries like Singapore and Malaysia act as transit points for foreign nurses seeking further migration to popular destinations, such as the United States (US) and the United Kingdom (UK). The majority of foreign nurses who leave Singapore are Filipinos and they tend to move to the UK, US or Canada on completion of their employment contracts (International Council of Nurses 2010). Consequently, the co-existence of shortages and outflows of nurses to international markets is common in several ASEAN countries. Therefore, although reducing regulatory barriers may increase mobility within the nursing sector, such policy measures will do little to promote integration if individual migration trajectories are aimed at further destinations.

## Specific Barriers in ICT

E-ASEAN was identified as one priority sector for integration in the 2004 ASEAN FA. In 2005, the MRA for engineers was signed to “facilitate [the] mobility of engineering service professionals”, which include Information, Communications and Technology (ICT) engineers (ASEAN 2005). The ICT sector provides an interesting juxtaposition to the nursing sector. The latter is typically highly regulated by country-specific laws and guidelines and monitored by influential professional associations such as the Singapore Nursing Board, Thailand Nursing and Midwifery Council, Nurses’ Association of Thailand and the Philippines Board of Nursing. In contrast, the ICT sector is almost entirely self-regulated and



standards are largely enforced by the private sector (cf. Manning, C & Sidorenko, A 2007). Individuals have direct access to jobs in the ICT sector, unlike in nursing, where recruitment is highly regulated and often centralized. One key reason for this difference is that the quality of healthcare has a direct and obvious impact on human health, whereas the quality of ICT services does not bear so directly on human health (Manning, C & Sidorenko, A 2007). Governments are, therefore, understandably stricter with the enforcement of desired professional standards in the nursing profession than in the ICT profession.

In the healthcare sector, the higher income ASEAN countries have more liberal in-migration policies for healthcare professionals. However, in the ICT sector, the same trend is not as apparent. Although the wealthier countries have, in general, more liberal in-migration policies, the ICT sector stands out as an anomaly. The lower income countries, such as Thailand, Indonesia, Vietnam, Laos, Cambodia and Myanmar, all have relatively more open policies to attract foreign investment to the ICT sector in comparison to their policies for other sectors of the economy (Manning, C & Sidorenko, A 2007). Their eagerness to attract foreign investment in ICT as a latecomer might help to explain their more liberal policies. For example, Myanmar is still many years away from producing graduates that are competitive in the international ICT market. Hence, in order to jump-start its ICT sector, Myanmar is eager to welcome foreign ICT professionals.

### **Limited Information and Visa Procedures**

Still, despite relatively liberal in-migration policies and e-ASEAN initiatives, there remain restrictions on the inward mobility of ICT professionals. Although regulations governing the inflow of ICT professionals in ASEAN countries are not as stringent as those for healthcare professionals, private costs associated with job search and gaining foreign employment appear to be higher in the ICT sector, largely due to limited information on international mobility arising from the unregulated nature of the industry (ASEAN-ANU Migration Research Team 2005; Manning, C & Sidorenko, A 2007). Limited information causes processing delays in securing entry and work permits and reduces incentives for in-migration. As highlighted by the ASEAN-ANU (2005) report, the chief barriers to entry of ICT professionals into Myanmar and Laos are cumbersome work permit application procedures, which are accompanied by exorbitant visa fees and processing delays.

### **Quantitative Restrictions and Other Regulations**

Other barriers to entry relate particularly to quantitative restrictions, conditions on employment and economic needs tests. Quantitative restrictions are in place in countries like Thailand, Vietnam and Cambodia. But, recognising the shortage of ICT professionals, the Ministry of Information and Communication Technology of Thailand (MICT) was reported in 2005 to be working on relaxing the five-person quota in the local IT sector (ASEAN-ANU Migration Research Team 2005: 53). However, a search of MICT's website reveals no policy updates about the quota (MICT 2007). Thus, while policy changes may be desired, the actual process of change is frequently slow and often encumbered by diverse local interests as well as limited data.

Conditions on employment, on the other hand, are in place in Indonesia, Cambodia, Laos and Myanmar. These countries require an employer to ensure that capacity-building and skills-transfer take place, with the intention that local staff will eventually replace the foreign professionals (Manning, C & Sidorenko, A 2007). Thus, the movement of ICT professionals tends to be biased towards the high-skilled end of project managers (ASEAN-ANU Migration Research Team 2005).

Third, an economic-needs test allows foreigners to be employed only on a need-to basis and upon satisfaction of domestic requirements. In Malaysia, this means, among other things, that an employer is required to advertise domestically before extending the job to a foreigner (ASEAN-ANU Migration Research Team 2005). In Indonesia, foreign directors, managers and technical experts/advisors are allowed a maximum stay of two years, subject to a one-year extension, based on an economic-needs test (ASEAN-ANU Migration Research Team 2005).

### **Skills Recognition**

In addition, there is the problem of non-recognition of educational qualifications and professional training. Unlike the nursing profession, there is no standardized mechanism for the recognition of foreign IT qualifications (ASEAN-ANU Migration Research Team 2005; Manning, C & Sidorenko, A 2007). The onus is on individual employers to scrutinize the qualifications of their foreign recruits. It is important to note that the constantly changing nature of IT and computer science may mean that attempts to introduce standards may be excessive and slow to respond to technological developments (ASEAN-ANU Migration Research Team 2005). The ASEAN-ANU (2005) report also found that private investment in professional development via proprietary certification, such as those accredited by Microsoft and Cisco, yield a higher return through the premium accorded to an employee with such qualifications. As such, unlike the healthcare sector, industry certification rather than university degrees and diplomas may be more crucial for international mobility in the ICT sector.

In short, despite the relatively more liberal in-migration policies, the eagerness of many ASEAN countries to attract foreign ICT investment and regional initiatives to promote integration in the e-ASEAN sector, it is evident that many obstacles to the movement of labour in the region still remain. The final section explores some policy implications of improving the movement and integration of labour within ASEAN countries.

## **4. POLICY IMPLICATIONS**

To date, ASEAN efforts to address migration and integration issues have been limited to MRAs for skilled labour and professionals. Neither low and unskilled labour migration nor undocumented migration issues have been addressed by regional efforts. Globally, the most liberal provisions for labour migration are found in the EU and in the Common Economic Relations (CER) agreement between Australia and New Zealand (Neilson, cited in Bhatnagar, P & Manning, C 2005). These regional agreements grant access to the labour markets of member countries without work permits and provide mutual recognition of qualifications.

The ASEAN experience, however, shows that geographical proximity and a common history alone are insufficient for labour integration (Bhatnagar, P & Manning, C 2005).

It appears that there are at least three barriers to greater integration in ASEAN. First, as mentioned in the introduction, the economic and political diversity within ASEAN makes integration more problematic than in the EU. Second, the primary concern with value-adding economic growth means that regional agreements are focused on skilled and professional labour migration and exclude the integration of low and unskilled migrant workers. Hugo (2005b) points out that most net labour receiving countries in Asia tend to have strong restrictions on immigration. While people with high levels of financial or human capital are courted, other migrants are only allowed temporary stay and their rights are generally considerably curtailed in comparison to citizens. Common measures to ensure that low and unskilled migrants do not settle include: disallowing family to accompany or visit the worker, limiting the mobility of the worker within the country, tying the worker to a single employer, prohibiting marriage to citizens and restrictions on rights (Hugo, G 2005b: 114-5).

The third barrier to greater labour integration lies with the “ASEAN way” of doing things, that is, via a strong emphasis on consensus and non-interference with domestic policies. Theoretically, the ASEAN FA makes provision for the free movement of labour in priority sectors; however, in reality, domestic policies do not reflect the same desire for labour integration. A case in point is the nursing sector, where it is clear that domestic policies trump regional agreements and there remain many barriers to the free movement of nurses within ASEAN.

The lack of regional cooperation on the issue of labour migration integration suggests that it is not on the active agenda of ASEAN as an issue of regional importance. If a freer movement of labour is to be achieved, then the underlying challenges posed by political and economic diversity, the emphasis on value-adding economic growth and the “ASEAN way” need to be addressed. In addition, as Hugo (2005b: 115) points out, migration policy development in Asia is too frequently based on the interests of particular groups and “misunderstanding of the nature and effects of migration”. He urges that there is a critical need for more evidence-based decision making. This calls for greater collaboration between researchers and policy makers with respect to the development of migration policy.

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# Recent Migration Trends and Policies in Japan

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## ABSTRACT

The objective of this article is to explore recent trends in migration and related policies, based upon empirical data and case studies from demographic, economic, social as well as labour market perspectives.

The main findings of this article are:

1) there are still strong factors attracting migrants who encounter growing labour markets mismatches at the local level; while 2) there are also factors which encourage migrants to leave the country, such as rapid economic development of neighbouring emerging economies as well as the traditional employment management policy of favouring people who prefer long-term employment.

3) According to some analyses of local labour markets, the density of migrants' population is high not only in large cities, but also in small and medium-sized cities with industrial agglomeration as well as rural areas with continuous outflows of younger people. Japanese workers and migrant workers are more or less complementary to each other in several ways.

4) A survey by the "Alliance of Cities with High Density of Foreign Population" showed that language proficiency has a high correlation with stability and remuneration of migrants' employment. However, local initiatives alone cannot provide enough incentives for migrants to continue learning the Japanese language.

The policy slogan to create "multicultural coexistence" in Japan is a grass-rooted concept based on local realities. It is necessary to establish institutional infrastructures at the national level to enable consistency between immigration policy and integration policy as well as close collaboration of policies between local and national levels. The main targets are a) institutionalization of language standards, qualification of teaching staffs and legal incentives for migrants to learn Japanese language, b) reinforcement of active labour market policies for migrants together with policies for housing, social security and welfare as safety nets, c) strengthening of education for children who are lacking Japanese language skills and encouragement for them to pursue higher education.



The recent amendment of the Immigration Control Act and Basic Population Register Act, which came into force in July 2012, provides a basis for guaranteeing rights and fulfilling obligations to migrants at local levels. This can be regarded as a first step towards the realization of a more comprehensive and effective migration policy in the near future.

## **1. INTRODUCTION**

The objective of this article is to explore recent trends in migration and related policies, namely, 1) recent migration trends of Japanese and foreign population flows and their backgrounds, 2) immigration flows of foreigners and their requirements, 3) relationship between migrants and locals using statistical data, 4) recent labour migration trends in Japan using local data under the complex disasters, 5) measures taken by the central and local governments to integrate migrants economically and socially in Japan and 6) future prospects for migration and migration policies. Specifically, we are going to analyze related data and discuss such subjects in the following way:

First, we will try to discuss the macro-economic and labour market environment of international migration in and around Japan (Chapter 2). Second, we will describe the inflows and stocks of foreign nationals and the requirements of the Immigration Control and the Refugee Recognition Act (Chapter 3). Third, we will make an overview of the development of the labour market and foreign workers and their location, as well as their mobility (Chapter 4). Fourth, we will statistically show the recent demographic change of the Japanese and its relation to foreign population (Chapter 5). Fifth, we will focus on the present stage of the social integration of foreigners with the newest data from the Alliance of Cities with High Density of Foreign Citizens (Chapter 6). Finally, we would like to summarize the discussion and main findings, followed by recommendation.

## **2. CHANGES IN MIGRATION OF JAPANESE OR FOREIGN NATIONALS AND THEIR BACKGROUNDS**

Japan has entered the phase of declining population since 2005. The demographic factor may be one of the important factors which may explain the recent development of international migration.

However, the Japanese population increased in 2006, 2007 and 2009 because of positive net immigration of Japanese nationals. In addition, the positive net immigration of foreign nationals also compensated for such declines from 2005 to 2008. In this period, the Japanese economy has been expanding and domestic employment has been recovering (Table 1) (Iguchi 2012e).

In September 2008, the world economic crisis broke out and manufacturing and financial sectors were the hardest hit. The net immigration of foreign nationals started to shrink.

In March 2011, the Great East Japan Earthquake happened. After the earthquake, 530,000 foreigners left Japan within a month. But, they gradually returned as the situation of the nuclear plants stabilized. As a result, the registered foreign population declined slightly

(from 2.09 million in March to 2.07 million in December 2011). This year, the decline of the Japanese population has reached 200,000 and that of foreign nationals 5,000, which is the largest population decline after World War II.

These changes varied according to nationalities: the largest decline in percentage was Brazilians, followed by Koreans, while the Chinese and Filipinos showed no substantial changes in population.

**Table 1: Development of Population in Japan (Unit: Thousand, %)**

	Total Population			Japanese			Foreigner		
	Population in October	Diff.	Rate of change	Population in October	Diff.	Rate of change	Population in October	Diff.	Rate of change
2005	127769	-19	-0.01	126205	-61	-0.05	1564	42	2.7
2006	127901	133	0.10	126286	81	0.06	1615	51	3.2
2007	128033	132	0.10	126347	62	0.05	1686	71	4.2
2008	128081	51	0.04	126340	-81	-0.01	1741	55	3.2
2009	128032	-52	-0.04	126343	4	0.00	1689	-52	-3.0
2010	128057	26	0.02	126382	38	0.03	1675	-14	-0.9
2011	127799	-259	-0.20	126180	-202	-0.06	1619	-56	-3.5

Source: Ministry of Internal Affairs and Communication (Estimates based on population census)

Aside from factors such as the economic crisis and the complex disasters, we would like to examine the factors that may explain the in- and outflow of foreign nationals as well as Japanese. They consist of long-term factors which might influence migration (either push factors or pull factors).

First, deflation has occurred in Japan since the middle of the 1990s, while there is a trend of inflation in the global economy with the rapidly growing demands from emerging economies. The global inflation trend is primarily caused by soaring prices of energy, raw materials and food as a result of increasing demands from emerging economies, especially China and India, along with the background of abundant speculative money in the financial sector as a result of the quantitative easing of several developed countries with the debt crisis.

Following the collapse of the bubble economy at the beginning of the 1990s, accumulation of non-performing loans and contraction of bank credit have resulted in low investment and slow economic growth as well as deflation since the middle of the 1990s.

Even after overcoming the financial crisis through legislations in 1998, the deflation gaps at macro-level have continued irrespective of enormous expenditures by the government and quantitative easing by the Bank of Japan in order to stimulate the economy.

One serious effect of deflation on the labour market is strong pressure to squeeze labour cost at enterprises. When we look at the domestic labour market, enterprises have to continuously reduce labour costs not only by reducing the remuneration for regular employees, but also by replacing regular employees with employees on contracts. This has led to growing and diversifying mismatches in the local labour markets, as many unemployed cannot find

regular jobs and vacancies for technicians cannot be filled by a shrinking younger population who want to go to universities.

In addition, there are growing numbers of inactive persons who are still young but discouraged from working. As a result, an increasing number of long-term unemployed are now dependent upon social assistances.

Second, Japanese employment systems function under the condition of low labour turnover, which in most Asian countries is much higher than in Japan. Many Asian talents seek faster evaluation, selection and promotion within a few years. In contrast, Japanese companies have long-term evaluation systems and do not have fast tracks for employees who are evaluated as possessing high potential. For a long time, even large Japanese companies thought that there would not be so many job-changers, and there are no specific measures in their personnel policies for handling such a situation.

In Asian companies growing rapidly, several measures are taken to prevent unexpected labour turnover and to assure the retention of essential personnel within the company. They implemented several reforms of their personnel policies following recommendations by American or European consulting firms on personnel policy.

Perhaps in twenty or thirty years' time, the mobility of the labour market in Asia will be substantially lower than today and many people will seek stable and long-term employment, under developed social security systems.

As a consequence, there are two contrasting outcomes already evident in Japan. One outcome is the inflow of migrant workers into the local labour markets in order to fill the gap caused by the mismatches between demand and supply at the local level in Japan.

Another outcome is the outflow of migrant workers, especially those with high potential already employed by Japanese enterprises. They are inclined to quit the company in a few years and even leave Japan to work abroad. The main reason might be that Japanese companies cannot concentrate human capital investment on employees with high potential (Iguchi 2012 d).

In addition, Japanese engineers, especially in the electronics industry, have changed jobs and been hired by Korean or Chinese firms, which offer much higher remuneration and better working conditions. It has resulted in a growing outflow of Japanese engineers, with some "technology drain", from Japanese firms to their competing firms in Asia.

Now, we can classify several factors influencing international migration of both Japanese and foreign nationals (Table 2).

**Table 2: Changing environment and factors affecting international migration in and around Japan**

Environment	Main factors	Direction	Reasons of inflows or outflows	Examples
Deflation in Japan versus Inflation in the world	- Strong pressures to <u>reduce total labour costs</u> by enterprises	Inflow (Coming from abroad)	<u>Mismatches in the local labor markets</u> as a result of the declining and aging population (supply) and changing business models of companies because of globalization (demand)	Net Inflow of <u>Technical Interns</u> , <u>Japanese-Asians (New-Nikkeijin)</u> , and <u>hiring of foreign students graduated from universities</u>
	- <u>delayed reform of employment systems</u> to meet with high turnover	Outflow (Going abroad)	<u>Slow selection or evaluation</u> for regular employees and <u>increasing unstable employment of atypical employees</u>	Net outflow of Japanese Brazilians etc. (Nikkeijin), and <u>resignation of foreign graduates in a short period or Japanese engineers finding jobs abroad</u>

Source: Made by the author

### 3. CHANGING MIGRATION AND REQUIREMENTS OF IMMIGRATION

We now look at inflow of foreign nationals, taking into consideration the requirements set by the Immigration and Refugee recognition Act.

In the Immigration Control and Refugee Recognition Act, Article 1 stipulates the sole objective of the Act. It is “fair control of immigration and emigration”. There are no such objectives as protection of migrants, guarantee of rights and obligations or social integration of migrants.

Article 2-2 of the Act stipulates two different types of migrants by the Annex Table I and the Annex Table II. Annex Table I defines “statues of residence” for the purpose of “activities” performed by foreigners. They are “Diplomat”, “Official”, “Professor”, “Religious activities”, “Journalist”, “Investor /Business manager”, “Legal /Accounting services”, “Medical Services”, “Researcher”, “Instructor”, “Engineer”, “Specialist in humanities/International Service”, “Intra-corporate-transferee”, “Entertainer”, “Skilled Worker”, “Technical Intern Training” (1-I, 1-RO, 2-I, and 2-RO), (these 15 statuses are for working purposes), as well as “Cultural activities”, “Temporary visitor”, “Students”, “Trainee”, “Dependent” and “Designated activities” (these 5 statuses are for other purposes than working) (Table 3).

**Table 3: New entry of foreigners according to status of residence**

Year			2007	2008	2009	2010	2011
Status of residence Total			7,721,258	7,711,828	6,119,394	7,919,726	5,448,019
Status according to activities	Status for working purposes	Diplomat	9,205	12,029	10,183	11,167	9,678
		Official	14,519	24,358	22,229	27,000	19,563
		Professor	2,365	2,465	2,639	2,630	2,420
		Artist	239	222	226	256	221
		Religious activities	985	828	771	713	737
		Journalist	119	226	170	136	59
		Investor /Business manager	918	919	857	896	838
		Legal /Accounting service	8	2	4	3	4
		Medical services	6	1	6	2	7
		Researcher	559	563	592	528	423
		Instructor	2,951	2,930	2,499	2,339	2,540
		Engineer	10,959	9,212	3,363	2,852	4,178
		Specialist in humanities/ International Service	7,426	5,690	4,167	4,113	4,658
		Intra-company transferee	7,170	7,307	5,245	5,826	5,348
		Entertainer	38,855	34,994	31,170	28,612	26,112
		Skilled labor	5,315	6,799	5,384	3,588	4,178
		Technical Intern Training 1-I	-	-	-	2,282	5,178
		Technical Intern Training 1-RO	-	-	-	23,720	60,847
		Technical Intern Training 2-I	-	-	-	-	0
		Technical Intern Training 2-RO	-	-	-	-	227
	Status for other purposes	Cultural activities	3,454	3,378	3,557	3,159	2,729
		Temporary visitor	7,384,510	7,367,277	5,822,719	7,632,536	5,180,962
		Student	47,939	59,116	66,149	63,478	49,936
		Trainee	102,018	101,879	80,480	51,725	16,079
		Dependent	20,268	22,167	20,540	19,486	18,165
Status according to social position	Status for other purposes	Designated activities	8,009	8,413	9,863	11,972	12,954
		Spouse or child of Japanese national	24,421	19,975	14,951	11,452	10,766
		Spouse and child of permanent resident	1,710	1,964	1,684	1,068	1,392
		Long-term resident	27,326	20,123	9,946	8,178	7,811
Status according to social position	Status for other purposes	Temporary asylum	4	0	0	0	0

Source: Ministry of Justice

Annex Table II stipulates status of residences according to social positions. They are “Spouse or Child of a Japanese national”, “Long-term resident”, “Spouse and children of permanent resident”, or “Temporary visitor” (See Table 3).

In addition, there is the status of “Permanent resident” in Annex Table II, which can be issued to foreigners who have stayed in Japan for at least ten years in principle, with the condition that he or she is of good conduct and can sustain his or her livelihood. In the case of a spouse of a Japanese, permanent resident status can be issued when he or she has been staying in Japan for less than five years.

Article 5 stipulates the reasons for rejecting the application for landing, which include drug abuse or danger for social order etc.

Article 7 stipulates the ordinance by Ministry of Justice on the activities of 14 statuses of residence: “Investor /Business manager”, “Legal /Accounting services”, “Medical Services”, “Researcher”, “Instructor”, “Engineer”, “Specialist in humanities/International Service”, “Intra-corporate-transferee”, “Entertainer”, “Skilled Worker”, “Student”. “Trainee”, “Dependent” and “Technical Intern Training” (1-I, 1-RO, 2-I, and 2-RO). This ordinance should be decided after consultation with Ministries Agencies concerned.

The scope of accepting foreign workers are limited to foreigners with technology and knowledge or those with special skills, according to Annex Table I, while those foreigners with status of residence according to Annex Table II are able to conduct every kind of activity including low or unskilled jobs (Table 2). (Iguchi 2012d)

Article 19 stipulates the permission for undesignated activities issued by the Immigration Bureau. Article 19-3 stipulates the “Residence Card” which should be issued by the Immigration Bureau when foreign nationals get permission for landing.

Article 19-7 stipulates that foreign nationals should present the residence card and register at municipalities according to the Inhabitant’s Registration Law. In addition, Article 19-16 stipulates that foreign nationals should report to a local immigration bureau when they have changed their workplace.

Article 19-17 stipulates the obligation for organizations which accept foreign nationals to report to the local immigration bureau, except when employers are obliged to report to Employment Service Offices according to Article 28 of Employment Countermeasures Law. The same law stipulates that these reports should be transferred from Minister of Health, Labor and Welfare to Minister of Justice.

Article 20 states the procedures for changing status of residence. Article 21 stipulates the procedures for extending the stay with the same status of residence. These articles have guidelines by the ministry concerning requirements for changing or extending their statuses. These guidelines contain requirements such as paying taxes or holding certificate of social insurance etc. However, a lack of requirements does not necessarily lead to deportation of the migrants.

Articles 24 and 25 mention the procedures for deportation. Article 50 stipulates special permission of stay granted by the Minister of Justice when there are humanitarian reasons. This article also has a guideline for the permission.

The total number of new entries was 7.7 million per annum before the world economic crisis in 2008. However, the annual inflow has drastically declined to almost 5.4 million in 2011 after the rebound of new entries to 7.9 million in 2010.

Although the entries of foreign nationals have been fluctuating as a result of external or internal shocks, the stock of migrants has been relatively stable and the decline of foreign residents still remains over two million according to the registration statistics.

First, it is noteworthy that 980,000 foreign inhabitants hold permanent resident status including special permanent resident status, which has been issued to the descendants of Koreans or Chinese who had been Japanese nationals before the end of World War II. Nowadays, according to Article 22 of the Immigration Control and Refugee Recognition Act, ordinary permanent residents have outnumbered those with special permanent resident status (Table 4).

**Table 4: Registered foreigners according to status of residence**

Year	2007	2008	2009	2010	2011
Status of residence Total	2,152,973	2,712,426	2,186,121	2,134,151	2,078,508
Permanent resident total	869,986	912,361	943,195	964,195	987,508
Ordinary permanent resident	437,757	496,056	533,472	565,089	598,440
Special permanent resident	430,229	420,305	409,565	399,106	389,085
Non-permanent resident total	1,282,987	1,305,065	1,243,084	1,169,965	1,090,983
Student	170,590	179,827	192,668	201,511	188,605
Souse and child of Japanese	256,980	245,497	221,923	196,248	181,617
Long-term resident	268,604	258,498	221,771	194,602	177,983
Technical Intern Training	-	-	-	100,008	141,994
Dependent	98,167	107,641	115,081	118,865	119,359
Specialist in humanities / International Service	61,763	67,291	69,395	68,467	67,854
Skilled labour	44,684	52,273	50,493	46,592	42,634
Engineer	21,261	25,863	29,030	30,142	31,751
Spouse of permanent resident	15,365	17,839	19,570	20,251	21,647
Intra-company transferee	16,111	17,798	16,786	16,140	14,636
Investor / Business manager	7,916	8,895	9,840	10,908	11,778
Instructor	9,832	10,070	10,129	10,012	10,107
Trainee	88,086	86,826	65,209	9,346	3,388
Others	223,628	226,747	221,189	146,867	77,631

Source: Ministry of Justice

According to nationalities, China occupies 32.5% of registered foreign residents, followed by Korea, Brazil, the Philippines, Peru and the United States (Table 5).

**Table 5: Migrant stocks (registered migrant) in Japan**

Countries of origin	2007	2008	2009	2010	2011	%
Total	2,152,973	2,217,426	2,186,121	2,134,151	2,078,508	100.0
China	606,889	655,377	680,518	687,156	674,879	32.5
Korea	593,489	589,239	578,495	565,989	545,401	26.2
Brazil	316,967	312,582	267,456	230,552	210,032	10.1
Philippines	202,592	210,617	211,716	210,181	209,376	10.1
Peru	59,696	59,723	57,464	54,636	52,843	2.5
the US	51,851	52,723	52,149	50,667	49,815	2.4
Others	321,489	337,205	338,323	334,970	336,162	16.2

Source: Ministry of Justice

#### 4. DIFFERENT TYPES OF MIGRANT LABOR AND ITS LOCATION AND MOBILITY

The total number of foreign workers should be grasped by the reporting system of foreigners' employment according to Article 28 of Employment Countermeasures Law. In reality, this system has become compulsory since October 2007 and it covers 686,000 foreign workers. However, this figure may underestimate the real number,

Therefore, the author has estimated the number of foreign workers every year based on reliance on several kinds of statistics. The total number is 900,000 excluding those who have special permanent resident status (Table 6).

According to the estimate by the author, foreigners who have the status of residents for the purpose of working, except technical intern trainees, represent 22.2 percent of foreign workers. Technical intern trainees, who possess a status of "designated activities", and students with permission for non-designated activities, amounted to almost the same number as those who have a status of residence for the purpose of working.

Foreigners of Japanese descent have traditionally been the largest group in this table. But their numbers have declined significantly since 2009 due to the world economic crisis.

The number of overstaying foreigners has substantially declined under the efforts of the Immigration Bureau to reduce overstayers by half from 2005 to 2009. This figure also reflects the issuance of a "special permission to stay" by the Minister of Justice, which may be issued in the process of deportation when there are humanitarian considerations, as indicated in the guidelines attached to Article 25 of the Immigration Control and Refugees Recognition Act.

The estimate also reflects the fact that there are new foreigners who obtain permanent resident status. Many of them come from the category of Japanese descendants. If foreigners would like to build a house in Japan and secure bank loans, it is necessary for them to apply for permanent resident status.



**Table 6: Development of foreign workers (excluding special permanent residents) since 1990: Estimates reflecting amendment of laws in 2010**

	1990	1995	2000	2005	2008	2009	2010	2011
Status of residence for the purpose of working	67,983	125,726	154,748	193,785	211,535	212,896	307,235 (207,227)	342,266 (200,271)
Highly Skilled	43,823	64,672	89,552	193,785	172,600	172,900	167,838	162,255
Foreign workers with foreigner's specific skills	24,110	23,324	65,196	36,994	38,894	39,996	43,823	38,016
Designated activities	3,260	6,558	29,749	104,488	121,863	130,636	24,100	22,751
Students working in non-designated activities	10,935	32,366	59,435	104,671	99,485	106,588	103,260	104,340
Foreigners of Japanese descent	71,803	193,748	220,458	241,325	229,569	202,101	178,031	163,795
Overstayers	106,497	284,744	233,187	149,785	113,072	91,778	78,488	67,055
Non-designated activities	unknown	unknown	unknown	unknown	unknown	unknown	unknown	unknown
Working with permanent residence status	-	17,412	39,154	143,184	160,212	173,696	183,990	194,849
Total number of foreign workers without special permanent residence status	260,000 + α	620,000 + α	750,000 + α	930,000 + α	930,000 + α	920,000 + α	940,000 + α (860,000) + α	900,000 + α (840,000) + α
Registered Foreigners	1,075,317	1,362,371	1,686,444	2,159,973	2,217,426	2,186,121	2,134,151	2,078,504

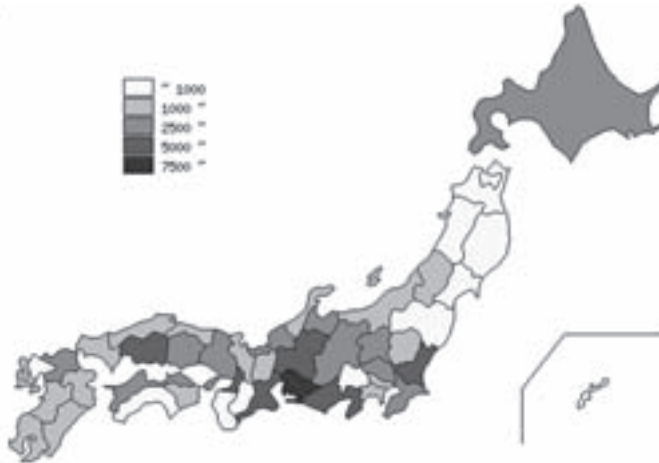
Note: ( ) means an estimate according to the definition of foreign workers before Immigration Control and Refugee recognition Act have taken effect to introduce the new status of residence "Technical Intern Training" in July 2010.

In the labour market, the functions of foreign workers differ according to the categories.

Graphics 1-5 show that technical intern trainees, who are under the rotation system and who are not able to change their jobs, are widespread in remote areas where the youth population has declined and population aging is going on.

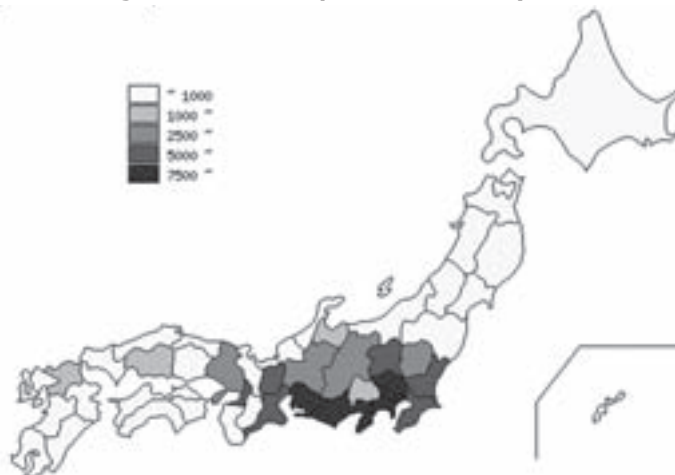
In contrast, foreign workers of Japanese descent and those with permanent resident status are mobile and concentrate in the areas with higher wages. The highly skilled foreign workers are mainly working in the areas of Tokyo, Aichi and Osaka. The locations of foreign students who are working part-time corresponds with that of universities and colleges (Graphics 1-5).

**Graphic 1: Foreign workers as technical intern trainees (October 2011)**



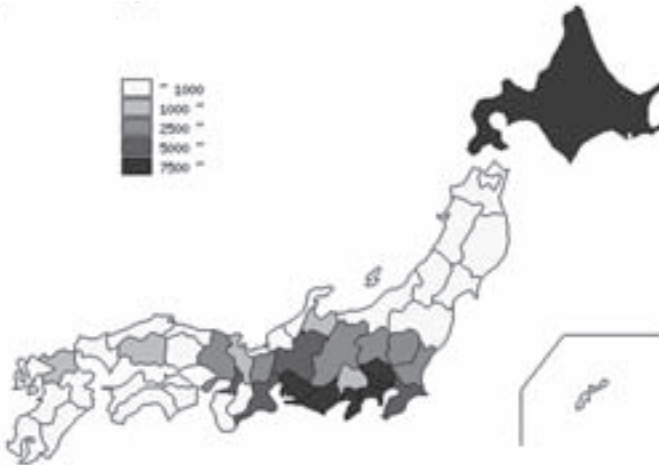
Source: Made by the author in reliance upon data from the reporting system of foreigners' employment by Ministry of Health Labour and Welfare.

**Graphic 2: Foreign workers of Japanese descent (October 2011)**



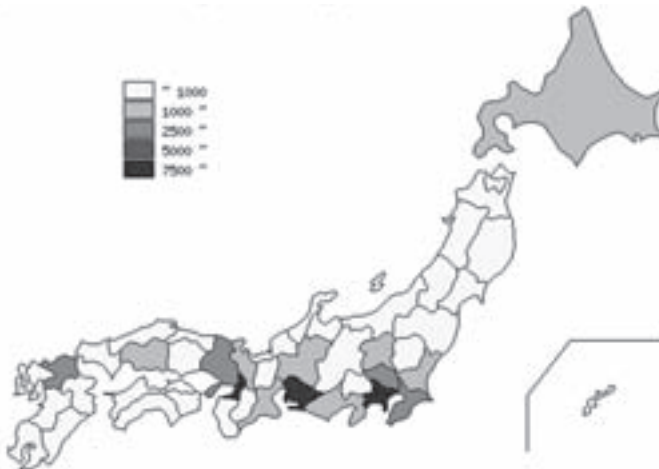
Source: Made by the author in reliance upon data from the reporting system of foreigners' employment by Ministry of Health Labour and Welfare.

**Graphic: 3 Foreign workers with permanent resident status (Oct. 2011)**



Source: Made by the author in reliance upon data from the reporting system of foreigners' employment by Ministry of Health Labour and Welfare.

**Graphic 4: Foreign workers with knowledge and technology (October 2011)**



Source: Made by the author in reliance upon data from the reporting system of foreigners' employment by Ministry of Health Labour and Welfare.

**Graphic 5: Foreign part-time workers as students (October 2011)**

Source: Made by the author in reliance upon data from the reporting system of foreigners' employment by Ministry of Health Labour and Welfare.

## 5. THE RELATIONSHIP BETWEEN MIGRANTS AND LOCALS

Now we can statistically explore the relationship between demographic factors and international migration using local data between 2005 and 2010.

Looking at population movement at the local levels, population decreased in every prefecture in December 2010. When we divide this movement into natural and social increase (or decrease), natural decrease was observable in every prefecture and social increase can be identified in several prefectures. These prefectures with social increase of population are exceptional: Social increase is observable only in the Tokyo metropolitan areas as well as Aichi, Shiga, Osaka, Hyogo and Fukuoka prefectures. Especially noteworthy is that in the disaster-stricken areas, in the north-eastern part of Honshu Island, only Miyagi Prefecture (strictly speaking Sendai City) has been attracting people from neighbouring regions.

When we look at the age structure of Japanese nationals, it is noteworthy that the number of babies born annually is as high as 1.06 million, as in 2011, while it was almost 2.2 million in the 1947-49 period, and 1.7-1.9 million in the 1965-74 period.

Based on such descriptive data, we try to statistically explore the relationship between demographic movement and foreign population. We can obtain the following results from 2000 and 2005: the declining population of youngsters has been compensated with the growing foreign population, especially technical intern trainees at the local level.

It does not make sense when people insist that foreign labour should not enter the labour market, while females and the elderly should have priority for working opportunities. In reality, Japanese Brazilians are concentrated in the areas where labour force participation and employment rate of females and elderly are high (Table 7 and Table 8).

**Table 7: Correlation between demographic changes and foreign population in 2000**

	Share of youth population	Labour force participation of the elderly	Employment rate of the elderly	Labour Force Participation of women	Employment rate of the women
Total foreigner	0.301**	0.619***	0.699***	0.021	0.321**
Special permanent residents	0.340**	0.100	0.360**	-0.364***	-0.094
Japanese-Brazilians	-0.054	0.686***	0.504***	0.410***	0.474***
Foreign specialist	0.357**	0.293**	0.519***	-0.131	0.207
Technical intern trainees	-0.437***	0.217	-0.040	0.396***	0.215

Source: By the author in reliance on Shiho (2011). The original data is population census (2000).

Note: \*\*\*significant at 10% level. \*\*significant at 5% level. \*significant at 1% level.

**Table 8: Correlation between demographic changes and foreign population in 2005**

	Share of youth population	Labour force participation of the elderly	Employment rate of the elderly	Labour Force Participation of women	Employment rate of the women
Total foreigner	0.203	0.528***	0.731***	0.128	0.486***
Special permanent residents	0.294**	-0.099	0.288**	-0.347***	-0.037
Japanese-Brazilians	-0.010	0.661***	0.554***	0.445***	0.562***
Foreign specialist	0.241	0.114	0.505***	-0.209	0.184
Technical intern trainees	-0.369***	0.234	0.020	0.366**	0.247*

Source: By the author in reliance on Shiho (2011). The original data is population census (2005).

Note: \*\*\*significant at 10% level. \*\*significant at 5% level. \*significant at 1% level.

## 6. LOCAL INITIATIVES OF INTEGRATING MIGRANTS

Initiatives to integrate migrants into the society were started in Kawasaki City at the beginning of the 1990s. After the Great Hanshin Awaji Earthquake, there emerged initiatives to rescue people and reconstruct their lives in Kobe City. They called their movement as “Multicultural Coexistence”.

In 2001, thirteen cities established the Alliance of Cities with High density of Foreign Citizens with the initiative of Hamamatsu City. In 2004, the Alliance defined the “Multicultural coexistence” as “a society which respects identity and culture of the members on the basis of the guarantee of rights and the fulfilment of obligations to sustain the city life”. In 2005, the Council on Regulatory Reform of the Cabinet Office recommended that municipalities, in cooperation with government agencies, should strengthen policies for “multicultural coexistence.” To achieve this goal, migration policies should consist of both immigration control policy and multicultural coexistence policy as proposed by the Alliance.

Based on requests for regulatory reform, the cabinet adopted the three-year plan of regulatory reform in 2006 including amendment of the Immigration Control and Refugees Recognition Act and the Employment Countermeasures Law as well as the Inhabitants' Register Law. Through this amendment, the data system of foreign citizens should be integrated to the data system of Japanese citizens and a digital network of municipalities and government agencies should be created so as to guarantee rights and to enable fulfilment of obligations to foreign citizens. The bill was passed by the parliament in July 2009 and the laws took effect partially in July 2010 and totally in July 2012. At the same time, the Foreigners' Registration Law was abolished.

However, this amendment of the laws is the beginning of migration policy reform. Municipalities recognized that the amendment of the new laws provide them with the basis for guaranteeing rights and fulfilment of obligations to foreign citizens. But, it will take further steps to realize effective data systems among inhabitant's register, social security, tax system and so forth.

In addition, the Alliance has been intensively taking measures at local levels to strengthen language training. Therefore, it is urgent now to create an institutional infrastructure for language training by introducing Japanese language standards, evaluation methods, and qualification of teaching staff etc. It also tries to strengthen employment measures especially vocational training in foreign languages as well as more comprehensive measures for education of migrant children.

Because of emergency employment measures after the world economic crisis, there have been policies implemented by the government to promote the employment of foreigners. This budget also enabled municipalities to reinforce Japanese language courses for foreigners, training for employment of foreigners as well as supporting foreign children to change from foreigners' schools to Japanese public schools etc. However, the budget will expire at the end of March 2013. Although the Alliance made requests repeatedly to institutionalize such emergency measures, many of them will be abolished or eliminated.

According to the new survey, language ability is an important determinant of the stability of employment and sufficiency of household budget (Tables 9-12).

**Table 9: Ability to speak Japanese according to the length of stay in Japan**

Length of stay in Japan	Japanese language			Total
	I can speak	Speak a little	I cannot speak	
10 years and more	51.5%	43.9%	4.6%	100%
5 years to 9 years	18.6%	67.2%	14.2%	100%
2 years to 4 years	10.4%	65.8%	23.8%	100%
One year or less	6.5%	42.9%	50.6%	100%
Total	39.0%	50.8%	10.2%	100%

Source: Alliance of Cities with High Density of Foreign Citizens (2012)

Note: Samples are 910 Japanese Brazilians.

**Table 10: Ability to read Japanese according to the length of stay in Japan**

Ability to read Japanese language						Total
Length of stay in Japan	No Answer	I can read newspapers	I can read simple Chinese characters	I can read Hiragana or Katakana	I cannot read Japanese	
10 years and more	1.1%	16.3%	26.5%	43.7%	13.4%	100%
5 years to 9 years	0.9%	3.0%	17.8%	56.5%	21.8%	100%
2 years to 4 years	0.0%	0.0%	12.3%	57.0%	30.7%	100%
One year or less	1.0%	0.0%	26.7%	38.7%	43.5%	100%
Total	1.0%	11.4%	22.5%	47.3%	17.9%	100%

Source: See Table 9

**Table 11: Working status according to language ability**

Japanese language ability	Structure of household according to working status				Total
	Regular employee	Dispatched worker	Part-time worker	No one is employed	
Can speak	42.4%	31.3%	17.6%	8.6%	100%
Speak a little	26.5%	49.2%	16.1%	8.2%	100%
Cannot speak	29.8%	22.0%	28.2%	20.0%	100%
Total	35.3%	38.2%	17.5%	9.0%	100%

Source: See table 9

**Table 12: Sufficiency of household income according to language ability**

Sufficiency of household Income						Total
	Income is sufficient for the household	Income is not enough for the household	Income is insufficient for the household	Living with social assistance	Others	
I can speak	47.2%	28.1%	18.4%	2.2%	4.1%	100%
I can speak a little	40.8%	32.6%	17.2%	3.7%	5.6%	100%
I cannot speak	35.2%	31.8%	19.3%	10.2%	3.4%	100%
Total	42.5%	31.0%	17.8%	3.8%	4.9%	100%

Source: Alliance of Cities with High Density of Foreign Citizens (2012)

Note: Samples are 910 Japanese Brazilians.

The Alliance also made a request to the government to establish a new government agency for migration policy. However, the majority of the ministries have not agreed with the Alliance so far. In the meantime, the government has established an office within the Cabinet Office to promote the policy for long-term foreign residents and have compiled an action plan. However, they have no clear target, no financial background, and no deadline for creating institutional infrastructures for migration policy.

Concerning the scope of acceptance of foreigners, the government has been keeping the principle of accepting foreigners with technology and knowledge as much as possible, while unskilled foreigners should not be accepted. But, this principle has relevance only with Annex Table I of the Immigration and Refugees Recognition Act and no relevance with Annex Table II of the Act.

The activities of civil society to support migrants in Japan had already started in the middle of the 1980s, when many Filipinos came to Japan as entertainers. Most of them were female workers and needed rescue from exploitation and infringement of human rights. Some Japanese NGOs, which had been providing shelters for women who suffered from domestic violence, also accepted trafficked women from the Philippines, Thailand or Columbia etc.

At the same time, there are NGOs which try to give assistance to overstaying foreigners who are not covered by sickness insurance and are not able to have medical treatment. From there emerged trade unions for foreign workers, which may carry out negotiations with employers when there are disputes. With the increasing number of Japanese Brazilians or Japanese Peruvians, NGOs have become active in many local areas where foreign inhabitants have increased. Although many of the NGOs in Japan are small and isolated, movements to build networks among them emerged in the Kanto area in 1991. To cover all areas of Japan, the Solidarity Network With Migrant Japan was established in 1997.

Together with the “multicultural coexistence” policies, there are increasing numbers of volunteer citizens who provide lessons on the Japanese language for foreigners or who become tutors for foreign children. It is also noteworthy that many municipalities or local associations for international exchange employ interpreters or counsellors. These bilingual citizens play an important role in solving everyday problems for foreign citizens who are not covered by local communities. In case of emergency, they can also give reliable information to foreign citizens in foreign languages.

Many of these initiatives are taken at the local level and are undertaken with the objective of “multicultural coexistence”. The capacity and effectiveness of such initiatives are limited, because local initiatives are undertaken in the absence of laws and regulations. Therefore, it is necessary to create institutional infrastructure for “multicultural coexistence” at a national level for providing language training, improving education for foreign children and youngsters, promoting employment for foreign workers and providing them with a safety-net through social insurance as well as employment insurance. This may be an important investment for the future of the Japanese society which cannot be sustained without the participation of foreign citizens.

## 7. CONCLUSION

International migration in and around Japan is undergoing great changes. There are still factors attracting migrants, while there are other factors causing foreigners to leave Japan. This mechanism can be explained by the macro-economic environment and the situation in the labour market. Because of the world economic crisis and the complex disasters, the flow of



migrants fluctuated and net migration was negative in 2011. However, the stock of migrants has been resilient to several shocks and it remains over two million.

The Japanese migration policy is mainly shaped by the Immigration Control and Refugee Recognition Act, which does not include social integration policies. There are two categories of migrants who enter Japan, either with the objective of activities, or for the social position of migrants. There has been a principle by the government to accept foreigners with technology or knowledge as much as possible, while so-called unskilled labour should not be permitted. However, only about twenty percent of the migrants entered Japan with the objective of working.

When we look at the labour markets of foreign workers, they are concentrated in the areas with higher wages when they are mobile enough. But foreign workers without mobility, such as technical intern trainees, are also located in the areas of low wages and productivity, where the youth population has left for big cities and the population is aging.

Then we statistically verified the relationship between foreign and Japanese nationals. As for technical intern trainees, they compensate for the loss of the youth population. As for Japanese Brazilians, where they are working, employment rate of females and elderly workers are also high.

Based on these analyses, the author stresses the local initiatives of “multicultural coexistence” in Japan. These initiatives have achieved the amendment of the Immigration Control and Refugee Recognition Act as well as the Inhabitants Register Law and Employment Countermeasures Law. All of the amendments have taken effect from July 2012 (partly from October 2007 or July 2010).

However, this is the first step for guaranteeing the rights and fulfilling obligations to foreign citizens. We need to create more institutional infrastructures for language training, employment promotion, provision of safety nets, and education for foreign children and youth etc. These measures should be mainly taken at the local level together with civil society organisations, which are now growing its network around Japan.

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# Managing Immigration and Integration in Singapore

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## ABSTRACT

Singapore is a small city-state situated in the centre of Southeast Asia, and home to five million residents and non-residents. In 2000, a quarter of the Singapore population was considered non-native born. This ratio, by 2010, had increased to one-third of the total population. One million people were added to the population during this period, with the bulk of the influx coming in as permanent residents and short-term foreign workers. The core of local-born Singaporeans has shrunk considerably from 75% to 66% over the same period. This group is set to become the minority group in their homeland, should the trend persist. The rapid growth in population was primarily fuelled by the country's liberal economic policies, and in reaction to the socio-demographic imperatives faced by the city-state. At the same time, the open-door policy was introduced to uplift the nation's economic competitiveness and make up for the country's anaemic fertility rate as the pace of ageing accelerates in the coming decades.

Not surprisingly, the tectonic shift in the demographic landscape has unnerved the local community. Some Singaporeans are uncomfortable over the relentless influx of immigrants and foreign labour. The resentment that underscores the discontent ranges from resource competition (e.g., jobs, education scholarships) to intrinsic socio-cultural contestations (e.g., space, identity, cohesion), and a perceived political divide (e.g., government bias in favour of immigrants over local-born). The policymakers are cognisant of these emerging fractures and many policies have been put in place to address the imbalance. These include steps to recalibrate the intake of foreign labour and long-term residents, ramp up the provision of social infrastructure, impose a residential quota on permanent residents, increase grassroots

engagement, and sharpen policy entitlement for the different residential groups. What will the future hold for Singapore's ethno-cultural terrain? What are the barriers to harmonious co-existence? And what is the trade-off in terms of economic growth and standard of living? This paper aims to examine these issues and identify the impending challenges in the decades to come.

## INTRODUCTION

Singapore is historically an immigrant society that has a large number of people originating from abroad. Since the British founding of Singapore in 1819, the tiny island-state has been a magnet for immigrants from the region due to its strategic location at the southern tip of the Malaysian peninsula. Good geographical position enabled the former colony to transform into an important trading centre and make economic improvements at breakneck speed.

Despite the economic progress under British rule, the colonial government made no effort to enhance ethnic relations. This lack of attention led to rising social tensions between the different racial communities which eventually ended in a few disruptive racial riots in the 1960s. When Singapore gained independence in 1965, maintaining social peace and harmony was deemed a key priority for the government. Racial integration was taken seriously in all spheres of public policies and every effort was made in the nation-building process to forge a distinctive Singaporean identity which all citizens could identify with and be proud of.

The past experience in the management of racial and religious harmony and in the development of civic health thus became the *de facto* template for the management of social diversity, including the challenges related to the recent influx of immigrants. While many other countries have also become recipients of immigrants in recent years, Singapore stands out with its comprehensive approach to regulate migration and foster integration into the host society.

## SINGAPORE'S SOCIO-DEMOGRAPHIC LANDSCAPE

The modern city-state of Singapore has a land size of 714.3 km<sup>2</sup> (in 2011). The island has no hinterland or natural resources, and is highly dependent on imports and external trade. With a population density of 7,257 persons per km<sup>2</sup> (in 2011), Singapore is one of the most crowded countries in the world. Notwithstanding its geographic constraints, Singapore has done exceptionally well with its economy – between 1959 and 1991, the gross national product per capita increased more than 14 times (cf. Quah 1992, p. 151-152).

According to the last population census in 2010,<sup>1</sup> Singapore has a total population of 5.08 million inhabitants of which 1.31 million are non-residents (e.g., people holding an Employment Pass) and 3.77 million are residents (including 3.23 million citizens and 541,000 permanent residents (PRs) (see Table 1)). Until the mid-1990s, approximately 90%

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<sup>1</sup> All the data presented in this chapter refer to the results of the 2010 census (cf. Wong 2010) and the information of the Department of Statistics Singapore (<http://www.singstat.gov.sg/stats/keyind.html>).

of the total population were Singapore citizens. This ratio has fallen to less than two-thirds today. However, the ethnic composition has remained relatively stable for the last 40 years. The Chinese form the overwhelming majority with 74.1% of the population. The Malays are the biggest minority group, making up 13.4% of the total population. The Indians form 9.2% of the population and the remaining ethnic groups, known collectively as Others, form the last 3.3%. The division of the population into these four groups (Chinese, Malay, Indian, and Others, or CMIO for short) can be found in all aspects of society and is crucial for immigration as well as integration policies. Although the CMIO-scheme can be criticised for generalising and neglecting intra-racial differences, the system helps in managing the various ethnic groups and other cultural challenges.

**Table 1: Singapore's Population Size, Growth and Composition**

	1980	1990	2000	2010
Total Population ('000)	2,413.9	3,047.1	4,027.9	5,076.7
Resident Population	2,282.1	2,735.9	3,273.4	3,771.7
Singapore Citizens	2,194.3	2,623.7	2,985.9	3,230.7
Permanent Residents	87.8	112.1	287.5	541.0
Non-Resident Population (e.g., Foreigners with Work Permit, Employment Pass, S-pass, Long- Term Social Visit Pass, or Student visas)	131.8	311.3	754.5	1,305.0
Average Annual Growth (%)	1.5	2.3	2.8	1.8
Resident Population	1.3	1.7	1.8	1.0
Singapore Citizens	1.6	1.7	1.3	0.9
Permanent Residents	-4.5	2.3	9.9	1.5
Non-Resident Population	8.0	9.0	9.3	4.1
Ethnic Ratio (100%)				
Chinese	78.3	77.8	76.8	74.1
Malays	14.4	14.0	13.9	13.4
Indians	6.3	7.1	7.9	9.2
Others	1.0	1.1	1.4	3.3

Source: Singapore Census Reports; Wong (2010), edited by Patrick Rueppel

Singapore is not only a multi-racial society, but also a multi-religious one. Buddhism is the most common religion with 33.3% of the population. Christianity, with 18.3% of the population, is becoming more important. Muslims (14.7%), Taoists (10.9%) and Hindus (5.1%) account for the other religious blocs (cf. Linnarz, 2011, p. 106).

In order not to discriminate against any of the four major ethnic groups, there are four official languages: Malay, Mandarin Chinese, Tamil and English. While the lyrics of the national anthem are kept in Malay to show respect to pre-colonial heritage, all signboards and official announcements are made in all four languages. English is the official inter-ethnic lingua franca as it enables the different races to communicate with one another. At the same

time, immigrants and foreigners from all over the world can also participate in Singapore's multicultural society without much difficulty.

## OVERVIEW OF THE DRIVING FORCES THAT UNDERSCORE SINGAPORE'S IMMIGRATION POLICY

Singapore's multicultural landscape and immigrant policies need to be understood within the larger historical context. After the end of the Second World War, Singapore reverted to its colonial outpost status for the British (1945-1963) and then briefly became a part of the Malayan Federation (1963-1965) comprising Peninsula Malaysia, the Sabah state, and Singapore. Singapore became an independent state in 1965 when the city was expelled by the Malayan Federal government for spreading racial unrest to other parts of Malaya (cf. Lau, 1998). With no natural resources and a population of barely three million people who were mostly poor and unskilled, the prognosis for the then-650 km<sup>2</sup> nation was bleak. How did Singapore leap from a third- to a first-world economy with one of the world's highest per-capita income<sup>2</sup> in one generation? The success factors are a combination of perseverance, strategic geography, and visionary leadership.

As a small, open and vulnerable city-state, Singapore had no choice but to embed itself in the larger global economic system to survive and to prosper. The Republic started as a humble trading port for regional commerce but constantly reinvented itself to move up the economic value chain. Singapore has, over the years, attracted a sizeable amount of foreign direct investments in various sectors such as manufacturing, information-communication technology, engineering, financial services, biomedical sciences, and hospitality. The changing façades of the industries moved in tandem with the level of affluence and educational aspirations of a maturing population.

Singapore's economic miracle owes a lot to the far-sighted stewardship of Lee Kuan Yew, the founding Prime Minister, and the governing People's Action Party which has garnered more than two-third majority seats in the parliament since 1963. Lee and other policymakers are firm believers in a market-driven economy and Singapore's growth model is quintessentially entrenched in pragmatic, neo-Keynesian principles. Keeping an open-door policy, promoting export-oriented industries, and ramping up factors of production are the key ingredients of success (cf. Yeung & Olds, 2004, p. 507-513). This approach has served the city-state well and has enabled it to leapfrog its geographic limitations and transcend the organic confines of a small state, one of which is the lack of adequate manpower and talent.

Singapore's economy however, reached full employment in the late 1970s (cf. Yeung, 1973, p.162) and for more than 30 years, the Republic has had to import foreign labour at every level of the skills ladder to complement its domestic workforce. From the economic point of view, a liberal foreign manpower policy is not only vital to sustaining the country's growth momentum, it has also proved to be critical in maintaining the country's economic

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<sup>2</sup> Ministry of Trade and Industry Singapore – Global Competitiveness Report 2011-2012 [www.mti.gov.sg/.../Global%20Competitiveness%20Report%202011-2012.aspx?...Competitiveness%20Rankings](http://www.mti.gov.sg/.../Global%20Competitiveness%20Report%202011-2012.aspx?...Competitiveness%20Rankings)

competitiveness, especially in the development of new growth sectors and/or industries. The progression up the economic value chain could not have been achieved without the contribution from overseas talent.

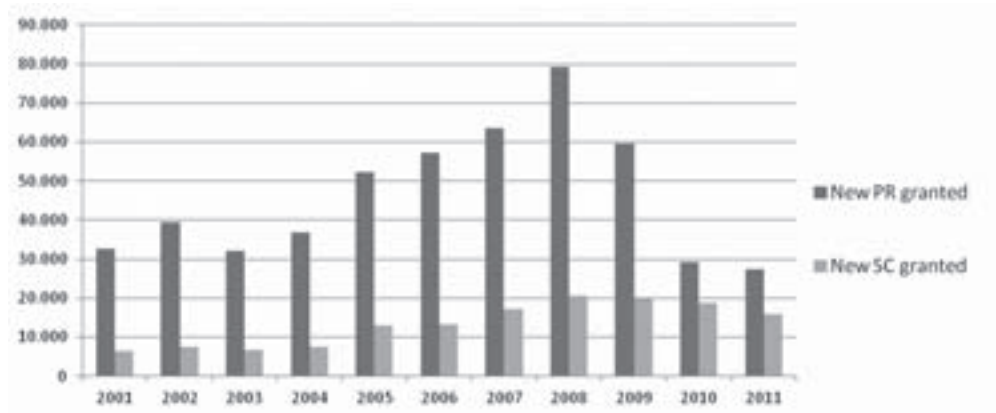
In the globalised political economy, Singapore faces a challenge that is common for all small states – how can it remain competitive and be useful to the international community? Situated between the two emerging giants of China and India, there is a perennial concern that the city-state will be bypassed by the rest of the world. For the Republic to uphold and uplift its current standard of living, a strong and dynamic workforce is vital, as well as a flexible immigrant and foreign worker regime.

The insatiable demand for foreign labour is reflected in recent demographic contours. According to the population census reports, there were just 60,000 non-residents in 1970, comprising the expatriate communities, dependent pass holders, and transient employees who work in menial, low-paying, or risky jobs that Singaporeans shun. The size of the non-residents category has since doubled every 10 years and by 2010, the figure had swelled to 1.3 million, or approximate 26% of the total population (see Table 1).

The trend for permanent residents (PRs) mimics the stratospheric rise in the transient non-residents group. The number of PRs has doubled every decade since 1980, and by 2010, it reached a record 540,000, or 11% of the total population. Notwithstanding this rapid influx, the rate of new approved PRs has endured a dramatic swing in recent years due to the tightening of foreign labour intake. Between 2001 and 2008, an average of 49,000 applications for permanent residency was approved, rising to a peak of almost 80,000 new PRs in 2008 (see Table 2). Subsequently, the numbers have dipped to no more than 28,000 in 2011. The take-up rate for Singapore citizenship follows a similar pattern, peaking in 2008, and tapering off in the following years (see Table 2).

From the economic point of view, the liberal immigration policies have paid off handsomely for the city-state. Singapore was ranked as the most liveable city in Asia by the accounting firm PwC (cf. *The Straits Times*, Oct 11, 2012). It was also praised for the ease of doing business and for its infrastructure quality. Singapore is also known as Asia's top destination for business meetings and conferences, as evident by the top tourism accolade it received from the World Travel Awards for 2012 (cf. *The Straits Times*, Oct 19, 2012). The awards are testament to how a well-calibrated and talent-centric labour policy can uplift living standards for a small and vulnerable nation-state like Singapore.



**Table 2: Immigration Trend**

Source: Dept of Statistics, Singapore

## RESIDENTIAL CLASSIFICATIONS AND THE APPROPRIATION OF STATE RESOURCES

Taking an overarching view of the ebb and flow of international labour, the liberal immigration and foreign worker policies are part of a broader market-driven economic framework. Singapore is rebranding itself as a global business hub, an incubation city for arts, culture and education, and a centre of excellence for innovation and enterprise. This aspiration is supported by a repertoire of residential and work visas catering to different segments of business and household needs.

To begin with, Work Permits (WP)<sup>3</sup> are issued for foreigners at the lowest end of the skills ladder, with the bulk of them performing tedious jobs Singaporeans shun, such as those in the construction sector and in domestic care-giving. The Special Pass, or S-pass, is the next level of entry. This applies to the mid-level skilled foreigners holding at least a diploma, a degree or technical qualifications. The S-pass is primarily designed to meet labour shortages for mid-level executives and frontline staff such as those in the Food and Beverage industry. At the highest end of the qualification ladder are the holders of Employment Pass (EP), comprising professionals, managers, specialists, and senior executives with recognised qualifications and years of work experience.

The categorisation of skills and work visas is closely tied to the entitlement and rights of the individual, their eligibility for permanent residency, and at a macro-level, an indication of whether they are deemed to be suitable long-term inhabitants of the island-state. Under the current regime, WP and S-Pass holders are not entitled to any form of social welfare, nor are

<sup>3</sup> Ministry of Manpower, Passes and Visas, accessed via <http://www.mom.gov.sg/foreign-manpower/passes-visas/Pages/default.aspx>

they allowed to bring in their dependents (with some exceptions).<sup>4</sup> Most of them are also not eligible for residency application.

Foreign workers in the WP category are also treated differently according to the industries of employment. Unskilled foreign workers in the construction sector, for instance, are mostly housed in temporary living quarters or workplace dormitories located far away from residential estates. On the other hand, foreigners on EP may sponsor their dependents to live in Singapore, but this option is generally not applicable to S-Pass holders and certainly not to employees on WP visas.

Compared to WP and S-pass holders, those employed under the EP scheme are considered “more valuable” and are treated better than other categories of non-residents. While EP holders are not entitled to any state benefits, this segment of the foreign population is often seen as an intermediate step to gaining permanent residency. The PRs, on the other hand, are entitled to some form of state support and privileges, including access to medical and educational subsidies, and public housing ownership. PRs however, do not have equal rights as citizens; they do not have political voting rights and their entitlement is always pegged at a notch lower than that for citizens. Second-generation male PRs are also legally mandated to serve a two-year military conscription, just as citizens do.<sup>5</sup>

Overall, the sharp policy differentiation is aimed at regulating the influx of foreign labour and long-term residents. The stratification provides policymakers a framework to channel manpower resources to selected industries and for different purposes. This helps to supplement the existing industries when the need arises as well as shorten the learning curve in developing new growth sectors.

It should be emphasised that comprehensive data regarding the profile of immigrants and foreign workers in Singapore is either unavailable in the public domain, or is notoriously difficult to find. There is very little public information on the detailed breakdown in terms of ethnicity, country of origin, sectors of employment, and other nuanced criteria for long-term residential application. The opaque outlook stems from the policymakers’ concern that the players may “game” the system if enough information is made publicly available on the criteria for work and residential applications.

## OPEN-DOOR POLICY AS A WHOLE-OF-GOVERNMENT APPROACH

The staggering influx of immigrants and transient labour is not the outcome of a single isolated policy but the effect of a larger economic blueprint to achieving the renaissance city goal. The tectonic shift in the demographic landscape is a side effect of the global city aspiration, and it illustrates the trade-off between economic competitiveness and population

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<sup>4</sup> Ministry of Manpower, Passes and Visas, accessed via <http://www.mom.gov.sg/foreign-manpower/passes-visas/s-pass/before-you-apply/Pages/default.aspx>

<sup>5</sup> Sons of PRs must do NS to keep status: Defence Minister, *Asia One*, published Sunday Jul 01, 2012, accessed via <http://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20120701-356519.html>

management. For Singapore to be an influential city of the world, a wide-ranging approach is required.

Indeed, in addition to various categories of employment visas, a plethora of strategic initiatives are in place to bring the world closer to Singapore. Examples of these measures include the Regional and Global Headquarters (RHQ and IHQ) Awards, Global Investor Programme (GIP), Global Schoolhouse initiative, Foreign Sports Talent (FST) Scheme, and overseas scholarships for non-Singaporeans. The business HQ awards are designed to attract multinational corporations (MNCs) to relocate their regional or global HQ operations to Singapore and to cement the Republic's status as an Asian business hub. Besides the contribution from increased tax revenue, the presence of these HQs would also inject greater diversity and dynamism to the texture of the labour force as they are likely to relocate some of their senior executives to Singapore from the overseas base. This would result in a more cosmopolitan, vibrant, and global-oriented work-force.

The Global Investor Programme operates with a similar objective in mind – to welcome international investors with a good business or entrepreneurial track record to sink their roots in the city-state (Refer to GIP factsheet).<sup>6</sup> Foreign nationals who are keen to set up or invest in a Singapore-based business worth at least \$2.5 million will have their application for permanent residency fast-tracked.

The Global Schoolhouse project was part of a 2002 strategic economic work plan to develop and transform the education sector to become an engine of growth for Singapore (cf. Sidhu, Ho, & Yeoh, 2011, p.259-261). The vision is consistent with the city-state's objective to divert from its economic reliance on the manufacturing industry to a more service-oriented economy. The ambitious project aims to bring in 150,000 full-fee paying international students and 100,000 international corporate executives on training by the year 2015. Suffice to say, the presence of the sojourners is designed to nurture the multicultural learning environment in schools and in the workplace.

Singapore's ambition to reinvent itself is not confined to the economy, as it also aspires to become a nation of great sportsmen. This goal is best exemplified in the Foreign Sports Talent Scheme. First conceived in 1993, the goal was to boost local sports excellence and to facilitate the development of a sports culture. The Singapore Table Tennis Association was the first to adopt the scheme, followed by other fraternities like football and athletics. Under the scheme, young and promising overseas sportsmen are offered citizenship to compete for Singapore in prestigious international sports events. It is assumed that winning sports medals can be a source of national pride and a unifying force for all Singaporeans.<sup>7</sup> And medals were indeed won. Singapore earned itself a silver medal for women's table tennis team in the 2008 Beijing Olympics Games, and two bronze medals at the 2012 London Olympics. Both winning contingents were fielded by an all-immigrant team.

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<sup>6</sup> Contact Singapore, Global Investor Programme, accessed via <http://www.contactsingapore.sg/Library/1/Pages/1191/GIP%20Factsheet%20EN%20%20Oct%202012.pdf>

<sup>7</sup> "Olympics: Feng's bronze can help galvanise S'pore sports: DPM Teo", TanYo-Hinn, *Today*, 03 Aug 2012, accessed via <http://www.channelnewsasia.com/stories/singaporelocalnews/view/1217638/1/.html>

Lastly, there is a wide range of scholarships offered to foreigners to study and work in the Republic. These include the ASEAN scholarships and Ministry of Education Scholarships for non-Singaporean residents. Until recently, up to 20% of places in the local universities were set aside for international students, with many of them receiving tuition waivers and guaranteed accommodation.<sup>8</sup> In return for receiving government-funded education, the foreign beneficiaries are required to serve a working bond of up to six years upon graduation, thereby increasing the supply of manpower to meet the tight labour market. For the scholarship recipients, it is viewed as an assured employment visa in-waiting.

Many of these measures are not unique to Singapore and similar initiatives, like the GIP, can be found in other developed economies. But the Singapore open-door policy and its targeted results are surprisingly audacious in terms of scope and the scale of implementation. For an island-state with a land size of barely 700 square km, the infrastructure required to support 250,000 international students and executives on training is a stretch on resources. Likewise, for Singapore to set aside 20% of tertiary enrolment for international students (most of them on scholarships paid for by the taxpayers) when less than 30% of every native-birth cohort (as at 2011) is offered a place to study in the publicly-funded universities is politically difficult to justify to the local population. More importantly, unlike other global cities such as London, New York, and Paris, Singapore is both a metropolitan city and a nation state. While liberal and talent-centric immigration policies are the quintessential ingredients for success in global cities, these priorities are usually balanced by other social objectives for the country as a whole.

## OPEN-DOOR POLICY TO MITIGATE THE SILVER TSUNAMI

Economic competitiveness is not the only factor that underlies Singapore's strong reliance on foreign labour and immigration. The obsession with population is also driven by the concern of an impending demographic "Silver Tsunami" when the baby boomers retire in the coming decades. The concern over senior citizens leaving the workforce en masse is compounded by low population fertility rates in the last 20 years.

The Total Fertility Rate (TFR) – defined as the number of children born to a woman – has steadily declined since the late 1970s (see Table 3). The TFR was 3.07 in 1970 and 1.15 in 2010 (cf. National Population and Talent Division's paper on Marriage and Parenthood Trends in Singapore).<sup>9</sup> It was a norm four decades ago for married couples to have at least three or more children. Today, the average size of the household has shrunk considerably even as more Singaporeans are now choosing to remain single. Singaporeans are also living better

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<sup>8</sup> "1,700 non-Asean students awarded scholarships each year", Lin Zhaowei, *The Straits Times*, published Feb 18, 2012, accessed via <http://www.straitstimes.com/microsites/parliament/story/1700-non-asean-students-awarded-scholarships-each-year>

<sup>9</sup> National Population and Talent Division, Prime Minister's Office, Marriage and Parenthood Trends in Singapore, June 2012, Occasional Paper, accessed via [https://www.nptd.gov.sg/content/NPTD/home/\\_jcr\\_content/par\\_content/download\\_0/file.res/Issues%20Paper%20-%20Our%20Population%20Our%20Future.pdf](https://www.nptd.gov.sg/content/NPTD/home/_jcr_content/par_content/download_0/file.res/Issues%20Paper%20-%20Our%20Population%20Our%20Future.pdf)

and healthier due to improvements in public health services. The average life expectancy has increased from 65.8 years in 1970 to 81.7 years in 2010 (see Table 3).

Demographically, a TFR of at least 2.1 is required for the population to be self-sustaining (cf. previous footnote).<sup>10</sup> A persistently low TFR will have severe economic repercussions, including a drain on the nation's financial reserves to fund burgeoning social programmes for the aged. The impact of this demographic conundrum has already been felt in the old-age support ratio, determined by the number of working-age adults in support of each retiree who is at least 65 years old. In 1970, there were 17 working-age adults to one elderly Singaporean. Forty years later, the ratio has plummeted to 8.2 people and is projected to spiral down to fewer than three working adults in 2050 if the trend persists. Enlarging the pool of labour and immigrants became an obvious albeit short-term solution to the complex problem.

**Table 3: Singapore's Demography**

	1970	1980	1990	2000	2010
Total Fertility Rate	3.07	1.82	1.83	1.60	1.15
Old-Age Support Ratio	17.0	13.8	11.8	9.9	8.2
Life Expectancy at Birth (Years)	65.8	72.1	75.3	78.0	81.7
Males	64.1	69.8	73.1	76.0	79.2
Females	67.8	74.7	77.6	80.0	84.0

Source: Population Trends 2012, Department of Statistics Ministry of Trade and Industry

## RESENTMENT ON THE GROUND

As an historical immigrant society, Singapore has always been known to many foreigners as a hospitable and inclusive host society. Singapore is also home to many MNCs and non-profit organisations, and their presence has created numerous jobs for the local economy and infused dynamism and vibrancy to the otherwise squeaky clean city-state. As such, it is ironic that some Singaporeans feel uncomfortable with the influx of foreigners. It is also challenging to identify the precise period in time where immigration came to be regarded as a problem. One could argue, from available statistics, that the discourse began in the mid-1990s when permanent residency was offered to foreigners at the rate of 30,000 persons per annum (cf. Koh, March 22, 1997). This is a significant rate, given that it represents 1% of the total citizen population in the 1990s.

As a result of the rapid influx of new immigrants and foreign workers, the demographic landscape of Singapore has shifted dramatically over the last 20 years. Not only has the ratio of Singapore citizens decreased, but while the citizen population has expanded by 1.7 times, the pool of non-residents and PRs has collectively increased 9.3 times.

The relentless increase in non-native residents, especially among PRs and transient labour, has led to heated debates on issues related to immigration, integration, and the meaning of citizenship. The groundswell of discomfort can be heard from a wide spectrum of sources,

<sup>10</sup> See footnote 8.

including opinion polls, media reports, and online forums. The unease in the immigrant discourse is also extensively covered by the international media.<sup>11</sup>

On the economic front, some Singaporeans feel that their job security has been compromised as they now have to compete harder with foreigners, be they transient workers or naturalised citizens; students and parents are unhappy with the large number of scholarships and university places allocated to international students; and foreigners are often blamed for causing runaway home prices, traffic congestion and breakdown in public infrastructure.<sup>12</sup> As at the 3rd quarter of 2012, the prices for resale public housing have increased by more than 95% compared to the same period in 2005. The stratospheric increase in housing prices coincided with the unfettered influx of immigrants and foreign workers between 2005 and 2009 (cf. Resale Price Index, <http://www.hdb.gov.sg> and Table 2).

On the socio-cultural front, the presence of large groups of foreigners is seen to have affected social cohesion and devalued the status of citizenship. Although many new immigrants and transient workers share similar ethno-cultural origins as the forefathers of the native-born citizens (e.g., ethnic Chinese and Indians), their social norms and behaviours are dissimilar to the ones now practised by the local native communities.<sup>13</sup> Singaporeans feel that their status as native-born citizens has been displaced by the burgeoning number of foreigners. The challenges are further compounded by the fact that some recent immigrants are either ignorant of local taboos or unaccustomed to living in a multicultural environment, and are seen as disrespectful towards local hosts. The lack of English language proficiency is also a barrier for interaction between the non-English speaking immigrants and the ethnic minorities.

More importantly, there is a lingering perception that the government treats foreigners better than native-born citizens. Singaporean men, for instance, feel disadvantaged because they have to serve a two-year military conscription whereas first-generation immigrants are exempted (cf. Leong, May 10, 2012). The resentment is further compounded by opaque immigration policies and the lack of public consultation.

For some Singaporeans, the animosity reflects a deeper sense of insecurity, a perceived lack of a social safety net, and an enduring stereotype of PRs using Singapore as a springboard to other developed economies. The sentiments were noted in recent and past opinion polls: 73.2% of Singaporeans believed “job opportunities will be reduced for local-born Singaporeans if we have more immigrants”; 55.8% agreed that the “government attracted immigrants to Singapore at the expense of local-born citizens” (cf. Leong, in press); and 63% of

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<sup>11</sup> “Singapore’s expat surge fuels economic fears”, Patrick Barta and Tom Wright for *The Wall Street Journal*, accessed via <http://online.wsj.com/article/SB10001424052748703414504575001302415117966.html>

<sup>12</sup> Han, Fook Kwang. “The real fear: Being pushed out of home.” In *Singapolitics*, accessed via <http://www.singapolitics.sg/views/real-fear-being-pushed-out-home>

<sup>13</sup> Peh, Shing Huei. “When Indians and Indians just don’t mix.” In *The Straits Times*, 3 March 2007.

Singaporeans agreed or strongly agreed that “The policy to attract more foreign talent<sup>14</sup> will weaken Singaporean’s feeling as one people, one nation” (cf. Tan & Koh, 2009).

A survey by *The Sunday Times* six years ago (January 14, 2007) reported that 86% of respondents feared that foreigners will “take away jobs from Singaporeans”; 65% believed foreigners “enjoy all the privileges living in Singapore but (accepted) none of the responsibilities”; and 43% thought that “the Government cares more for foreign talent than Singaporeans”. Simmering tensions over the erosion of the Singaporean identity and status has built up over the years, as Singaporeans feel increasingly threatened by the unabated influx of immigrants and transient labour.

In January 2013, the National Population and Talent Division, the government unit that oversees population affairs within the Prime Minister’s Office (cf. <http://www.nptd.gov.sg>), released the White Paper entitled “A Sustainable Population for a Dynamic Singapore”. It sets out key strategies and a roadmap for Singapore’s population policies to address current demographic challenges.<sup>15</sup> Several main themes were featured, including the retention of a Singaporean core through the regulation of approving new citizens and permanent residents, the creation of jobs and opportunities for Singaporeans and the maintenance of strong infrastructure to create “a good home” for all.<sup>16</sup>

There was a public uproar over the projected population figure of 6.9 million by 2030. The White Paper was deemed to be “shocking and disappointing”,<sup>17</sup> especially since immigration policies had already been fiercely debated since the last election in 2011. Additionally, the projected figures of taking in 15,000 to 25,000 new citizens per year to boost the declining total fertility rate (TFR) caused many to question if the trade-offs between economic growth and population expansion were worthwhile.<sup>18</sup> Chief grouses included a deteriorating quality of life arising from a higher cost of living and widening income disparity.<sup>19</sup> Furthermore, there was a sense that the structural and social consequences of the current population increase, such as overcrowding, higher prices and job competition, had not been thoroughly addressed. Many Singaporeans felt that the White Paper was dismissive of public opinion, and further indication that the government could not be trusted. This wave of resentment

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<sup>14</sup> In the Singapore migration discourse, the term “foreign talent” is sometimes used interchangeably with “immigrant”. It refers to high-skilled workers becoming PRs, new citizens, and expatriates, i.e., non-native. Low-skilled workers are labeled as “foreign workers” which shows even a linguistic division between the groups.

<sup>15</sup> “A sustainable population for a dynamic Singapore: White Paper”, published by the National Population and Talent Division, accessed via <http://202.157.171.46/whitepaper/downloads/population-white-paper.pdf>

<sup>16</sup> “At a glance: White Paper on Population”, published Jan 29, 2013 on *Singapolitics*, accessed via <http://www.singapolitics.sg/fast-facts/glance-white-paper-population>

<sup>17</sup> “S’pore population to hit 6 million by 2020: paper” by Fann Sim, published Jan 29, 2013 on *Yahoo! News*, accessed via <http://sg.news.yahoo.com/s%E2%80%99pore-population-to-hit-6-million-by-2020--paper-061718360.html>

<sup>18</sup> “WP opposes Population White Paper: Sylvia Lim” by Rachel Chang, published Feb 4, 2013 on *Singapolitics*, accessed via <http://www.singapolitics.sg/news/wp-opposes-population-white-paper-sylvia-lim>

<sup>19</sup> “Beyond the lightning rod of 6.9 million” by Gillian Koh, published Feb 2, 2013 on *The Straits Times*, accessed via <http://www.ipscommons.sg/index.php/categories/politics/113-beyond-the-lightning-rod-of-69-million>



culminated in a public protest, which was attended by over 4,000 people.<sup>20</sup> Among the issues raised were the lack of public consultation and questions over what constitutes a Singaporean core and how this would affect the future of Singapore.<sup>21</sup>

## RESPONSE FROM THE GOVERNMENT

The simmering tension and resentment toward foreigners have not gone unnoticed. Singapore's policymakers have adopted a comprehensive, whole-of-government approach to bridge the foreign-local schism. In line with the government's approach in managing complex social problems, this is also how Singapore tackled racial and religious divisions in the 1960s. The social integration mandate is currently overseen and coordinated by the National Population and Talent Division, which falls under the purview of the Prime Minister's Office. All ministerial agencies are expected to work together closely to ensure that the policies and programmes are implemented effectively on the ground.

On the whole, the state's response to bridging the affective divide can be classified along six fundamental thrusts: (1) Influx calibration, (2) Provision of infrastructure and social security, (3) Policy differentiation, (4) Housing policies as an instrument for integration, (5) Promoting grassroots activism, and (6) Leveraging on identity policies. The six-prong strategy focuses on the key problem areas observed in the integration discourse and serves as a guiding framework in the formulation of public policies.

### 1. Calibrating Influx of Immigrants and Transient Workers

In response to the groundswell of resentment and the watershed 2011 General Election where the incumbent People's Action Party received the lowest popular votes post-Independence, a slew of changes were made to regulate the entry of immigrants and foreign workers. The minimum qualifying salary for the S-Pass and the Employment Pass work visas were raised in July 2011: from a monthly income of S\$1,800 to S\$2,000 for S-Pass holders, and from S\$2,500 to S\$2,800 for EP employees. The criteria for EP were further revised within the year, with the minimum monthly income going up to S\$3,000, and a further tightening of educational qualifications requirement.

With effect from September 2012,<sup>22</sup> non-resident workers face tighter restrictions in bringing in their spouses, children and extended families. Only S-Pass and EP holders who earn at least \$4,000 may sponsor their spouses and children to stay in Singapore; and EP holders with a minimum income of S\$8,000 are entitled to sponsor their parents. Prior to this, all S-Pass holders who earn more than \$2,800 and EP holders could bring in their spouses

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<sup>20</sup> "4,000 protest against White Paper" by *Asia One*, accessed via <http://www.asiaone.com/News/Latest%2BNews/Singapore/Story/A1Story20130217-402603.html>

<sup>21</sup> "6.9 million people and an emotional hump" by Calvin Cheng, published Feb 20, 2013 on *Singapolitics*, accessed via <http://www.singapolitics.sg/views/69-million-people-and-emotional-hump>

<sup>22</sup> See Ministry of Manpower, Employment Pass – Before you apply (Guidelines) <http://www.mom.gov.sg/foreign-manpower/passes-visas/employment-pass/before-you-apply/Pages/default.aspx>



and children. The new measures are meant to curb population growth as the infrastructure struggles to support the growing number of people on the island.

In addition to the qualifying criteria for work visas, there is also a marked reduction in the number of foreigners granted permanent residency and citizenship since 2009 (see Table 2). The calibration of entry curbs the “demand” side of the equation, by ensuring a more sustainable rate of population growth.

## **2. Provision of Basic Infrastructure and the Broadening of Social Security**

This principle addresses the perceived sense of insecurity by stepping up the provision of social infrastructure to cope with the rising demand for public services. The urgency to enhance basic amenities can be seen in the building and retrofitting of railway lines (cf. Singapore Budget, 2012), construction of new hospitals (cf. Lim & Lee, 2012), widening of roads (cf. Singapore Budget, 2011), state subsidisation for a new fleet of bus services (cf. Musfirah, February 17, 2012), and a ramping up of public housing supply (cf. Ramesh & Tan, September 27, 2012).

In addition to enhancing the physical capacity, the social support system has been broadened to engender a greater sense of security and assurance for the citizenry. This includes making healthcare more affordable and accessible (cf. Lim & Lee, 2012), providing greater support for childcare, eldercare, and families with special needs children (cf. Ministry of Education, March 8, 2012; Ministry of Health, February 20, 2012; Ministry of Social and Family Services, August 13, 2012), and allowing a larger percentage of Singaporeans the opportunity to earn a degree from publicly funded universities (cf. Ministry of Education, August 28, 2012).

By enhancing the quality and quantity of public infrastructure, and by putting in place a more robust social safety net, the intended outcome is to encourage Singaporeans to be more inclusive towards foreigners. Such measures are aimed at building greater confidence and deeper psychological resources for Singaporeans to deal with competition from the influx of immigrants.

## **3. “Singaporeans First”: Policy Differentiation between Citizens, PRs, and Non-Residents**

Beyond upgrading social infrastructure, policymakers are actively encouraging qualified non-Singapore residents and permanent residents to sink their roots in the Republic. Using a “Singaporeans First” approach, the intention is to differentiate the amount of benefits accruing to the different categories of citizens, PRs and non-residents. As a rule of thumb, citizens are entitled to receive more state subsidies and given priority in policy administration vis-à-vis PRs; and PRs, in turn, receive more support compared to non-residents. Ostensibly, non-residents and PRs will be motivated to apply for residency and citizenship if they stand to gain financially from the conversion. This distinction has, over the last few years, been gradually sharpened in favour of the citizen population.

The strategic thrust percolates all public sectors and this paradigm of thinking is evident across a wide spectrum of social, economic, and educational policies. Singapore citizens, for instance, have absolute priority over PRs and non-residents in the enrolment of their children to their preferred primary school; enjoy greater healthcare and education subsidies; are eligible to purchase a subsidised flat directly from the Housing Development Board at a significant market-rate discount; and have the political rights to vote and to stand in national elections. The residential distinction serves more than just a reward for taking up Singapore residency. It also reassures Singaporeans that the interest of the citizenry lies at the heart of policymaking.

#### **4. Building Mutual Trust Through Housing Policies**

In order to appreciate how housing policies influence harmonious social relations, it is important to know the backdrop of Singapore's residential landscape. The two defining hallmarks of public housing policies in Singapore are: (1) Relative affordability, and (2) High levels of home ownership. These two characteristics are unique features in Singapore society as much as they are exemplars of nation-building success. Based on the Population Census Report in 2010, 87.2% of all residential households in Singapore are homeowners with the large majority, or approximately 80%, residing in public housing built by the Housing Development Board (HDB), a statutory board under the purview of the Ministry of National Development (cf. Department of Statistics Singapore, 2010).

This remarkable achievement is a quintessential feature of the social compact between the state and the people. Singaporeans who are gainfully employed are promised state support to help them become homeowners. This is made possible with the plethora of social assistance schemes such as priority allocation of units, special subsidies, utilisation of retirement savings for mortgage repayment, and a low interest rate. These policies collectively ensure that quality housing remains affordable for the masses. The idea behind home ownership is that people will have a feeling of belonging, a home they can identify with and a sense of rootedness. This makes them stakeholders in Singapore and gives them something to fight for here (cf. Yuen, 2005, p.16-17; Zur Lienen, 2002, p. 5).

The public housing programme does not just aim to provide affordable accommodation; it also strives to promote a harmonious and cohesive living environment, integrating residents socially and spatially, and forging a communal identity at the same time (cf. Siddique, 1993, p. 45). In the immediate post-Second World War years, Singapore's housing landscape was characterised by the existence of strong, separated ethnic enclaves, segregated along socio-economic lines. The spatial segregation was a potential breeding ground for conflict and was believed to be one of the causes of the violent racial riots during the 1950s and 1960s (cf. Mutalib 2004, p. 59; Ooi, 1993, p.10; Van Grunsven, 2000, p. 120). One objective of the HDB policy is to break up ethnic enclaves and enhance social integration through a spatial mixture of the races in public residences. The management of ethnic relations through residential integration follows the belief that a spatial mixture will lead to more contact between races which would then result in greater awareness of other cultures, religions and norms (cf. Mutalib 2004, p. 55, 59-60; Ooi, 1993, p. 6, 10-11).

With this in mind, the Ethnic Integration Policy (EIP) was introduced in 1989, which requires the ethnic composition for each block of HDB flat and the surrounding neighbourhood to follow the national ethnic ratio (Chinese, Malay, Indian, and Others categories) as closely as practicable (see Table 4, on ethnic ratio in each block and neighbourhood). This ensures that no single-race blocks exist and residents interact with people of other races in their daily commute (cf. Yuen, 2005, p. 10-11). The policy effectively ended the spatial concentration of races and social segregation in public housing. Each block now represents a small microcosm of Singapore. The EIP is thus in line with the goals of the HDB policy to foster greater tolerance and understanding (cf. Lai, 1995, p. 122; Ooi, 1993, p. 4-15, 20; Siddique, 1993, p. 47; Sim, et. al, 2003, p. 297).

More importantly, EIP forms the de facto integration framework to enhance intercultural relations and social harmony in the home environment. In March 2010, a new residential quota for Singapore PRs was introduced for HDB estates. This policy is intended to prevent the formation of new immigrant enclaves, given the tendency for PRs from the same nationality to congregate in HDB flats, which are increasingly becoming more popular among foreigners. Under the new policy, each block of HDB flats shall not have more than 8% of non-Malaysian PR households, and within a given precinct, not more than 5%. Malaysian PRs are exempt from the quota as they are culturally similar to Singaporeans and hence, the threat of an ethnic-national enclave is less of a concern. Given that there are now more than half a million PRs, representing nearly 15% of the total resident population, there is a political imperative to ensure that new immigrants blend in well within the home environment.

While studies (e.g., Lai, 1995; Rueppel, 2011) have indicated that successful integration among the races and between foreigners and locals are not always guaranteed under EIP and PR residential quota, a mixture between native-born and naturalised residents is, at the very least, a pre-requisite condition for intercultural contact to take place. From the perspective of policymakers, racial or nationality quota remains one of the main tools to achieving a cohesive, multi-ethnic society in Singapore, and is consistent with “the state’s policy of nation-building based on multiracialism” (Lai, 1995, p. 18), as a result of which people have developed a preference for multi-racial living.

**Table 4: Racial Limits of the EIP**

Race	Block Limit	Neighbourhood Limit
Chinese	87%	84%
Malays	25%	22%
Indians/Others Note: Ethnic “Indians” & “Others” form one category in the EIP due to their small population	13%	10%

Source: ZUR LIENEN 2002, p. 5 edited by Patrick Rueppel.

## 5. Grassroots Activism

There are many types of community-driven, grassroots organisations in Singapore. In view of the scope and limitation of this chapter, the paper will focus solely on government-linked grassroots bodies. These are volunteer committees located in the housing estates coordinated by the People's Association – a statutory board under the purview of the Ministry of Social and Family Development – to build social capital and promote neighbourliness. Grassroots members typically stay in the same estate that they serve and regard themselves as facilitators for neighbourhood interactions. They serve as a conduit of exchange between policymakers and residents, and in particular, between the Member of Parliament and the electorates that come under his or her ward. The grassroots outreach programmes are performed mainly through block parties, recreational programmes, house visits, and periodical town hall meetings with political office holders and ministry representatives.

Grassroots activism is a cornerstone to promoting social interactions between people of different ethno-national origins. Within the broader nation-building narrative, the grassroots movement is seen as a state-funded apparatus to advance inter-racial understanding, minimise social fractures, and reinforce social resilience and trust between residents from different backgrounds. Many grassroots measures that promote integration are also closely connected to the HDB policy, where they aim to complement spatial integration and foster social communal bonding within the neighbourhoods. Most of the grassroots entities are assigned ownership to some kind of provincial facilities, such as the Resident Committee Centres and Community Clubs, where they serve as common touch points for the residents. These centres and clubs offer an affordable range of programmes for everyone, including social and academic enrichment classes for school pupils, interest groups, and the elderly. Moreover, there are sporting and recreational amenities that are available for public rental, some of which could be used for special occasions such as marriage and festive dinners. Overall, the multi-racial grassroots movement offers an inclusive platform for the different ethno-cultural groups to engage each other and consequently foster greater intercultural participation and appreciation.

Beyond local grassroots activism, there are grassroots-driven national initiatives that encourage foreign-local interactions. The National Integration Council (NIC) is an example. The Council was established in April 2009 to foster foreign-local integration and it is under the purview of the National Population and Talent Division. The NIC consists of four working groups, with each addressing a different facet of the integration discourse, namely Community, Media, Schools and Workplace relations. The role of the NIC is mainly that of an enabler. It aims to create a collegial climate that bridges the foreign-local chasm, by building a sustainable and active network for social integration, and facilitating both foreigners and locals to internalise Singapore's core values. The NIC is presided by a governing board consisting of eminent professionals and public intellectuals.

NIC also provides financial assistance in the form of the Community Integration Fund (CIF) for projects that enhance intercultural understanding. Singapore-registered organisations and companies registered with the Accounting and Corporate Regulatory Authority of

Singapore (ACRA) may apply for up to S\$200,000 from the CIF. Under the CIF, up to 80% of project costs can be co-funded after approval by a panel of four NIC members (cf. National Integration Council, 2012).

To further strengthen immigrants' commitment to the Republic, the Singapore Citizenship Journey was launched in February 2011 to formalise the citizenship conversion exercise. All new applicants for Singapore citizenship are required to complete an induction programme prior to finalising their citizenship. The Singapore Citizenship Journey consists of three compulsory components: First, an online learning portal that introduces Singapore history, its political system, national symbols, and the major races and culture. Second, the Singapore Experiential Tour requires prospective new citizens to visit the important historical sites in Singapore to gain first-hand experience on the ground. Third, a Community Sharing Session in which new citizens will meet and interact with the local grassroots leaders and volunteers to learn about life in a multi-racial environment and the various possibilities for participation in the community. The Singapore Citizenship Journey offers a comprehensive induction programme to the new immigrants as it promulgates the different facades of societal norms, values and ethos embraced by the majority of Singaporeans.

## 6. Identity Policies, a View from the Top

Like all other young sovereign nations, Singapore seeks to forge a distinct national identity that every citizen can identify with and be proud of. At the same time, the city-state is cognisant that historical and cultural identities (such as race, language and religion) are important psychological markers of heritage, and the discourse on integration and belongingness cannot be divorced from these personal attributes. As much as immigrants are expected to abide by the local cultural norms and embrace the shared values and local national identity, they are also encouraged to hold on to their heritage, be that of racial, linguistic, or religious identities (cf. Rueppel 2011, p. 41). The majority of Singaporeans are not looking for hegemonic assimilation, but an overlapping identity that emphasises positive engagement with the host community and the retention of original heritage culture (cf. Leong, in press).

Cultural maintenance and national rootedness are therefore not antagonistic but mutually complementary. Empirically, the two dimensions are positively correlated as a high degree of ethnic affiliation is matched with a strong sense of connectedness to the nation-state (cf. Ward and Leong, 2006). Social policies such as the EIP are thus not incompatible with the broader objective of foreign-local integration – a society that celebrates multi-racialism, and one that is confident and proud of its ethnic heritage and diversity will also engender an inclusive and tolerant attitude towards foreigners.

In addition to the identity of multi-racialism, there is another unique though inconspicuous social institution that quietly lends itself to the fostering of a strong Singaporean core – the conscription policy, otherwise known as National Service (NS). All male Singapore citizens and second-generation PRs are mandated by law to serve in a regimental unit for a period of two years full-time, during which they will receive military training and be immersed in ethos that emphasises collective interest above the self. The enlistment policy has been in place since 1967 and it is widely recognised as a rite of passage for Singapore men and their

families. Both anecdotal and empirical evidence indicate that fulfilling the NS obligation is a critical marker of identity and integration, especially within the context of acculturation (cf. Goh & Chow, Oct 23, 2012; Leong, in press; May 10, 2012). There is little argument that NS forges a sense of camaraderie between immigrants and their local-born compatriots; it is a common social denominator and a hallmark of the Singapore identity. Immigrants who embrace the NS institution can better appreciate Singapore's social terrain and become a full participating member of the community.

## WHITHER INTEGRATION?

Singapore's immigration and integration approach represents a good mixture of hard (recalibrate influx of foreigners, HDB ethnic and PR quotas) and soft (grassroots activities, identity politics) factors, both of which are complementary and closely intertwined. While some of the impacts are easily measurable (e.g., PR ratio in HDB estates), the mindset and attitudes of people are difficult to analyse (e.g., immigrant perceptions and social inclusiveness). The topic on integration is a current political hot potato and Singapore's policymakers are only too aware of the challenges at stake. This provides a strong impetus for a comprehensive approach in managing migration and integration.

Although most policies that are in place have gained some traction and are poised to accomplish the intended objectives, there is clearly room for policy refinement. First, the current discourse has given excessive attention to the politics of comparison. Using the "Singaporeans First" principle has engendered the impression that Singaporeans receive more state subsidies, and are accorded higher status and priority than PRs and non-residents. While some form of positive differentiation is inevitable, there is a concern of over-reliance in using this framework to promote integration. In certain instances, the differences in policy has ironically reinforced rather than bridged the "us-versus-them" divide. Similarly, while the EIP and PR quota has contributed to strengthening communal bonding, the differences in racial and residential status should not be over-emphasised. It may be advisable to switch from a narrative that centres on diversity towards one that stresses on what people have in common.

Second, non-government linked grassroots organisations should take the lead in driving engagement between new immigrants and native-born residents. Many of the current initiatives are managed by the People's Association-led committees. While these are exemplar event organisers, there is a perception that policymakers are trying to bring them into their fold for political gains. Non-government linked civil society organisations, including the ethno-cultural associations and religion-based organisations, can do more to facilitate interactions. In the same vein, the recently introduced Singapore Citizenship Journey is a good project which could be broadened. Besides applicants for citizenship who are co-opted in this initiative, those who have applied for permanent residency should also be required to learn about Singapore and attend such learning events before being granted PR status. Furthermore, applicants for citizenship should be made to pass a written test on aspects of Singapore's history, political system and values.

Finally, there is a need to re-visit the current strategic framework used for achieving economic growth – in particular, balancing the trade-off between growth and the maintenance of social harmony. The tensions that have surfaced in recent years are mainly the products of yesteryears' policies where the emphasis was tilted towards economic growth rather than labour productivity or social inclusion. As the economy matures and available resources in public infrastructure and amenities operate at the maximum capacity, there is increasing socio-political pressure to focus on social cohesion rather than the economic imperatives. Policymakers will have to be discerning and re-examine their priorities in light of these challenges.

In summary, Singapore's approach to bridging the foreign-local schism has proven to be successful and could be emulated by other countries. First, the holistic, whole-of-government approach has enhanced intergroup understanding and harmony at all levels of society, and this in turn helps to reduce distrust among the diverse communities. Second, confronting locals with foreigners in a tension-free environment and at an early stage will help to foster understanding and reduce prejudices. Third, community activities at the local level have enabled people to get to know foreigners as neighbours rather than as strangers and vice-versa. Fourth, governments have to establish certain rules that everybody has to respect and make immigrants aware of these rules through measures such as the Citizenship Journey programme. With the interweaving of international economies, transnational labour movement is set to be the norm rather than the exception. Singapore can be a role model in this area of governance.

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# Immigration Policies in South Korea: On the Focus of Immigration Requirement and Incorporation to Korean Society

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## 1. INTERNATIONAL MIGRATION FLOWS IN KOREA

For Koreans, the 20th century definition of international migration meant Koreans emigrating to other countries. Yet, recently, international migration for Koreans has also come to mean the reception of foreigners into their homeland. All throughout the 20th century, Korea has been a migrant sending nation. It was only after the 1980s that foreigners gradually began entering Korea.

Though 1987 marks the first year of the transition to democracy for South Korea, it is also the year that the course of direction for migration changed in Korean society. As Koreans began to taste the fruit of their nation's economic growth, the number of Korean migrant workers leaving to find employment overseas rapidly decreased. With Korea's economic boom in 1986 also came, for the first time, the avoidance of jobs referred to as difficult, dirty and dangerous. Headline articles in major newspapers in Korea reported survey results showing that Koreans, though usually known for their workaholic tendencies, preferred leisure to overwork (see Seol 1999). With this new phenomenon came a rise in Korean workers' wages, and consequently, several openings in the Korean labour market. At the same time, garment, and footwear manufacturing, and other labour-intensive companies moved their factories to several Southeast Asian countries such as Indonesia, Philippines, and Thailand. Since these were all low-wage industries there was hardly any opposition from Korean workers regarding this decision. During the 1986 Asian Games and the 1988 Olympic Games, the success of Korea's economic development became widely known in countries in Asia as well as abroad. Moreover, with the collapse of the Cold War regime in the late 1980s, China and South Korea were able to resume both personal and economic exchanges. *Joseonjok*, the ethnic Koreans living in China, especially, began visiting Korea more frequently. During this period, migrant workers from China and Southeast Asian countries began to come to Korea. While the Korean government had no program to import foreign labour, migrant workers

from underdeveloped countries in Asia came to Korea and began to fill vacancies in the labour market.

Since the early 1990s, foreigners began marrying Koreans for the purpose of immigrating into the country. Indeed, international marriages between Koreans and foreigners occurred prior to that time; however, it wasn't until the 1990s that the government began to statistically record and present data regarding the matter. Accordingly, since then, the dynamic of international marriages in Korea can be more keenly grasped. In 1995, the migration transition with respect to international marriages took place. Prior to 1994, international marriages between men from developed countries and Korean women were normal; nevertheless, the number of couples that actually fit this composition was few. Since 1995, the number of marriages between women from underdeveloped countries and Korean men has overwhelmingly increased. Until 1994, international marriages usually involved Korean women leaving the country with only a small proportion deciding to reside in Korea after marriage. However, since 1995, the number of foreign women immigrating and settling down in Korea is gradually increasing, along with the rapid increase in international marriages.

In 1999, the National Assembly enacted the *Overseas Koreans Act*, which gave overseas Koreans with foreign citizenship opportunities to visit their country of origin more freely. In 2001, the government developed a comprehensive plan to attract foreign students, known as the *Study Korea* project. As a result, visa holders of overseas Koreans and foreign students increased. Further, with hopes of revitalizing the economy in the wake of the Asian financial crisis, regulations regarding marriage broker businesses were lifted, and marriage brokers began practicing freely. As the year 2000 passed, numerous marriage brokers appeared and thus dawned the beginning of international matchmaking. With this, the number of international marriages in Korea significantly increased.

As a new influx of immigrant groups entered South Korea, the nature of its society began to change from a homogenous society to a multiethnic one. Table 1 shows, by year, the number of immigrants who exceeded their 90-days period of stay from 2000-2011. The significant increase in immigrants in 2000 was a temporary phenomenon. In 1997, as a result of the Asian financial crisis and severe economic recession experienced by South Korea, as well as several other Asian countries, Korean companies greatly reduced the number of their foreign employees. From 2001-2005, as the economy recovered, Koreans began heading overseas again, causing the rate of emigration to far exceed that of immigration. The number of foreigners immigrating to Korea increased. Following the year 2006, the number of immigrants in Korea exceeded emigrants. Though Koreans continued to make their way abroad, the number of foreigners entering Korea became larger. Indeed, the year 2006 marks a turning point for Korea—a nation formerly known as a predominately sending nation became in a relatively short period of time, a primarily receiving one.

**Table 1. Trends in international migration in Korea, 2000-2011**

Year	Gross migration				Net migration				Immigration				Emigration			
	Total		Koreans		Total		Koreans		Total		Koreans		Total		Koreans	
	Foreigners		Foreigners		Foreigners		Foreigners		Foreigners		Foreigners		Foreigners		Foreigners	
2000	734	473	262	8	-76	84	198	173	371	198	173	363	274	89		
2001	780	507	273	-32	-87	55	210	164	374	210	164	406	297	109		
2002	790	518	272	-16	-62	46	228	159	387	228	159	403	290	113		
2003	851	528	323	-42	-57	15	236	169	404	236	169	447	293	154		
2004	894	565	329	-49	-77	28	244	179	423	244	179	471	321	151		
2005	1,155	637	518	-95	-84	-11	277	254	530	277	254	625	360	265		
2006	1,180	703	477	48	-81	129	311	303	614	311	303	566	392	174		
2007	1,183	731	452	78	-71	148	330	300	630	330	300	553	401	152		
2008	1,262	750	512	55	-37	92	356	302	659	356	302	603	393	210		
2009	1,163	697	466	20	21	-1	359	233	592	359	233	571	338	233		
2010	1,182	693	489	82	-15	97	339	293	632	339	293	550	354	196		
2011	1,226	701	525	91	1	90	351	307	658	351	307	568	350	218		

Sources: Statistics Korea. 2012. *International Migration Statistics 2011*. Daejeon: Statistics Korea.  
 Korea Immigration Service (KIS). 2001-2012. *Korea Immigration Service Statistics*. Gwacheon: KIS.

According to Table 2, the number of immigrants who resided in Korea in 2009 was over 1.1 million. In 2012, the number of immigrants rose to 1,325,348. It is 2.6% of total population. The share of immigrants in Korea is not much in comparison to Europe and other advanced countries; however, the rate of increase is very high. Such a sudden increase in an immigrant population is certainly worthy of attention.

In 2012, the number of minor children belonging to immigrants was 156,522. Out of this group, 146,072 of them were children of marriage immigrants. They have Korean citizenship by birth. The remaining 10,451 were children of foreign couples. The number of immigrant households was 256,891, 1.3% of the total household population.

**Table 2. Immigrants and their children in Korea, 2006-2012<sup>1</sup>**

	2006	2007	2008	2009	2010	2011	2012
Immigrants (A) (=C+D)	654,741	782,882	951,151	1,102,230	1,110,961	1,113,852	1,325,348
Share of population	1.3%	1.6%	1.9%	2.2%	2.2%	2.2%	2.6%
Immigrants and their children (B) (=C+D+E)	679,987	827,140	1,009,158	1,194,920	1,216,463	1,249,790	1,481,870
Share of population	1.4%	1.7%	2.0%	2.4%	2.4%	2.5%	2.9%
Foreign residents (C)	615,216	728,831	885,640	1,028,505	1,014,500	1,002,742	1,201,835
Foreign migrant workers with employment visas	255,314	259,805	437,727	575,657	558,538	552,946	588,944
Foreign spouses of Korean citizens	65,243	87,964	102,713	125,673	125,087	141,654	144,214
Foreign students	20,683	30,101	56,279	77,322	80,646	86,947	87,221
Overseas Koreans visa holders	25,525	29,574	34,695	43,703	50,251	83,825	135,020
Other registered foreigners	144,616	216,933	136,409	103,115	106,365	137,370	162,082
Undocumented migrants with short-term visas	103,835	104,454	117,817	103,035	93,613	89,238	84,354
Naturalized citizens (D)	39,525	54,051	65,511	73,725	96,461	111,110	123,513
Persons naturalized through marriage	30,221	38,991	41,672	41,417	56,584	69,804	76,473
Persons naturalized by other means	9,304	15,060	23,839	32,308	39,877	41,306	47,040
Children of immigrants (E) <sup>2</sup>	25,246	44,258	58,007	92,690	105,502	135,938	156,522
Foreigner parents	-	-	-	4,205	6,971	9,621	10,451
Foreigner-Korean parents	25,246	44,258	58,007	88,485	98,531	126,317	146,071
Households of immigrants <sup>3</sup>	-	-	-	186,566	217,094	221,872	256,891
Share of total households	-	-	-	1.0%	1.1%	1.1%	1.3%

Notes:

<sup>1</sup> The reference period of the statistics of 2006-2009 is May 1, and that of 2010-2012 is January 1 of each year.<sup>2</sup> Children is defined as a minor under the age of 18. The number of children of undocumented migrants with short-term visas is not included in the statistics.<sup>3</sup> The number of households of undocumented migrants with short-term visas is not included in the statistics.Sources: Ministry of Public Administration and Security (MOPAS). 2006-2012. *Survey of Foreign Residents in Korea*. Seoul: MOPAS. Korea Immigration Service (KIS). 2006-2012. *Korea Immigration Service Statistics*. Gwacheon: KIS. Statistics Korea. 2012. *KOSIS (Korea Statistical Information Service)*. Daejeon: Statistics Korea.

To summarize, the predominant groups of immigrants currently living in Korea are migrant workers, marriage immigrants, overseas Koreans, and foreign students. This paper intends to enumerate the immigration control and social incorporation concerning the previously stated four predominant groups; discuss various phenomena regarding exchanges between immigrants and Koreans; and finally, explore the distinct characteristics of the immigration experience in Korea as well as possible implications for other countries.

## 2. IMMIGRATION REQUIREMENT AND INCORPORATION POLICIES OF KOREAN GOVERNMENT

The Korean government refers to immigration policy as “foreigner policy” or “multicultural policy.” In Korean, the word for both immigration and emigration is the same—*yimin*. As Korea was a primarily sending nation for about 100 years, Koreans only thought to use the term emigration when referring to *yimin*. However, since the situation has changed, rather than using the term *yimin* when referring to immigrants, Koreans use *foreigners* or *multicultural citizens*.

### Legal Grounds

The short-term goals of immigration policies in Korea include the prevention of discrimination against foreigners, the protection of human rights, and the provision of Korean language, basic information, and education tools needed to adapt to life in Korea. Regarding mid- and long-term goals, the government aims to engender a cohesive sense of national identity among all citizens. As shown in table 3, laws applicable to immigrants can be divided into six main categories. Looking at the time of implementation, laws with respect to legal status guarantees, immigration, and naturalization were implemented quite a long time ago. However, statutes relating to the social incorporation of immigrants weren’t implemented until the late 1990s.

The main content of each statute are as follows: First, regulations regarding foreign status are stipulated in the *Constitutional Law of the Republic of Korea*. The *Labor Standards Act* and the *National Human Rights Commission Act* ensure the prohibition of discrimination based on nationality.

Second, laws about immigration control, the recognition of refugees, the social incorporation of immigrants, and the naturalization of foreigners are extant. The *Departures and Arrivals Control Act* determines whether foreigners are qualified to enter and stay in the country, while the *Refugee Act* sets forth procedures for the recognition of refugee status. The *Basic Act on the Treatment of Foreigners in Korea* stipulates the basic provisions concerning the treatment of foreigners in Korea; to help foreigners in Korea to adjust themselves to the Korean society to reach their full potential and to create a society where Koreans and foreigners in Korea understand and respect each other with the aim of contributing to the development of Korea and the social integration. The *Nationality Act* includes the naturalization of foreigners.

Third, the *Act on Foreign Workers’ Employment, Etc.* enforced laws regarding the legal employment of less-skilled migrant workers in Korea. The 2001 amendment of the *Enforcement*

*Decree of the Elementary and Secondary Education Act* ensures minor children of illegal aliens the right to education.

Fourth, the *Marriage Brokerage Business Management Act* regulates the conduct of international matchmaking agencies, while the *Support for Multicultural Families Act* regulates with respect to marriage immigrant families. The *Support for Multicultural Families Act* contains policies that support couples of marriage immigrants and their Korean spouses and their children in Korea. The *National Basic Living Security Act* of 2006 and the *Single-Parent Family Support Act*, as amended in 2005, states that minor children of marriage immigrant families are entitled to public assistance of the *Basic Life Guarantee System*.

Fifth, in regards to overseas Koreans, the *Act on the Immigration and Legal Status of Overseas Koreans* stipulates laws concerning Korean visitation.

**Table 3. Selected Acts and an Enforcement Decree in Korea**

Laws	Enforcement
<i>Basic status</i>	
Constitutional Law	1948
Labor Standards Act	1953
National Human Rights Commission Act	2001
<i>Immigration control, incorporation and naturalization</i>	
Departures and Arrivals Control Act	1963
Refugee Act	2013
Act on the Treatment of Foreigners in Korea	2007
Nationality Act	1948
<i>Foreign workers</i>	
Act on Foreign Workers' Employment, Etc.	2004
Enforcement Decree of the Elementary and Secondary Education Act	2001*
<i>Marriage-based immigrants</i>	
Marriage Brokerage Business Management Act	2008
Support for Multicultural Families Act	2008
National Basic Living Security Act	2006*
Single-Parent Family Support Act (former Single-Parent Family Welfare Act)	2006*
<i>Overseas Koreans</i>	
Act on the Immigration and Legal Status of Overseas Koreans	1999

Note: \* The revision year of the Acts or the Enforcement Decree articles regarding the treatment of foreigners in Korea.

In the development decades 1960-1990s, the Korean government established and promoted a five-year plan for economic and social development. In the same way, the government intends to use the *Basic Act on the Treatment of Foreigners in Korea* and the *Support for Multicultural Families Act* as a means to create a more cohesive multicultural society. Yet, not only central and local government, but also businesses, media, schools, religious institutions, social institutions etc. are actively involved in this unique move of civil society.



## Foreign Workers

Foreign employees working in South Korea are classified into two groups depending on their skills: professional workers and less-skilled workers. The Korean government actively tried to attract professional workers while, at the same time, worked to recruit less-skilled workers only to fill vacancies in the labour market.

### *Professional Migrant Workers*

As many Koreans did not have the same specialized knowledge and technical skills as professional migrant workers, the Korean government authorized the recruitment of foreign workers. The variation of visa types distributed to such migrant workers is as follows: Professor (E-1), Foreign Language Instructor (E-2), Research (E-3), Technical Guidance (E-4), Professional Employment (E-5), Arts and Entertainment (E-6), and Special Occupation (E-7). Upon submitting a written employment contract, professional migrant workers were granted visas and could receive employment in the Korean labour market. The Korean government showed preferential treatment towards professional migrant workers by enforcing certain immigration regulations upon *only* less-skilled migrant workers. Unlike less-skilled migrant workers, a quota was not placed on the amount of visas issued to professional migrant workers. Also, labour market tests weren't enforced. Additionally, there was no limitation on the number of times professional migrant workers could extend their stay in the country whereas obvious limitations existed for less-skilled migrant workers.

Out of the total number of foreigners having professional visas, foreigners from developed countries such as America, Japan, Canada, etc. accounted for the largest group. Filipino women significantly outnumbered the number of foreigners holding entertainment visas, which was quite peculiar for that particular period of time (see Seol and Han 2011). With regard to visa conditions, it was assumed that professional migrant workers would not receive public assistance as it would lead to increased costs in welfare. Thus, accordingly, this group can join social insurance programs.

The Korean government, hoping to attract talent for the “brain gain” dimension in Korea, actively developed policies that supported professional migrants. In Korea, however, immigration procedures ceased to provide conveniences for workers and social integration policies stopped offering special programs. Using the theme “Global Talents,” policies encouraging foreigners to settle in Korea were pervasive, yet failed to lead to the development of any specific programs.

### *Less-skilled Legal Migrant Workers*

Aware of the terms of the rotation principle provided in the *Employment Permit Program (EPP) for Foreigners*, less-skilled workers agree to return to their home countries upon completion of their employment contract, yet the number of workers entering the country far exceeds the number that are leaving. There are also industrial trainees and other employees who work as sailors; however, the EPP stipulates that they be treated in the same manner as migrant

workers. Less-skilled migrant workers are subject to the *Act on Foreign Workers' Employment, Etc.* (Seol and Skrentny 2004).

The less-skilled foreign labour policy of Korea has five basic principles (Seol 2005, 2012). First, the *supplement the domestic labour market* principle. In essence, this means calling for the help of foreign labour to fill vacancies in the domestic labour market. The employment of foreign workers should not cause indigenous Korean workers to lose their jobs and lead to a reduction in wages and decent working conditions. Considering the sentiments of native Korean workers, this principle could also be referred to as the “hire locals first” principle.

Second, the *anti-discrimination based on nationality against foreigners* principle. This principle protects migrant workers from mistreatment. It is also known as the “principle of equal treatment.” The EPP protects the rights and interests of foreign workers legally employed in the country.

Third, the *prevention of settlement* principle. The government attempted to stop foreigners from settling down in the country by limiting their time of employment to only three years. Re-employment of foreign workers was only possible six months after their departure. After an employment period of three years, workers requested permission for re-employment to the Minister of Employment and Labour. Consequently, since June 6, 2010, a clause stating that workers can extend their employment contract for a period of about two years has been established. As a result, the employment period is extended to a maximum of four years and ten months. With the extension of foreign workers' employment period and the removal of the “re-employment after departure” regulation, the effort being made to meet the needs and interests of migrant workers can clearly be seen. However, as Korea disallows the accompaniment of family members with migrant workers, it is likely that it will receive criticism from the international community (see Seol and Skrentny 2009b).

Fourth, the *anti-corruption and transparency in the recruiting process of foreign workers* principle. This principle ensures transparency in the recruitment process of migrant workers and aims to prevent corruption. In order to ensure the effectiveness of this principle, the Korean government and sending countries have signed the MOU contract. Migrant workers from sending countries along with recruitment agencies and government or public institutions have made an agreement to act within the terms put forth in this contract.

Fifth, the *prevention of hindering industrial restructuring* principle. This principle seeks to ensure that the employment of migrant workers does not adversely affect the domestic industry and corporate restructuring. When companies use migrant workers for cheap labour, company restructuring is delayed and declines in the competitiveness of not only companies, but also the country as a whole results.

Less-skilled migrant workers under EPP can be classified into two groups: ethnic Koreans and non-ethnic Koreans. They have different visas – Visit and Employment (H-2) and Non-Professional Employment (E-9), and are applied to different sub-programs of EPP. Ethnic Korean migrant workers with the Visit and Employment (H-2) visa can work in almost all the sectors, and transfer workplaces freely. However, migrant workers with Non-Professional Employment (E-9) visa, are mostly non-ethnic Koreans, and can work in only some designated industries. They can transfer their workplaces only after the government's permission.

They can join the social insurance programs; however, they are not subject to the same public assistance as other workers because of visa limitations.

Table 4 displays the number of migrant workers employed in Korea. Using statistics from the *Foreign Residents in Korea* released by the Ministry of Public Administration and Security, there were 673,298 migrant workers in the year 2012. Another data source is the Korea Immigration Service (KIS). The KIS statistics for migrant workers were recorded with respect to their skill level, ethnicity, and legal/illegal visas status. In 2012, there were 44,264 professional workers and 647,177 less-skilled workers. If the summation of both groups is calculated, the total number of foreign workers in Korea is 691,441. Ethnic Korean foreigners are issued the Visit and Employment (H-2), while the Non-Professional Employment (E-9) visas are issued to non-ethnic Korean foreigners seeking unprofessional employment. There were 299,710 ethnic Korean migrant workers and 197,552 non-ethnic Korean migrant workers in 2012.

**Table 4. Foreign migrant workers in Korea, 2006-2012**

	2006	2007	2008	2009	2010	2011	2012
Foreign migrant workers (MOPAS and KIS data) <sup>1</sup>	359,149	364,259	555,544	678,692	652,151	642,184	673,298
Foreign migrant workers with long-term visas	255,314	259,805	437,727	575,657	558,538	552,946	588,944
Undocumented migrants with short-term visas	103,835	104,454	117,817	103,035	93,613	89,238	84,354
Foreign migrant workers (KIS data) <sup>2</sup>	398,215	510,536	626,548	680,425	696,817	660,432	691,441
Professionals	23,609	27,221	31,300	35,228	36,921	41,108	44,264
Less-skilled migrant workers	374,606	483,315	595,248	645,197	659,896	619,324	647,177
Non-professionals and industrial trainees	141,510	212,366	157,823	163,109	164,915	184,501	197,552
Ethnic Korean workers	52,304	84,055	234,970	298,014	316,878	282,662	299,710
Undocumented migrant workers	180,792	186,894	202,455	184,074	178,103	152,161	149,915

Notes:

<sup>1</sup> The reference period of the statistics of 2006-2009 is May 1, and that of 2010-2012 is January 1 of each year.<sup>2</sup> The reference period of the statistics is January 1 of each year.Sources: Ministry of Public Administration and Security (MOPAS). 2006-2012. *Survey of Foreign Residents in Korea*. Seoul: MOPAS. Korea Immigration Service (KIS). 2006-2012. *Korea Immigration Service Statistics*. Gwacheon: KIS.

If the employment of less-skilled migrant workers is examined by sector, foreigners of Korean descent are primarily employed in the service, construction, and manufacturing industry, while most non-ethnic Korean foreigners work in the manufacturing industry. With respect to company size, the rate of both foreigners with and without Korean descent entering small businesses with less than 30 people is very high. According to nationality, foreigners with Korean descent is overwhelmingly higher than Chinese. There are also some from Uzbekistan, Kazakhstan and the former Soviet Union. Among foreigners with no Korean descent, migrant workers are mostly from Vietnam, Thailand, Philippines, Indonesia, Sri Lanka, etc. Gender-wise, there are an equal number of ethnic Korean men and women, while men with no Korean descent accounts for approximately 90%, and women 10%. Lastly, similarly to ethnic Koreans, there are an equal number of Korean men and women from overseas.

The government established Support Centres for Foreign Workers, which provides limited social incorporation services to legally employed less-skilled migrant workers. The social incorporation services offered to less-skilled workers under the EPP are: conflict mediation between employers and migrant workers, support for victim of industrial accidents, support for transferring workplaces, shelter services, migrant workers living grievances and counselling legal problems, support for early return to country of origin, and administrative services for employers and migrant workers. Since the government initially wanted to deter foreigners from settling in Korea, courses on Korean language education and culture adaptation were not offered.

### ***Undocumented Migrant Workers***

Among the number of less-skilled migrant workers in 2012, 149,915 are employed undocumented workers (see Table 4). The Korean government refers to them as “illegal aliens.” Since 2006, the number of undocumented migrant workers in South Korea has steadily decreased. This is a result of the government’s strong crackdown on illegal residents as well as the establishment of stronger regulations regarding business owners and employment brokers.

The government has not only cracked down on illegal aliens, but has also stepped up deportation procedures and regulations. However, as undocumented migrant workers are subject to deportation, they remain outside the coverage of social incorporation programs. Yet, from a humanistic perspective, it is the government’s responsibility to guarantee basic human rights to migrant workers such as emergency medical care and children’s right to education regardless of their status. Through non-governmental organizations, social services such as counselling support for industrial accidents and work consultation should be offered. While illegal aliens may be supported under the *Industrial Accident Compensation Insurance*, they are not recipients of other services included within the social insurance programs. For example, many of them cannot apply for welfare services and public assistance programs such as the Korean language education and cultural adaptation training. Moreover, there are undocumented migrant workers with children. Since 2001, the Korean government has legally guaranteed children of illegal aliens in grades preschool to middle school the right to education.

## Marriage Immigrants

As stipulated in the *Departures and Arrivals Control Act*, foreign spouses of Koreans are to be issued *Marriage Immigrants* (F-6) visas for purposes of settling down in the country. Additionally, according to the *Nationality Act*, foreign spouses are one step closer to becoming naturalized citizens after two years of lawful stay in the country. Table 5 presents the number of marriage immigrants in Korea from 2006-2012. As of 2012, the number of marriage immigrants is 220,687 - men 23,898 (10.8%), women 196,789 (89.2%). With regard to membership status: foreigners amount to 144,214 (65.3%), and naturalized citizens amount to 76,473 (34.7%).

**Table 5. Marriage-based immigrants in Korea, 2006-2012<sup>1</sup>**

	2006	2007	2008	2009	2010	2011	2012
Marriage-based immigrants	95,464	126,955	144,385	167,090	181,671	211,458	220,687
Male	11,873	15,121	16,702	17,237	19,672	22,878	23,898
Female	83,591	111,834	127,683	149,853	161,999	188,580	196,789
Foreign spouses of Korean citizens	65,243	87,964	102,713	125,673	125,087	141,654	144,214
Male	9,835	12,497	13,711	15,190	15,876	18,561	19,630
Female	55,408	75,467	89,002	110,483	109,211	123,093	124,584
Naturalized citizens through marriage	30,221	38,991	41,672	41,417	56,584	69,804	76,473
Male	2,038	2,624	2,991	2,047	3,796	4,317	4,268
Female	28,183	36,367	38,681	39,370	52,788	65,487	72,205

Note:

<sup>1</sup> The reference period of the statistics of 2006-2009 is May 1, and that of 2010-2012 is January 1 of each year.

Sources: Ministry of Public Administration and Security (MOPAS). 2006-2012. *Survey of Foreign Residents in Korea*. Seoul: MOPAS. Korea Immigration Service (KIS). 2005. *Korea Immigration Service Statistics*. Gwacheon: KIS.

Marriage immigrants in Korea are the primary beneficiaries of a variety of social incorporation policies. Indeed, they are guaranteed recipients of social insurance and social welfare services. However, such public assistance only applies to the following foreigners residing in Korea: individuals married to a Korean citizen or carrying the child of a Korean citizen, individuals raising a minor child with Korean nationality, or individuals whose spouse is a direct descendant of a Korean national. Beginning from 2006, marriage immigrant families are entitled to receive public assistance from the government. In comparison to immigrants receiving public assistance in Europe, the welfare provision to marriage immigrants is very limited.

In 2004, policies with respect to marriage immigrants residing in Korea were established for the first time. At that time, the number of international marriages between Korean men and foreign women was rapidly increasing, causing a number of social problems. Several concerns emerged regarding marriage immigration, family conflict, and the proper environment for child development. Thus, the Ministry of Health and Welfare developed and promoted support programs for marriage immigrant families, such as Korean language education and cultural adaptation training. In 2006, the government announced the *Comprehensive Plan for the Social Incorporation of Female Marriage Immigrant Families and Multi-ethnic People*. On this platform, the government presented policies that supported their vision for female marriage immigrant incorporation and the realization of a multi-cultural society. Public policies adopted the concept of a “multi-cultural society” (see Seol 2006; Lee, Seol and Cho, 2006).

Pursuing this further, in 2008, there was a remarkable growth in marriage immigrant family policies. The government changed the term *marriage immigrant family* to *multicultural family*. Government ministries coined the term *multicultural family* and the *Support for Multicultural Families Act* came into effect. Also, in 2009, the Prime Minister Office established the *Multicultural Family Policy Committee* in order to create a better division of roles between the various ministries.

After President Lee Myung-Bak took office, support for multicultural family policies rapidly began to grow. In 2007, the overall budget for multicultural family policies, government and regional expenditure combined, was only 6 billion Korean won; however, in 2011, it reached a total of 128 billion Korean won. Korean language education for marriage immigrants, child support, and stable settlement support are just some of the many types of assistance available to multicultural families in Korea.

The government worked rigorously to show support for marriage immigrants residing throughout the nation. In 2006, in particular, there were 21 established *Multicultural Family Support Centres*; 100 sites in 2009, 159 in 2010, increasing to 200 in 2011.

Furthermore, many policies concerning the stable growth of multicultural children were made. Through the active intervention of home visitation educational services, programs ranging from child rearing in the home to children’s academic performance at school were developed. Though still in its infant stage, the government has initiated a bilingual education program for the children of marriage immigrants. Beginning from 2011, the government began offering languages classes, called “*Gifted and Talented Language Classroom*”, to children of marriage immigrants. In this class, multicultural children have the opportunity to learn



the language of either their non-Korean mother or father. Additionally, out of the 200 multicultural family support centres, 100 centres offer elementary students above the age of three, Chinese, Japanese, Vietnamese, Russian, Cambodian, and Mongolian language education courses. In order to develop a sense of cultural appreciation for global talent, the spouses and parent-in-laws of marriage immigrants can participate in a number of education programs. Also, since 2009, the government has implemented personalized education and bilingual institutions to support multicultural students – the children of immigrants. The purpose of such programs is to help teenagers who immigrated to Korea after their immigrant parents with cultural adaptation as well as Korean and native language skills.

## Overseas Koreans Visa Holders

In 1999, the National Assembly enacted the *Act on the Immigration and Legal Status of Overseas Koreans*. The main objective of this law is to communicate to overseas Koreans and citizens alike that overseas Koreans with foreign nationality will be treated no differently from Korean citizens. With this law, many Koreans of the Korean Diaspora, irrespective of their nationality, were able to freely work while living in Korea. As the aftermath of the 1997 Asian financial crisis continued, the government tried to facilitate overseas Koreans' investment into the Korean economy. As a result, ethnic Koreans who emigrated to America, Europe, etc. freely engaged in investment into Korea and employment opportunities in Korea.

The Act had a serious problem. The “overseas Koreans” clause covered only Korean diasporas departing from Korea since 1948, when the Korean government was established. Policy makers were fearful of the surrounding Chinese and former Soviet Union overseas Koreans who could see this as an opportunity for employment in Korea. Such an infiltration was likely to cause confusion in the domestic labour market and, thus, raised concerns. The law provisions provided by the National Assembly regarding this act defined overseas Koreans as “people with Korean nationality or their descendants,” excluding overseas Koreans who migrated during the Japanese colonial era. In the end, ethnic Koreans in China and former Soviet Union weren't able to receive the provisions stipulated in the *Act on the Immigration and Legal Status of Overseas Koreans*. After that, civil organizations claimed that the Act was a violation of the constitution and took the case to trial in the Constitutional Court. The Constitutional Court ruled the act to be unconstitutional on the basis of discrimination against overseas Koreans. In 2004, the National Assembly passed an amendment to include Chinese, and former Soviet Union Koreans along with overseas Koreans in the *Act on the Immigration and Legal Status of Overseas Koreans*.

However, even with the amendment of the *Act on the Immigration and Legal Status of Overseas Koreans*, the *Departures and Arrivals Control Act* made a regulation that foreigners in Korea likely to engage in less-skilled labour may not be issued the same visa as “overseas Koreans.” Thus, Chinese and former Soviet Union overseas Koreans still could not reap the benefits of the *Act on the Immigration and Legal Status of Overseas Koreans*. In order to resolve this problem, the government, in 2007, implemented the *Visit and Employment Program (VEP) for Ethnic Koreans with Foreign Citizenship*. Through the VEP, overseas Koreans were allowed employment in less-skilled labour for a maximum period of four years and ten

months. Limitations such as a quota and visa renewal conditions were set to ensure that the system did not adversely affect the domestic labour market. The VEP was created to protect the labour market while providing real benefits to overseas Koreans from developing countries such as China. However, at the same time, it is criticized for discriminatory treatment toward such individuals (See Seol and Skrentny 2009a; Seol and Lee 2011; Skrentny, Chan, Fox and Kim 2007).

Meanwhile, though overseas Koreans residing in Korea are recipients of social incorporation programs based on the *Basic Act on the Treatment of Foreigners in Korea*, such benefits are primarily given to marriage immigrants and thus, not specialized.

## Foreign Students

Foreign students residing in Korea usually come for the purpose of study or training. According to Table 2, in 2006, the number of foreign students in Korea was only 20,683, but this dramatically increased to 87,221 in 2012. Nearly ten years ago, foreign students could only be seen at the language institutes and departments of international relations of major universities in Seoul. However, recently, foreign students can easily be found at universities all throughout the country, reflecting the great increase in numbers.

Similarly, the cause of increase in foreign students in Korea can be attributed to a number of reasons: demand for higher education in China and other developing countries in Asia, sweep of the “Korean Wave,” and the government’s efforts and policies to attract foreign students. While factors with regard to students’ native countries cannot be disregarded, the main cause for such an increase, unquestionably, lies with Korean universities and government policies to attract foreign students.

Initially, Korean universities made efforts to recruit foreign students to meet two objectives: attract superior students from abroad and overcome difficulties recruiting new students. The first objective is centred on globalization’s banner of “Exchange and Cooperation,” while the latter draws attention to a “new market” to solve chronic recruitment problems. In particular, since the pronouncement of reconstruction policies for universities with low recruitment rates, attracting foreign students has become a strategy for survival by an increasing number of universities.

Next, it is important to note that the Korean government is supporting the universities’ efforts to recruit foreign students through its policy implementation. In 2001, the Korean government established a comprehensive plan to recruit foreign students known as the *Study Korea* project, which is still ongoing. The basic direction of this policy is twofold: first, train talented students who can play a bridging role between developed and developing countries, and second, contribute to the globalization of the domestic education system in order to improve its international competitiveness; at the same time, however, foreign students are expected to improve the image of South Korea as they travel and study in other countries.

As a rule, foreign students cannot be employed in Korea; nevertheless, they may work for a limited period of time if granted permission from local Immigration Offices. According to the Statistics Korea survey of employment conditions as of June 2012, the labour force participation rate of foreign students is 20.1%. More than 90% of international students come

from China (Statistics Korea 2012b; Seol 2013b). The number of Chinese students working part-time in Korea is increasing, reflecting the high concentration of Chinese students around university campuses nationwide.

### 3. INTERACTIONS BETWEEN IMMIGRANTS AND NATIVE KOREAN CITIZENS

#### The Societal Relationship between Koreans and Migrants

In the late 1980s, migrant workers began to be assaulted by their Korean counterparts for no apparent reason. Incidents occurred in small and medium-sized companies and construction worksites, and a few foreigners were also attacked in public places. In August 2009, a Korean hurled insults at an Indian migrant on a city bus. While the incident has received a lot of press coverage, racist assaults are not widespread. However, the importance of the issue was not ignored easily.

The group in Korea suffering the most serious discrimination based on nationality, ethnicity, and race are less-skilled foreign migrant workers. The causes of discrimination against less-skilled migrant workers can be separated into five elements (see Seol and Han 2004).

First, *chauvinism* is a concept that combines elements of nationalism and racism. Chauvinists are those who believe foreigners and Koreans should be separated and that foreigners should be removed completely. These people also believe that Koreans maintain a pure bloodline, and foreigners will damage this purity.

Second, some in Korean society have devised a *hierarchy based on ethnicity and race*. The hierarchy is not a simple matter. There have been instances where unrelated elements such as physical characteristics like dark skin have led to an assumption that the person in question must be from an underdeveloped country.

Third, *xenophobia* can be seen as a factor. Some Koreans fear a mass influx of *outsiders* on the grounds that societal integration and harmony within their society will be threatened.

Fourth, not only does race-based discrimination occur, *discrimination* also exists *within the ethnic Koreans group*. For instance, the Korean government issues the Ethnic Koreans (F-4) visas to those applicants residing in developed countries like America or in Europe. However, the visas are rarely issued to those applicants residing in China or the former Soviet Union. Instead they are provided with a Visit and Employment (H-2) visa, and these of course are selectively issued. This policy that ranks minorities within one's own ethnic group is a manifestation of the *hierarchical nationhood*. This is a strongly held attitude amongst Koreans.

Fifth, discrimination exists that is based on *people with less skill* as being equal to *lower social prestige*. In the *hierarchical status system* originating from traditional society, industrial relations are not considered equal. The same goes for workers and employers. The notion has been carried down to the present day, where the tendency to look down upon manual workers remains.

Marriage immigrants often originate from the same countries as the less-skilled workers, and the nature of their work undertaken in Korea is not dissimilar. Their experiences with discrimination are almost identical to the experiences of migrant workers.

It is also important to mention the racial discrimination experienced by the children of multiethnic families. They can be ostracized from the group, with many instances of children becoming outcasts. At school there have been frequent occurrences of angry and upset children after they have been told: "Go back to your country." Children are a society's mirror. Considering the epigram, we can see that if the sense of hierarchy in Korea does not disappear, problems will go unresolved.

On the other hand, while good-intentioned, the enforcement of bad policies is having an effect on the children of multiethnic families. Instances of distressed children are common. One example is the categorization of children as "children of multicultural families." When learning at school that a child is from a "multicultural family," other students may label that child. Up until then this fact may not have been revealed. It must be considered that some children may not wish to be labelled "multicultural" at all.

### **Koreans' Attitudes toward Immigrant Influx**

Many Koreans hold a positive attitude about foreigners entering the country. In 2003, Koreans reported having a positive attitude toward immigrant reception in the International Social Survey Program (ISSP)—a sample survey conducted on citizens from 19 countries on the topic of national identity. In the 2003 ISSP, the proportion of respondent answering positively to the question, "immigrants are generally good for Korea's economy" was the third highest in Korea; the proportion answering negatively to the item, "immigrants take jobs away from people who were born in Korea" was the sixth highest; and the proportion of respondents that answered, "The number of migrants should be increased,"<sup>1</sup> to the question, "Do you think the number of immigrants to Korea nowadays should be increased or decreased?" was the third highest (Seok et al. 2005).

A similar result was also found in Pew Research Center's survey conducted in 2007 on 46 countries. The survey showed that a high percentage of Korean respondents were against "strict measures of entry control against immigrants,"<sup>2</sup> thus demonstrating Korea to be the most open country to foreign workers out of all the nations under study. Most countries strongly favour the reinforcement of immigration control policies. Since Koreans barely have experience living in the same country with foreigners, rather than anticipate the difficulties and discomfort that would accompany migrant influx, they simply saw it as an opportunity for economic development. While contention for jobs between foreigners and Koreans do exist and incidences of foreign crime do take place, significant positive aspects of migrant influx are also present. The supplementation of a scarce workforce as well as the new vitality

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<sup>1</sup> The answer options are: (1) increased a lot, (2) increased a little, (3) remain the same as it is, (4) reduced a little, (5) reduced a lot, and (6) can't choose.

<sup>2</sup> Only 25 percent of Korean respondents agreed with the following statement: "We should restrict and control entry of people into our country more than we do now" (Pew Research Center 2007: 25-26).

given to the Korean society as a result of migrant influx are positive aspects that cannot be disregarded.

Nonetheless, hasty conclusions about Koreans' openness towards foreigners and foreign culture should not be made. In terms of "cultural openness,"<sup>3</sup> Korea has the lowest ranks in the annual *World Competitiveness Yearbook* published by the International Institute for Management Development (IMD) in Switzerland. In 2008, Korea was placed last out of 55 countries, ranked 56 out of 57 countries in 2009, and 52 out of 58 countries in 2010. The reports show Korea as having the one of the most exclusive cultures in the world (IMD 2010, 2012).

Such contradictory findings show that Koreans' reception of foreigners, immigrants, and foreign culture differs depending on the context. While Koreans are eager to accept foreigners for purposes of economic advancement, occasions of actual contact or communication with foreigners remain very low. Most of the marriage immigrants of Korean spouses live their lives alone, apart from the community. While they may have relationships with other immigrants, their social exchanges with neighbouring Koreans are rare and limited (see Seol 2010).

## Government's Efforts to Enhance Multicultural Understanding

As a result of the rapidly increasing number of immigrants in Korea, the government has established policies geared toward enhancing the awareness of foreign cultures. Since 2006, the government has developed the curriculum based on four themes: publicity promotion, a multicultural friendly atmosphere, civil service training, and education for social welfare and medical service workers. Additionally, in 2007, the government revised the elementary, middle, and high school curriculum to reflect elements of cultural understanding, morality, social studies, and home economics.

Furthermore, in 2012, the government established policies to enhance the multicultural understanding of the general public and create a more racially and culturally diverse society. Accordingly, four strategic projects were developed along with policies to promote such multicultural understanding. The projects and policies include, but are not limited to, the following: education reinforcement, promotion of cultural diversity via media, reinforcement of tolerance through a variety of cultural experiences, and, finally, the reinforcement of a law-abiding society.

In short, though the government rigorously works to prevent immigrants from being treated as excluded members, policies seeking to preserve the cultural heritage of immigrants have yet to be implemented. Indeed, many organizations offer programs that cater to Korean language development and Korean social understanding; however, programs encouraging migrants to maintain the culture of their native country remain nonexistent. There is still quite a distance between the multicultural policies created by the Korean government and multiculturalism in the literal meaning of the word.

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<sup>3</sup> The statistics is based on local senior managers' assessment of the statement "The national culture is (closed/open) to foreign ideas" by indicating their answer on a scale of 1 to 6.

## Role of Civil-Society Organizations in Incorporating Migrants

Hundreds of Korean NGOs are working diligently to support both migrant workers and marriage immigrants (Seol 2013a). Some migrant workers-supporting NGOs prepare shelters or offer counselling services for various problems such as industrial accidents and unpaid wages. Legal and medical services are also provided. Additionally, a research study conducted on foreign workers not only confirmed the social attention of the public, but also presented alternative international policies. Similarly, this report showed the international cooperation of several migrant workers-supporting NGOs in different countries. Human rights advocacy groups in Korea are passionately fighting to protect the human rights of foreign workers. Migrant worker-supporting NGOs, in addition to carrying out their daily activities, are fighting to improve institutions for foreign workers. The EPP implemented in 2004 wouldn't exist today if it weren't for the efforts of foreign workers support groups.

Most marriage immigrants-supporting NGOs act as partners in enforcing government policies. There are only a few that operate without the support of the government. The government, in accordance with the *Support for Multicultural Families Act*, established 200 *Multi-cultural Family Support Centres* all throughout the country. Although these are government-established centres, they are operated by civil organizations. Based on the active participation of civil society, the civil sector and the government are joining together to enforce governmental policies. Multicultural Family Support Centres are the driving force of success in the nation's goal of social incorporation. In the hopes of providing multicultural families with stable policies and a stable family life, Multicultural Family Support Centres in partnership with various social welfare centres, offer the following integrated programs and services: language and culture education, family education, counselling, child support, job education, and multicultural awareness improvement projects. Along with these programs also come various forms of support such as marriage immigrants self-support groups, mentoring, volunteer opportunities, programs for utilizing community resources, multicultural awareness improvement projects, and instruction on how to strengthen community ties and networks.

## Anti-Immigration Crusaders

If we look at crimes undertaken by foreigners, it has been discovered there are some Koreans that express fear and hostility about the larger foreigner group. A few of them use extreme statements without hesitation, like "We must deport all the foreigners from Korea." During the 2012 general election for the National Assembly, a naturalized Korean woman originally from the Philippines was nominated by the ruling party. She suffered personal attacks and a tirade of abuse on the internet. Anti-immigration and anti-multiculturalism is unfolding, led by far-right leaning Koreans. While the type of action is not at a worrying level, and is currently confined within several groups, it is worth paying attention to.

Hostile comments are posted on the internet detailing instances of crime carried out by illegal immigrants and demanding harsh government crackdowns. These operate in tandem with activities occurring offline, including attending public hearings on immigration policy

and debates hosted by civic groups. This right-wing faction argues that a multicultural society will damage the pure bloodline of the Korean race, cause confusion over ethnic identity and ultimately annihilate Korean ethnicity. Questions are also raised as to why foreign labour is being imported at a time when it is difficult for Koreans to find work. They believe migrant workers are the cause for youth unemployment and the problems surrounding temporary labour.

Of course, their assertions are not based on fact. Migrant workers on EPP do not take jobs away from Korean citizens. Rather, they work in jobs that Koreans do not wish to do and in this sense perform a supplementary role. Crimes undertaken by foreigners are also comparatively lower than the national crime rate (see Seol 2011). Placing the blame for personal problems on an entire group of people is illogical. The fact that these kind of illogical voices are not catching on means that Korea's civil society is in good shape.

#### 4. CONCLUSION

Korea has experienced rapid economic growth and democratization. Migration transition has also occurred at a rapid pace. Since migrant workers and marriage immigrants began to arrive in Korea in the late 1980s, both institutions and operations were fraught with serious problems. At the time, the *Industrial Technical Training Program (ITTP) for Foreigners* deemed migrant workers exempt from protection by the labour laws (see Seol 1999). This incited fierce opposition from civil society, and in response the alternative EPP was established in 2004. Adhering to global standards was now understood at both a systemic and cultural level.

The policy regarding marriage immigrants was no different. In the beginning, international matchmaking businesses would organize group tours overseas where Korean men could meet with potential wives. Marriage brokers organized group meetings and marriages within a week. The approach to international marriage has been changed by the Korean government's intervention. The new Korean government regulations have stated that the women marriage brokers introduce to Korean men must be over eighteen years old, and that group matchmaking events and group accommodation are to be banned. Personal information must be presented to potential marriage immigrants in a language they understand, and interpretation services need to be provided. In addition, notarized documents must be produced and human rights violations are required to be reported. A policy was also introduced regarding conflict between Korean national administration regulations and local laws, and the enforcement of punishment. Policies like these protected the rights of those directly involved in international marriages, and were a reflection of the Korean government's multi-faceted approach to various research results.

While the programs for migrant workers and marriage immigrants has been designed and enforced, cooperation is needed between host countries and countries of origin. For effective international migration management, a method needs to be developed regarding the understanding of laws in countries of origin. In addition, countries of origin and host countries should work together in order to find solutions to shared problems.



The Korean government has modified the immigration programs that infringed on migrants' human rights. The main cause can be seen as the deepening of democratization, along with external pressure regarding international norms of human rights (Seol, Skrentny and Lee 2002; Seol and Skrentny 2009b). When looking for an alternative to current problems within the existing system, the policy makers have referred to the systems of advanced countries including Europe and America. Of course, the policy makers should consider the unique social and historical characteristics of Korea, but they cannot be free from the pressure to adhere to global standards.

In actuality, a trend of policy convergence can be seen amongst various countries in regards to international migration. What can be deemed a successful immigration policy in one country can be adopted as the benchmark for another. This has become common practice. It is extremely important for countries in Europe and Asia to share their experiences and policies related to immigration. I believe there is value in other countries participating in programs that Korea has initiated, like the EPP for migrant workers and the social integration program for immigrants. While it is unusual that the state takes the lead in policies like economic development, in order to maximize policy effectiveness in a short period of time, there is value in appraising one model.

If we look closely at Korea's immigration management model, rather than it being unilaterally led by the state, we can see that this model is based on cooperation between the state and civil society. The social incorporation program for immigrants is particularly reflective of this. *The Foreign Workers Support Centres* and the *Multicultural Families Support Centres* provide support to migrant workers and marriage immigrants. The government provides the budget and everyday management is undertaken by civil organizations. In other words, the government does not have a direct role in supporting migrant workers or marriage immigrants. Instead, this is carried out by civil organizations.

In addition, there is a need to recognize the role of those NGOs who do not receive government support. As democracy has been consolidated in Korean society, purely civil groups have rejected government funding and have managed to undertake activities to support migrant workers and marriage immigrants. Actions such as these help Koreans and foreigners understand one another and contribute to broader cultural understanding.

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# Managing Labour Migration in Times of Crisis — Recent Trends and Open Issues in Selected EU countries

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## ABSTRACT<sup>1</sup>

This paper provides a comparative overview of the European policy landscape in the field of labour migration, focusing on six key countries in the decade preceding and throughout the current economic crisis. It draws mainly on data and information gathered in the framework of LAB-MIG-GOV, a research project coordinated by FIERI ([www.labmiggov.eu](http://www.labmiggov.eu)). The main arguments in the paper can be summarized as follows:

In order to have a proper understanding of the policy dynamics in the field of labour migration, a broad focus on “migrant labour supply policies” (rather than on “labour migration policies”, restrictively meant as admission of foreign workers from third countries) is necessary. This allows the inclusion in the picture of crucial policy dimensions such as access to the labour markets of non-labour migrants, intra-EU mobility regime and regularisations of undocumented migrants.

The tone of public debates around labour migration varies significantly across different national contexts. However, a few important common features emerge from the main public opinion surveys: levels of anxiety about immigration across European countries, although

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<sup>1</sup> This paper benefits from the research carried out in the framework of LAB-MIG-GOV (“*Which labour migration governance for a more dynamic and inclusive Europe?*”), a comparative research project coordinated by FIERI under the supervision of Ferruccio Pastore, with the support of the “Europe and Global Challenges” Programme promoted by Compagnia di San Paolo, Riksbankens Jubileumsfond and VolkswagenStiftung. EPC is one of the partners of LAB-MIG-GOV, in charge of the analysis of policy developments at EU level. The preliminary research results of LAB-MIG-GOV are available on the website [www.labmiggov.eu](http://www.labmiggov.eu).

variable, are generally high, but no upsurge has been observed with the worsening of the economic crisis since 2008. Furthermore, at least until 2011, a widespread awareness persists of the economic benefits associated with foreign labour migration, particularly in terms of complementariness with native labour force.

National approaches in the field of foreign labour management show little convergence: a strong heterogeneity was witnessed before the crisis and persists during the downturn. But the internal geography of such policy diversity is in deep transformation: in the pre-crisis phase, we have identified a process of diverging evolution with, on one hand, Mediterranean countries and the UK displaying a more open and proactive approach, and, on the other hand, the “continental core” (around France and Germany) sticking to a more cautious and restrictive line. The crisis, with its highly asymmetrical impact, is dramatically changing this landscape by putting the brakes on new admissions for employment reasons where expansionary trends were previously observed and, on the other hand, by allowing new policy dynamisms and openness where economies have been less affected.

In such a fragmented and unstable economic and policy context, any substantial progress towards a supra-national EU approach is unlikely in the short to medium term. The emphasis is now on national-level reforms, where priority is often given to “functional alternatives” to labour immigration (primarily to boost domestic activity rates, including that of settled immigrants). Should the reform process of EU economic governance make further progress, however, a renewed pressure towards more harmonized migrant labour supply policies would be likely.

## **1. A CONCEPTUAL PREAMBLE: “MIGRANT LABOUR SUPPLY POLICIES”**

How many and which kind of workers are needed over a given period of time in a given country or group of countries? How many of these needed workers can be found inside national borders and how many should come from elsewhere? Such questions lie at the conceptual and political heart of the labour migration policy field, but they are seldom formulated in such a broad and comprehensive form. In the European context, the internal and external “sides” of labour market policies have for long been developed, implemented and even researched in separate and largely non-mutually communicating spheres. This was certainly also due to the scarce quantitative relevance and low political status of labour migration policies in Western Europe, after the general adoption of “stop policies” by all traditional immigration-receiving states in the early 1970s. During the following two and a half decades, long-term admission from abroad of non-EU nationals for working purposes was virtually nonexistent. Consequently, research interest also declined and started to grow again only towards the end of the last century, when formal labour immigration policies gradually regained visibility and relevance, especially in some southern European countries and the United Kingdom (Menz and Caviedes, 2010; Menz, 2011).

The formal ban on workers’ recruitment from abroad (with limited exceptions for some highly skilled profiles) did not stop immigration as such (Castles, 1986). On the one hand,

family and humanitarian inflows – i.e., rights-based types of migration over which states have much more limited discretionary control – gained momentum; on the other hand, undocumented immigration and overstaying also grew. As we will see in greater detail below, all these forms of migration – although not formally definable as “labour immigration” – indirectly fed European labour markets. In all EU member states, although to varying extents and on the basis of different regulations, family and humanitarian immigrants had, sooner or later, access to the labour market<sup>2</sup>, and large numbers of undocumented foreign workers were granted the opportunity to regularize their residence and work status (Pastore, 2004; Sciortino, 2011). These indirect labour immigration channels, however, were for long totally neglected: throughout the 1980s and 1990s, non-discretionary migrants were predominantly framed (both in the political and academic sphere) in social and cultural terms, overlooking their actual and potential economic role, except for the cost they represented for welfare systems. As for irregular migrants, their prevalent framing as a security or “law and order” issue obscured the growing weight they were gaining in European labour markets.

The lack of an integrated understanding of the complex ways in which different forms of international migration affect the functioning of European labour markets is not just a long-standing scientific lacuna, which has only recently started to be filled. The lack of attention for the economic impact of non-economic immigration policies and more broadly for the labour market role of non-economic migrants is also a problem for policies, which risks distorting their evidence bases and thereby limit their effectiveness.<sup>3</sup> These shortcomings are becoming more serious in the context of the protracted economic crisis, which makes the efficiency of labour markets increasingly important.

For these reasons, in the framework of the LAB-MIG-GOV project and in the set of papers that have been produced by the LAB-MIG-GOV research team for EPC’s EU-Asia project, we have decided to go beyond a limited focus on “labour migration policies”, restrictively meant as policies for the admission of third-country nationals for working purposes, and to base our accounts and analyses on a broader concept of “migrant labour supply policies”. We have thus taken into consideration not just the way in which selected EU member states directly “feed” their labour markets with immigrant workers, but also what we have called “indirect labour immigration policies” and even, in the cases of and to the extent these are relevant, active labour market policies aimed at facilitating the access of different categories of immigrant residents to the labour market.

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<sup>2</sup> EU legislation played an important harmonisation role in this field, in particular with the directives on family reunification and reception conditions of asylum seekers which imposed temporal limits by which family migrants and asylum seekers have to be recognised with full access to the labour market: in either case restrictions to full access to employment or self-employment cannot exceed 12 months (See art. 14, Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification and art. 11 of the Council Directive 2003/9/EC of 27 January 2003 on reception conditions for asylum-seekers).

<sup>3</sup> The economic function of non-economic labour migration policies and the “functional equivalences” which often exist between different branches of migratory policy have only recently become a subject of interest for migration policy scholars; see in particular the important work in this direction by Claudia Finotelli and Giuseppe Sciortino (2009) or by Claudia Finotelli (2012).

## 2. NATIONAL DEBATES AND PUBLIC OPINION TRENDS

The four country papers produced for this project and the case studies carried out in the framework of the LAB-MIG-GOV project clearly show that the European Union is neither a unified nor a homogeneous arena for public debates on labour migration.

In a general context in which a severe and protracted economic crisis is firmly putting economic uncertainty and occupational problems at the top of the pyramid of perceived public concerns and political priorities, the extent to which labour immigration is losing salience as an issue varies from country to country. In the EU countries less affected by the crisis, like Germany and Sweden, where labour shortages continue to bite and there continues to be a call for selective import of foreign workers, it is not surprising that the issue maintains high visibility and policy relevance (see below, par. 4.2).

Besides the intensity, the tones in the national public debates on labour migration and the geography of the players also vary deeply from one country to another. Here too, the connection with the broader economic outlook of each country is strong, but the nature of the domestic entrepreneurial structure also plays an important role: where the economy fares better, and where large companies and multinationals are more important and vocal as public actors, the demand for labour immigration (and sound labour immigration policies) unsurprisingly tends to be more explicit and the debate more focused on the positive nexus between labour mobility and competitiveness. This happens in Germany and Sweden, but used to be the case also in Spain and the UK prior to the worsening of the crisis. Conversely, where migrant labour demand, although substantial, is highly fragmented and dispersed across a great number of micro and small enterprises or private households, employers seem to play a secondary role in the public debates about immigration and sound labour migration policies and the nexus between (labour) immigration and economic competitiveness and growth remains largely overlooked. Italy has represented a relevant example in this regard (Salis, 2012; Pastore, Salis and Villosio, 2012).

National variations in the intensity and dominant tones of public debates are closely connected, in a complex net of reciprocal influences, with the differences in the orientation of domestic public opinions. A very valuable source for analysing public attitudes on immigration in some of the largest labour importing countries in Europe (and North America) is provided by the comparative opinion survey *Transatlantic Trends Immigration* (TTI). This poll has been regularly repeated with the same methodology for a few years and this makes TTI data particularly precious because they provide a diachronic perspective and allow the reconstruction of public opinion trends over time.<sup>4</sup>

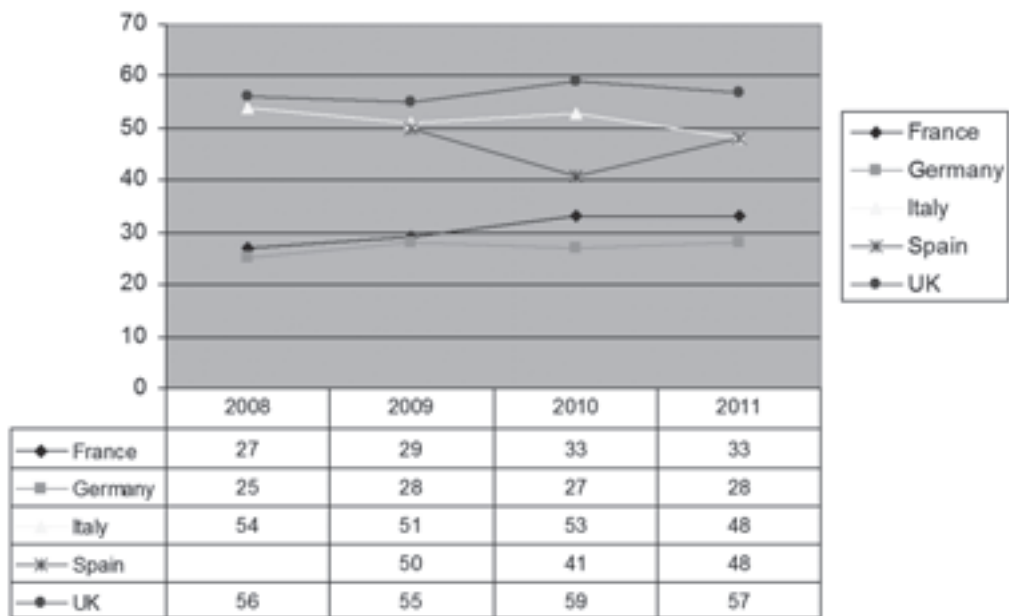
The first important conclusion coming from the diachronic analysis of TTI data is that a common European public opinion on the issue does not exist and that levels of anxiety about immigration vary significantly from country to country. Figure 1 below, for instance, shows that the share of respondents who think that there are “too many immigrants” is lowest in France and Germany (which are actually also the two countries in the sample which

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<sup>4</sup> For more details see: <http://trends.gmfus.org/immigration/about/>

experienced the lowest levels of immigration in the last few years) and highest in Italy, Spain and, above all, Great Britain. Nevertheless, as specific analysis carried out on the British sample of the TTI poll seems to show, the divide between pro- or anti-immigration respondents is largely explained by intergenerational cleavages: age, education, economic security, and migrant heritage largely explain individual attitudes towards immigration, with the latter three factors being strongly related to the former. As a result of this combination, older cohorts seem to be much more hostile to new immigration than younger cohorts (Ford, 2012). It should be added, however, that in none of these countries, have concerns about immigration as measured by this kind of questions experienced an upsurge in coincidence with the worsening of the economic crisis since 2008.

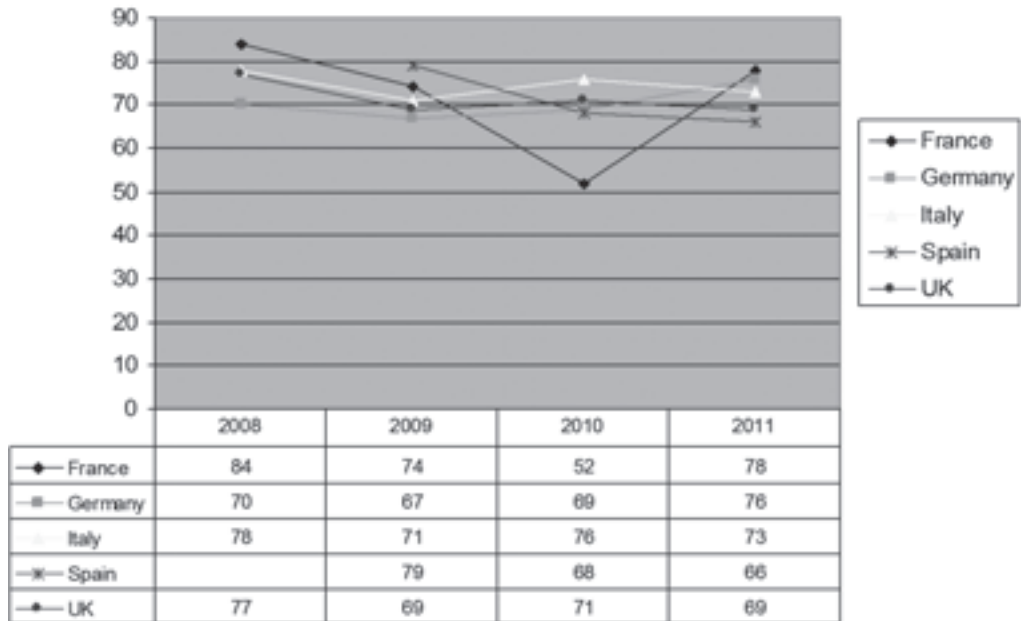
**Figure 1: Share of respondents that think that immigrants are “too many” (based on TTI 2011, Table Q2a).**



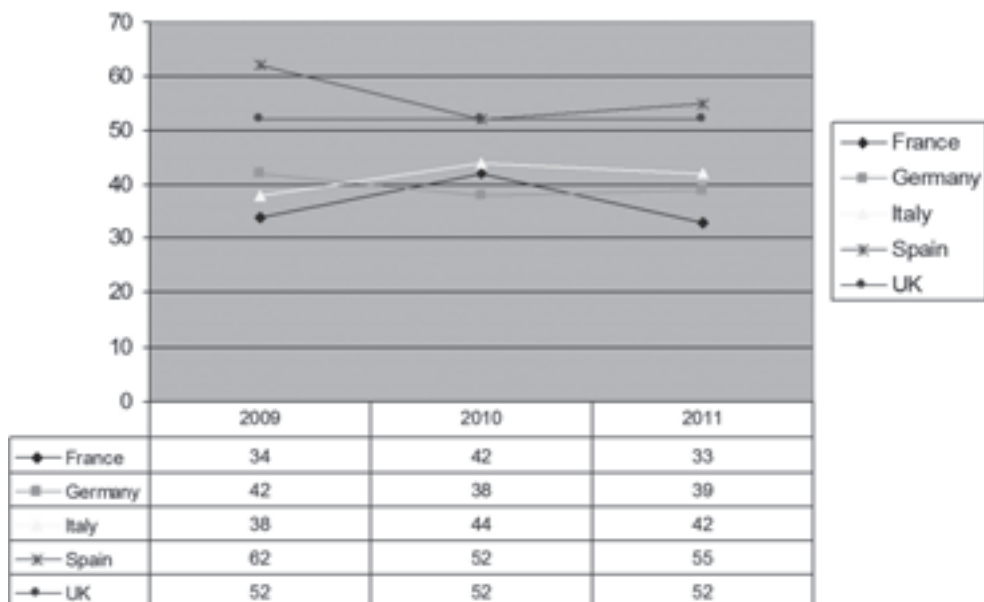
A second important feature of the public opinion landscape is a substantial awareness (albeit, here too, with deep national variations) of the overall positive economic role played by foreign labour. As shown in Figure 2, a more or less vast majority in all national samples believe that immigrants are complementary to natives in the labour market. A less homogeneously favourable assessment, however, emerges from another question of the survey: as a matter of fact, in Spain and the UK, the majority of respondents believe that immigrants are “bringing down the wages of citizens” (see Figure 3).



**Figure 2: Share of respondents that think that "Immigrants generally help to fill jobs where there are shortages of workers" (based on TTI 2011, Table Q18.2).**



**Figure 3: Share of respondents that think that "Immigrants bring down the wages of citizens" (based on TTI 2011, Table Q18.4).**



Public opinion trends around emotional issues such as migration tend to be particularly volatile and therefore need to be interpreted with great caution; there is also a need to be aware that they are not immediately translated into electoral choices, which are instead the results of much more complex alchemies. With all these necessary *caveats*, the public opinion orientations, of which we have given a few glimpses above, remain a crucial factor for understanding policies.

We will come back to the relations between policy preferences expressed by citizens and actual policy choices at the end of this paper. Before that, however, it is worth having a closer comparative look at the actual contents and tendencies in labour migration policies – and other policies affecting foreign labour supply – in some European countries.

### 3. DIFFERENCES IN THE COMPOSITION OF IMMIGRATION INFLOWS AND WHAT THEY REVEAL

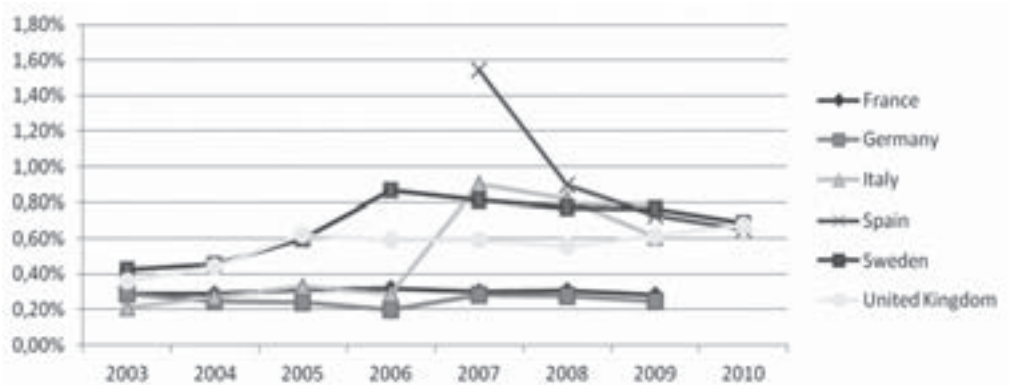
It is useful, although it may sound illogical, to start our comparative analysis from what could be viewed as the end, namely from the outcomes of policies, i.e., from the actual size and composition of migratory inflows in different countries. Quantitative and qualitative immigration trends are obviously not determined *only* (maybe even not *mainly*) by policies. Economic conditions at home and at destination, transnational connections and social networks, and symbolic and cultural factors: all of these clearly play very important roles, although it is extremely hard to weigh each factor in comparison with others. But, as migration research tends now to recognize more explicitly and consensually than in the past, policies (not just narrowly meaning migration policies) do count.<sup>5</sup> In broad terms, this is confirmed if we look at recent immigration trends in the five largest EU countries (which are also the largest immigrant destinations in the continent), plus Sweden.

The first obvious thing to be noted is that the overall size of inflows varies deeply over time and across countries. Let us use as a reference the harmonised figures provided by OECD (on the basis of national data) concerning “permanent migrants”, which are defined by the Paris-based organisation as “persons who have been granted the right of permanent residence upon entry, persons admitted with a permit of limited duration that is more or less indefinitely renewable plus some entering persons with the right of free movement (such as EU citizens within the European Union)”. Based on this definition, tourists, business visitors, seasonal workers, international students, exchange academics and researchers, trainees, service providers, etc. are excluded from the statistics on permanent immigration (Lemaitre, Liebig et al. 2007: 3).

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<sup>5</sup> For a useful and updated review of the literature on policy effectiveness in the migration field, see Czaika, M. and H. De Haas, 2011.

**Figure 4 – Inflows of permanent migrants in selected EU countries as % of the total population, 2003-2010**

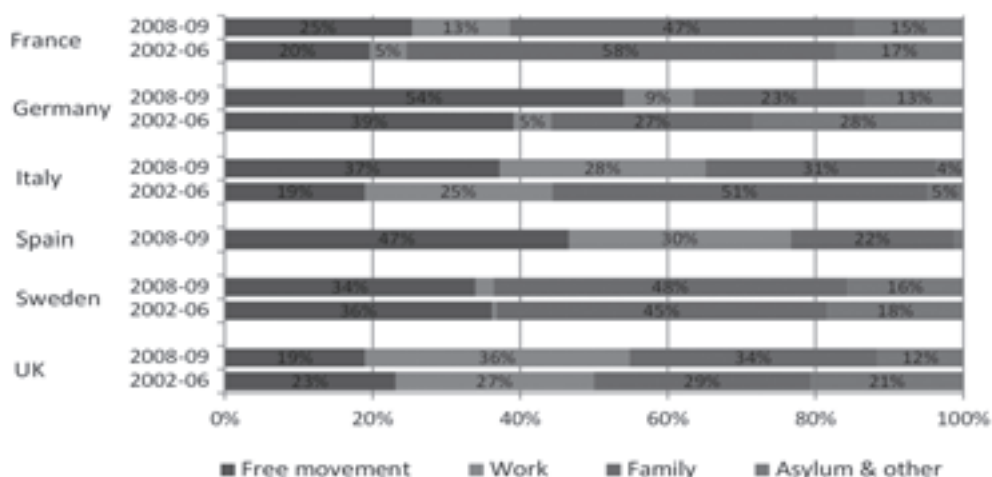


Source: OECD – Sopemi, various years.

These figures clearly show that, during the recent years, the levels of permanent immigration, as a percentage of the total resident population, have remained constantly modest in France and Germany, while they have been growing in Italy and Sweden with a relative slowdown during the current period of crisis. In the UK, annual inflows of permanent immigration were significant throughout the period considered and, different from what was observed elsewhere, they have continued to grow during the years of crisis. Unfortunately, data on Spain are only available since 2007 but the trend there is quite evident: Spain has been the EU country with the largest inflows relative to its total population, but it is also the country where the impact of the rising unemployment rate on migration flows has been the most significant.

Even more interesting than the actual size of immigration flows is, for the specific purposes of this paper, their composition in terms of relative weight of the different channels of admission and of immigrants' statuses upon entry. In Figure 5, such composition is schematically represented on the basis of the following four macro-categories used for comparative purposes by OECD: a) inflows which are the result of free movement, which in the case of EU countries consists essentially of intra-EU mobility; b) non-seasonal work-motivated admissions; c) family-related ones, i.e., mainly family regroupments and migration connected with transnational family formation (so-called "wedding migration"); and d) asylum migration and all other residual admission channels.

**Figure 5 – Distribution of permanent immigration flows by category of entry in selected EU countries, 2002-2006 and 2008-2009<sup>(a)</sup> (%)**



Source: OECD – Sopemi, 2012 and previous years.

Note: 2007 data on permanent immigration by category of entry was not published in the Sopemi reports

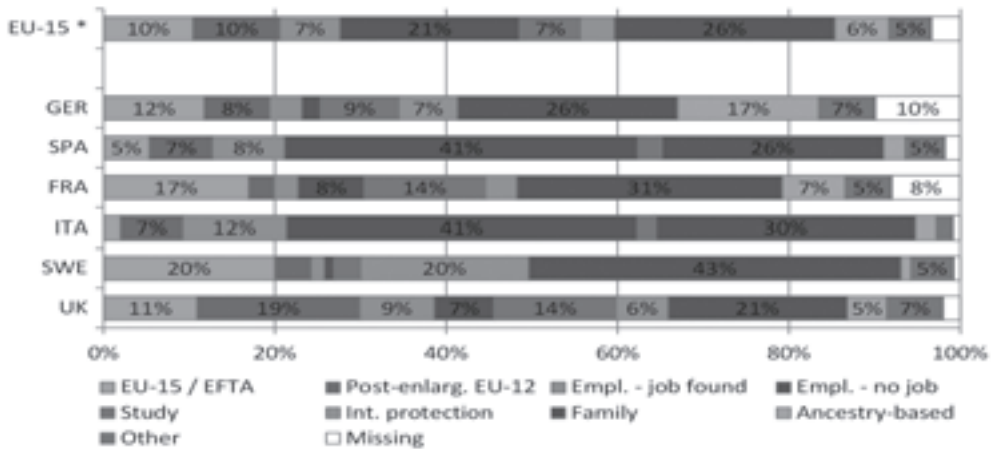
The substantial differences and few commonalities arising from this graph could be summarized as follows:

- The share of immigration for working purposes – although on the rise everywhere (but this is a pre-crisis picture, which will have to be corrected, for sure in quite substantial terms, as soon as more recent data become available) – varies enormously across the analysed countries, from the lowest level of Sweden to the highest of the UK (36% of total permanent inflows; average of 2008-2009).
- “Free movement” – i.e., predominantly work-driven mobility within the European Union of EU citizens, mainly from the Eastern European countries having access to the EU in 2004 and 2007 – represents a very important component of inflows everywhere, albeit with significant differences among countries.
- Important differences are also observed in the share of rights-based migration: asylum inflows and other forms of humanitarian migration are a residual (and declining over time) but nevertheless sizeable component everywhere, except in Italy and Spain. Family-related migration is an important phenomenon in all target countries, but it emerges as the main component of inward long-term mobility only in France and Sweden.

These essential features and the fundamental heterogeneity in country-specific “immigration blends” are confirmed if we look at survey rather than administrative data: Figure 6 compares (again with regard to the six LAB-MIG-GOV countries) the composition of representative samples of immigrant workers on the basis of the European Labour Force Survey (EU-LFS)

2008 *ad hoc* module (Cangiano, 2012). In this case, the categorization of immigrants on the basis of their status upon entry is different and more detailed than the one used by OECD<sup>6</sup>.

**Figure 6: Composition of migrant workforce by status on entry, recent migrants (entry 1998-2007), 2008 (%).**



Source: Cangiano 2012, based on EU-LFS

Note: EU-15\* refers to the pooled sample of immigrants resident in the EU-15 countries.

Whether one looks at OECD or LFS data, it stands out clearly that, from a social and economic point of view, it makes little sense to talk about “immigration” from an undifferentiated EU perspective. The phenomenon is still decisively shaped by national contexts, where policies play an important role. In particular, the share of work-motivated flows on the total varies deeply from country to country.

In stressing this, however, one should not either obliterate the fact that channels of admission and status upon entry do not pre-determine labour trajectories and that – as EU-LFS data analysed by Cangiano (2012) demonstrate – many family and humanitarian migrants do indeed take active part in the labour market. This fact has long been insufficiently considered in European debates on immigration, which have often tended to dismiss rights-based inflows as inevitably economically unproductive. Empirical studies show that this is not true, and this is the reason why we focus this paper on migrant labour supply policies rather than only on labour migration policies in a narrow and formal sense.

Besides, the extent to which non work-motivated immigration flows end up playing an active role in European labour markets is critically affected by the capacity of active labour

<sup>6</sup> Based on 2008 EU-LFS data Cangiano (2012) has created nine different entry status categories by combining variables related to country of birth, nationality and year of residence, country of birth of parents, main reason for (last) migration and the year of acquisition of citizenship. As a result, the identified categories were: EU15/EEA immigrants, Post-enlargement EU 12 immigrants, ancestry-based immigrants (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), and migrants for reasons of employment – job found before migrating, employment – no job found before migrating, international protection, family, study or other residual categories.

market policies to reach and include minorities of migrant origin. As we will see below, this is becoming a crucial policy challenge in the context of the crisis.

## 4. POLICY TRENDS, BEFORE AND DURING THE CRISIS

Which are the policy choices behind the heterogeneous immigration trends described above, and how are they evolving? This comparative review cannot avoid assuming that the crisis is a watershed and a turning point in migration policy trends at the continental level. We will therefore structure this paragraph along this chronological cleavage. Nevertheless, it has to be stressed that the crisis, as it is hitting countries and regions in Europe in a very asymmetrical way, is also affecting differently migration policy-making. As a result, as we will see, the pre-crisis map of similarities and differences among national approaches is emerging deeply transformed by the structural changes of the last five years.

### 4.1 Pre-crisis diverging evolution, but...

In the decade before the outburst of the crisis, the European Union as a whole experienced an impressive, but very uneven, immigration boom (See table below).

**Table 1: Foreign population as % of the total population in selected EU countries, 2001 and 2011**

	2001	2011
France	5.3	5.9
Germany	8.8	8.8
Italy	2.2	7.5
Spain	2.9	12.3
Sweden	5.4	6.6
United Kingdom	4.5	7.2

Source: EUROSTAT, 2012.

Two very different areas – Southern Europe (primarily Spain and Italy, followed by Portugal and Greece) and the Atlantic isles (UK and Ireland) – emerged as the main motors of such strong expansion in immigration, largely made up of low-skilled and demand-driven labour flows: the share of the foreign population in Italy and Spain of the total resident population has more than doubled in the last decade and substantial increases have been observed in the United Kingdom and Sweden<sup>7</sup>, while the indicator has remained stable overall in both France and Germany. In both these geographical areas, the first three-quarters of the 2000s were a period of intensive experimentation in the field of migrant labour supply policies, aimed at steering – although in very different forms – the expansive migratory trend.

On the other hand, in the European core, represented by France, Germany and the Benelux, (but also in Northern European countries) the same period was marked by a more

<sup>7</sup> When considering these figures, one should also bear in mind that Sweden and the UK have more open citizenship laws compared to those adopted in Italy and Spain. This could determine greater naturalization rates and, therefore, an unknown but significant share of the foreign population may gradually disappear from official statistics.

conservative approach, which did not depart from the restrictive management of labour migration which had been prevailing during the previous two decades.<sup>8</sup>

The policy experimentation carried out in some EU countries since the late 1990s in the field of labour migration management focused mainly on two fundamental technical challenges:

- I) *How to assess domestic labour shortages*, i.e., labour force needs which cannot be satisfied properly (both in terms of quality and timing) through domestic offer and, therefore, require *ad hoc* immigrant admissions. In this field, for instance, the practice developed in the UK since the establishment of the Migration Advisory Committee (MAC) is of particular interest;<sup>9</sup>
- II) *How to single out and, if necessary, train potential labour migration candidates prior to migration*, i.e., *when they are still in the sending countries*. Whereas in some of the countries we have studied – such as the UK or Sweden – this selection has been entirely left to market dynamics, in some Southern European countries experiments have been made to set up screening (and, in some cases, also training) mechanisms on the basis of bilateral agreements with sending countries.<sup>10</sup>

In another important policy area, however, policy innovation has been much less substantial. We are referring to the design of procedures aimed at facilitating the matching between specific employers experiencing labour shortages and specific foreign workers/candidates for migration. In theory, such crucial passage can be regulated in two opposite ways: by putting on the employer the burden (and the opportunity) to go and look for his/her prospective employees abroad (*employer-led*, or *demand-driven matching mechanisms*); or, instead, by allowing the job-seeking migrant to enter the immigration country in order to look for an appropriate employer (*worker-led*, or *supply-driven mechanisms*).

These two approaches are evidently very different in terms of both the basic pre-conditions for their functioning and their broader implications. Employer-led systems can operate effectively and smoothly only if employers are practically able to screen and select candidates in the countries of origin, either by entrusting an agent there or at distance, by electronic means. This selection abroad can realistically be expected to take place only when the employer is a large enough company and/or when the sought-after worker is highly skilled and his/her skills can be assessed at distance (through a CV, an interview via computer and similar means). On the contrary, small and medium-sized enterprises, where the bulk of existing labour needs concentrates, typically face greater difficulties in engaging in transnational recruitment activities and lack the financial and organizational resources to undertake complex and long-lasting procedures to bring the needed workers from abroad.

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<sup>8</sup> For a more analytical overview of similarities and differences in the main EU countries' approaches to labour migration, before and during the crisis, see Pastore, 2011.

<sup>9</sup> See the paper on the UK case, written by Camilla Devitt on the framework of the EU-Asia Dialogue project.

<sup>10</sup> For more details, see LAB-MIG-GOV country studies and Claudia Finotelli's paper on Spain produced for the EU-Asia Dialogue project.

On the other hand, worker-led/supply-driven systems raise the politically sensitive question of what happens if and when the job-seeker does not find a job within a reasonable lapse of time (and before the expiry of the visa, in all cases in which an entry visa is required). In Western Europe, over the last few years, the concern that the admission of foreign job-seekers might lead to irregular immigration through overstaying has been felt very strongly by political elites and policy-makers, pushing them to give systematic priority to employer-led matching mechanisms while increasingly neglecting the experimentation of supply-driven schemes.

Over the 2000s, this technical (but politically motivated) convergence on demand-driven systems took place in a rather wide and undifferentiated way, in countries that – as illustrated at the beginning of this paragraph – were otherwise diverging in their overall attitude towards labour migration. The growing subordination of admission for working purposes to the pre-existence of a binding job offer (or even of a work contract, as with the Italian “*contratto di soggiorno*”, introduced in 2002) brought a general increase in the rigidity of European admission systems. An important consequence is that – particularly in Southern European countries, where the demand for immigrant labour is largely issuing from small and medium-sized enterprises and predominantly targeting low-skilled workers – admission systems largely failed in their institutional task. In spite of the efforts in needs assessment and in increasing cooperation with sending countries, labour migration policies continued to score poorly in terms of their capacity to actually fill labour shortages with foreign workers admitted on an *ad hoc* basis. As a consequence, alternative channels of foreign labour supply, primarily *ex post* regularisation of undocumented immigrants and (since 2004) free movement of EU citizens from newly accessed Eastern European states, maintained or even increased their importance.

## 4.2 Converging responses to the crisis, but...

The financial and economic crisis, with its heavy occupational toll, has obviously affected in a profound way the policy landscape sketched above. As a first response, most governments used their leverage on the so-called “discretionary migration” (as opposed to the sphere of rights-based migration, where constitutional and international legal obligations reduce the scope for legislators’ discretion) by reducing entry quotas (where existing), cutting shortage occupations lists or raising stakes for individual admission (e.g., by setting higher thresholds for minimum salary upon entry).

Although not central to our argument, a paradoxical, although hardly avoidable, side-effect of this sort of anti-crisis migration policy strategy is worth mentioning here: with brakes put on labour admission channels, the relative weight of non-labour-oriented entries on the total migratory inflows obviously tends to increase. Typically, the share of family reunions



and other categories of migration on average marked by lower activity rates<sup>11</sup> therefore grows in a phase in which just the opposite would be economically desirable.

Besides tightening admission taps, a small minority of European governments has adopted voluntary return schemes in an attempt to drain, at least in part, the expanding pool of unemployed immigrants. In most cases, as in the Spanish one, however, such schemes have been virtually dropped rather quickly, after having proven to be unable to attract sizeable numbers of candidates for repatriation, partly as an effect of the limited size of financial incentives, but more importantly due to the wide reach of the crisis, which is affecting heavily also many sending countries and, therefore, discouraging attempts to return.

Another spreading policy trend, which goes beyond the sphere of immigration policies *stricto sensu*, is worth mentioning here. Faced with high levels of unemployment, which are growing even faster among immigrants than among natives, public authorities are putting increasing emphasis on the necessity to better target active labour policies in order to enhance their inclusive potential with regard to foreign workers. Such a trend is particularly hard to map and assess because, in most EU member states, labour market policies are strongly decentralised and vary significantly on a regional basis. Taking the Italian case as an example, it is interesting to note that enhanced labour market integration of foreign workers, particularly through active policies such as training and re-training, has been set as one of the strategic priorities of recent integration policies set in 2010 (Salis, forthcoming).

Besides the reduction of immigrant workers' unemployment, the objective to raise the activity rate of non-discretionary migrants has also often been cited by the officials interviewed for this research as a growing priority in a context of crisis.

In spite of the restrictive policy trends that we have been referring to, the crisis is not erasing labour shortages altogether, and it is not suppressing the need for selective admissions. But, as the OECD stresses, in such a difficult economic context, the approach to active labour migration policies is changing in some fundamental way, with growing attention and emphasis on selection criteria:

Migration policies as a factor of economic development also remain. 2011 witnessed many labour immigration schemes maintained, often with a more selective approach, giving less attention to "quantity" and more to the presumed "quality" of immigrants. (OECD 2012, p. 120).

But, given this general tendency towards greater selectivity based on the individual qualities of would-be migrants, the European geography of labour migration policies is shifting. The set of studies carried out for this project and for LAB-MIG-GOV show clearly that the countries less affected by the economic and occupational crisis (Germany and Sweden, among our case studies) are also the ones where a more persistent policy dynamism is observed,

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<sup>11</sup> Family and humanitarian migrants or international students typically display lower activity rates and higher unemployment rates compared to labour migrants, with systematic gender differences within their respective categories. According to data of the 2008 EU-LFS analyzed by Cangiano (2012), inactivity rates of recent (i.e., arrived between 1998 and 2007) non-EU immigrants range from 5% for male labour migrants entered with a job offer to 63% for female humanitarian immigrants.

with the landmark migration policy reform adopted at the end of 2008 in Sweden and with the important (although less mediatized) series of legislative and administrative adjustments implemented in Germany since 2010.<sup>12</sup> On the other hand, the countries which had been driving policy change in the pre-crisis phase (see above, par. 4.1) are currently going through a restrictive phase, in which work-oriented admission schemes are being either frozen or actively dismantled.

The European political geography of labour migration management which had marked the 2000s, with Southern European countries and the UK standing out as the main engines of policy change and a less dynamic continental core, is not actual any more. The new economic cleavages produced by the asymmetrical impact of the economic crisis – with a renewed German centrality and ever more acute challenges for European peripheries – are clearly reflected also in the sphere of labour migration and its regulation.

## **5. WAYS AHEAD: ECONOMIC IMPERATIVES AND POLITICAL CONSTRAINTS**

By deeply transforming Europe's economic and political geography, the crisis is also highlighting the continent's structurally problematic relations with labour migration.

On the one hand, it is hard to deny that some of the worst-hit countries are also those where some of the most migrant-intensive economic models had been gaining ground in the previous years (the most evident examples being Ireland and Spain, but similar arguments can apply to most Southern European countries). With hindsight, it is easy to state that these member states have been too little selective in their management of labour inflows, focusing more on short-term gains associated with large-scale, low-skilled immigration than on long-term sustainability.<sup>13</sup> In order to turn labour immigration into an ingredient for an effective exit strategy from the crisis, rather than let it become a worsening factor, all these countries need deep reforms in their migrant labour supply policies.

On the other hand, however, and somehow symmetrically, some of the countries which are faring better in the crisis (Germany, in the first place), are also among those which, in the previous phase, had adopted a more cautious and selective attitude in the field of admission of migrant workers. Without obviously suggesting any causal relation between these two dimensions, it is undisputable, however, that precisely the better economic outlook of these latter countries, associated with their more or less gloomy demographic profiles, call for further liberalizing innovation in their labour migration management strategies. As we have shown in the case studies, some of these countries (e.g., Sweden) have already started picking up the challenge, but these reforms need constant maintenance and adjustment: as a matter of fact, migration policies (more than other sectoral policies, which deal with an intrinsically dynamic phenomenon) cannot be but a work in progress, and even more so in times of deep economic uncertainty.

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<sup>12</sup> See the papers on Germany and Sweden written, respectively, by Barbara Laubenthal and Monica Quirico for the EU-Asia Dialogue project.

<sup>13</sup> For an application of such arguments to the Italian case, see Pastore, Salis and Villosio, 2012.

Labour migration policy reform thus imposes itself throughout the EU, albeit in very different forms, with quite heterogeneous sets of priorities and constraints. These fundamental differences, by the way, are likely to hamper substantial progress in the EU agenda on labour migration also in the future, unless (or until) the deepening of common European economic governance reaches the stage where autonomous labour market policies at the national level would not be possible anymore.

Are European intellectual and political elites aware of the urgency to innovate in the field of labour migration? And if so, what are their strategic orientations? Unfortunately, there are no positive and easy answers to these questions. As already stressed (see par. 2), the crisis is pushing down immigration in the ladder of political priorities, although not everywhere to the same extent. As for the possible paths of policy innovation, the main ideas which are floating around in the EU are controversial and based on weak bases, in terms of both empirical evidence and political consensus.

Should an observer condense the dominant European thinking on labour migration into three attributes, these would probably be: *regular* (i.e., no more regularisations)<sup>14</sup>, *temporary* (as reflected in the strong programmatic emphasis on “circular migration schemes”)<sup>15</sup> and *selective* (meaning that highly skilled immigrants are generally welcome, unlike low- and medium-skilled ones).

Most scholars are suggesting caution on all these three *mots d'ordre*, in that regularisations are often pragmatically defended as the “least worst” solution in certain circumstances, circular migration is often described as a spontaneous reality which risks being hampered by restrictive mobility regimes, and the exclusive priority given to high-skilled migration is often denounced as wishful thinking at risk of backfiring (and, thus, either remains on paper or generates skill/brain waste).

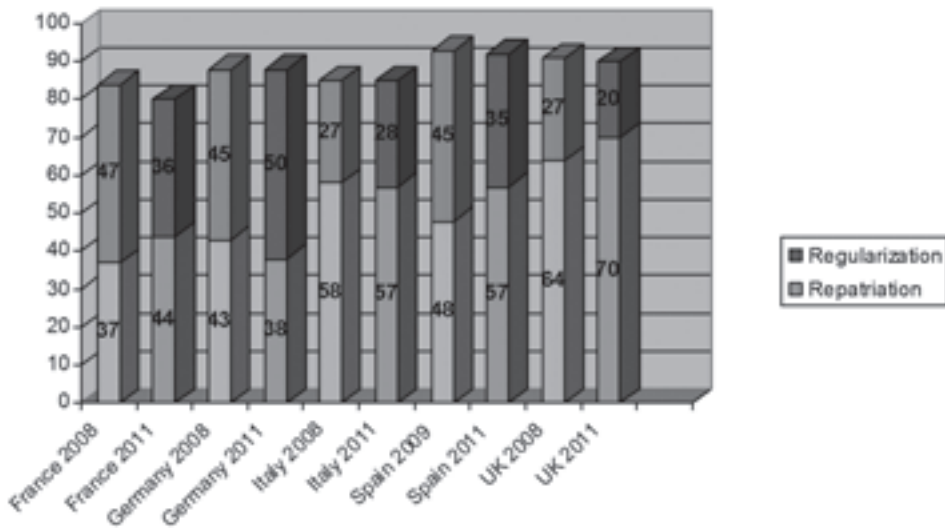
This is not the place to discuss these important and complex issues in any detail. It is however useful to point out that the three normative principles synthesised above, besides resting on weak empirical foundations, seem to suffer also from a (still too) weak political legitimacy. As a matter of fact, available opinion surveys seem to show that: a) sizeable minorities are everywhere in favour (or not *a priori* against) regularizations (see below, Figure 7); b) substantial majorities of European citizens almost everywhere have a preference for permanent over temporary admission (see Fig. 8); c) Europeans tend to prefer (and probably feel less threatened by) a labour migration policy targeting the low-skilled (but on the basis of a definite job offer) rather than a supply-driven approach giving priority to the high-skilled (see Fig. 9).

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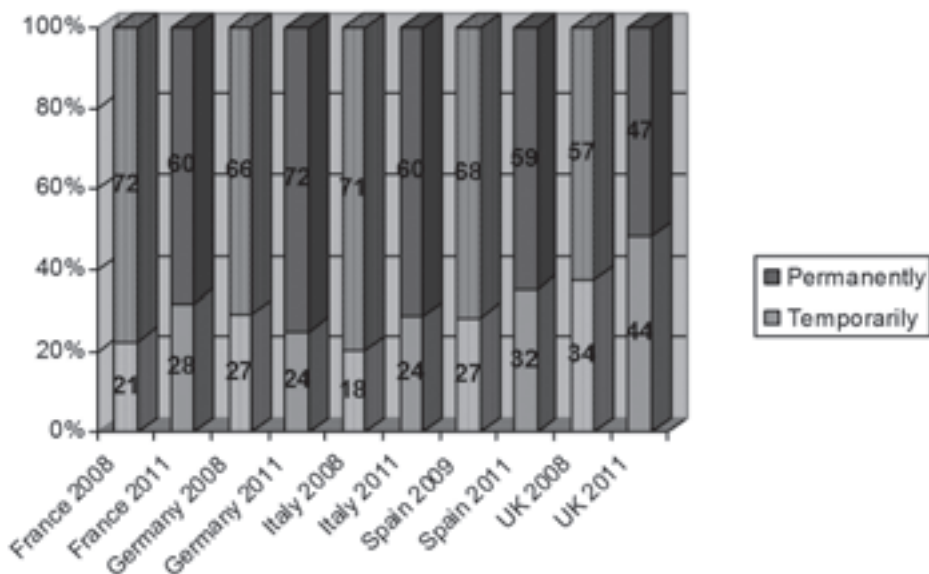
<sup>14</sup> See the following passage of the *European Pact on Immigration and Asylum* of 24 September 2008: “...the European Council agrees: [...] to use only case-by-case regularisation, rather than generalised regularisation, under national law, for humanitarian or economic reasons” (full text available at [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/jl0038\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/jl0038_en.htm)).

<sup>15</sup> At EU level, the concept was introduced by the European Commission’s Communication of 16 May 2007 on “circular migration and mobility partnerships between the European Union and third countries”, COM(2007) 248 final, available at page: [http://europa.eu/legislation\\_summaries/justice\\_freedom\\_security/free\\_movement\\_of\\_persons\\_asylum\\_immigration/114564\\_en.htm](http://europa.eu/legislation_summaries/justice_freedom_security/free_movement_of_persons_asylum_immigration/114564_en.htm).

**Fig. 7: Distribution of respondents to the question: "Should illegal immigrants be required to return to the country of origin, or should they be given the opportunity to obtain legal status allowing them to stay?" (based on TTI 2011, Table Q12).<sup>16</sup>**

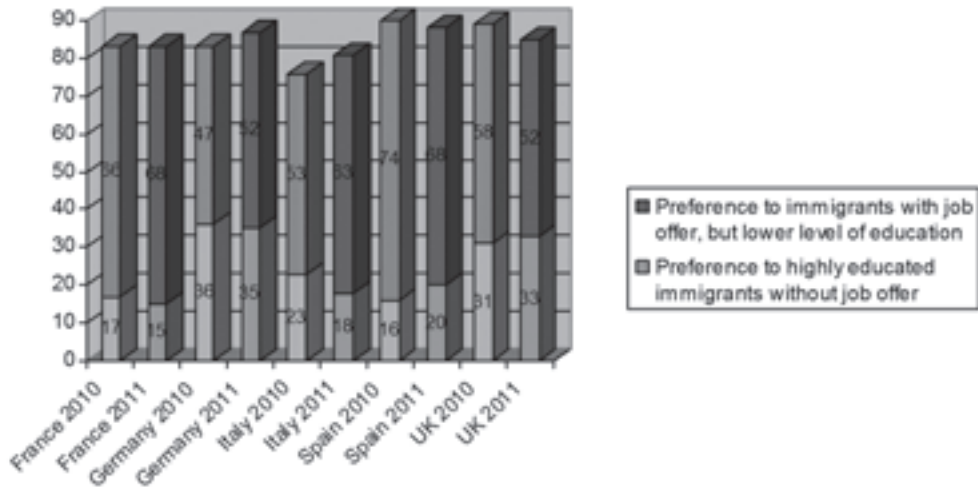


**Fig. 8: Distribution of respondents to the question: "Some people think that legal immigrants who come to (COUNTRY) to work should only be admitted temporarily and then be required to return to their country of origin. Others feel that they should be given the opportunity to stay permanently. Which comes closer to your point of view?" (based on TTI 2011, Table Q11).**



<sup>16</sup> In this figure and the following ones, column totals may not amount to 100, because refusals to answer and "I don't know" are not included.

**Fig. 9: Distribution of respondents to the question: “In deciding which immigrants to admit to COUNTRY, should the government give preference to immigrants who have a high level of education but no job offer, or should it give preference to immigrants who have a job offer in the COUNTRY but a lower level of education?” (based on TTI 2011, Table Q7).**



What can be drawn from the analysis of these opinion survey data is that there is a substantial and persistent gap between public opinions' policy preferences and the dominant political thinking of European elites on labour migration. In order to fill this gap, and to reconcile economic imperatives and political constraints, a long-term work of evidence-gathering, policy evaluation and pedagogical communication is needed.

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# Managing Labour Migration in Times of Crisis – The Spanish Case

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## ABSTRACT<sup>1</sup>

Spain has been considered the most successful labour migration model among southern European countries. The economic crisis, however, shed a light on the shortcomings of the Spanish employer-oriented model and its use of labour migration to compensate for the low technology level of the Spanish economy. This report analyses the main components of the Spanish labour migration model, focusing both on its strengths and on the weaknesses that emerged after the economic crisis of 2008. In the first section, the report provides a general overview of the main recruitment mechanisms of the Spanish labour migration model, such as the individual recruitment, quota regulations (*contingente*) and special avenues for high skilled workers. The second part of the analysis compares the relevance of the qualitative and quantitative criteria in the Spanish model, devoting special attention to the role played by “shortage lists” to avoid any foregoing labour market check. The third section assesses the capacity of the different types of recruitment instruments to match labour supply and demand, devoting special attention to the relevance of the collaboration between government and employers and of bilateral agreements with sending countries. Finally, the report analyses the relevance of regularisation processes as functional equivalents in the Spanish regime, showing how they provided *a posteriori* the needed foreign labour force when official admission policies failed. The final part of the report summarizes the characteristics of the Spanish regime, arguing that efficient labour migration governance does not only depend on well-designed admission policies, but also on the dysfunctionalities of a given country’s production system.

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## 1. INTRODUCTION

The transition of Italy, Spain, Portugal and Greece from labour-exporting to labour-importing countries was considered to be one of the most important new developments in the European migration landscape of the 1990s (Arango 2000). In Spain, immigration represented, without any doubt, one of the two most important social changes since the end of Franco's dictatorship and the approval of the Spanish Constitution in 1978. Immigration to Spain already experienced sensible growth in the 1990s. However, it is only at the beginning of the new century that migration flows to Spain started to increase rapidly and intensively. Between 2000 and 2011, foreign population grew from one million to almost six million, and Spain became one of the major immigration-receiving countries in Europe after having been an emigration country for decades. During the so-called "prodigious decade" of economic and demographic growth (Oliver 2008), the foreign-born population in Spain reached 14.3 per cent of the Spanish population, i.e., very close to the percentages of "older" immigration countries such as Germany (12.9 per cent) or the Netherlands in 2009 (11.1 per cent) (OECD 2011). With respect to the type of migration flows, labour migration certainly plays the lion's share in the Spanish migration regime. Among the third-country nationals legally residing in Spain at the beginning of 2012, 68 per cent already have a long-term residence permit. Among those with a temporary residence permit, 46 per cent have a permit for work purposes, and 26 per cent have a permit for family reasons. Only a small portion of immigrants to Spain currently consists of asylum-seekers and students.

Nevertheless, the high number of foreign workers in Spain was not the result of an efficient immigration policy. For almost two decades, Spain lacked adequate entry channels to meet the growing demand for foreign low-skilled labour to meet the labour requirements that could not be fulfilled by natives, who preferred to wait for better employment conditions rather than take low-skilled and low-paid jobs (Izquierdo-Escribano 1993; Cachón 2002; Arango 1993). The increasing labour demand in the Spanish labour market was accompanied by the almost complete absence of a political debate on how recruitment of foreign workers should be regulated. Similar to other Southern European countries, Spain's main commitments to the European membership was to strengthen its border controls and to fight against irregular migration.<sup>2</sup> With respect to foreign labour, Spanish law allowed foreign workers to be hired only if natives or citizens from "privileged" countries were unavailable for the same job. The so-called "labour market check" was meant to protect the Spanish labour market in times of high unemployment rates. The Spanish law also allowed for the establishment of yearly contingents of foreign workers under the name of the *contingente*, which offered yearly a certain number of entry slots for a predefined range of occupations in a limited number of economic sectors.

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<sup>2</sup> As a matter of fact, the first socialist government approved an Asylum and Refugee Law in 1984 and the Foreigners Bill (*Ley de Extranjería*) n. 7 of 1985, which was more focused on administrative issues regarding the entry and residence of foreigners than on conceiving effective regulation instruments (Arango 2000).

All existing legal channels to recruit labour migrants required a foreign worker to be recruited before his (or her) entry in Spain, which produced slow and cumbersome recruitment procedures. One of the most significant consequences of the lack of efficient recruitment channels was the growth of irregular migration and irregular employment, which were favoured by an extended informal economy, very weak labour market controls and a widespread toleration of irregular residence (Baldwin-Edwards 1997; King, Black 1997). In such a context, mass regularisations became the most suitable policy instrument for addressing the challenge represented by irregular migration whereas the *contingente* was used to regularise immigrants who had already found jobs in the country (Arango 2000).

Only at the beginning of the new century did several Autonomous Communities<sup>3</sup> and employers' associations start to support the introduction of more efficient tools for the recruitment of foreign workers. Both parties had become aware that economic growth in Spain also depended on the creation of efficient recruitment channels for foreign labour. The recruitment of foreign workers was also supported by the two largest trade unions (*Unión General de Trabajadores* and *Comisiones Obreras*). However, the unions also claimed that there was a need for the protection of native workers to avoid salary dumping due to immigration (*El País*, 13/07/2000). *Comisiones Obreras*, for instance, claimed that policy makers had to analyse very carefully the national employment situation before opening new entry avenues for foreign workers (*El País*, 22/07/2000).

Despite the increasing requests proceeding from employers' associations, Autonomous Communities, trade unions and the *Partido Popular* government (1996-2004) still presented immigration as a threat to national security rather than as an opportunity for the country's labour market. It was only in 2004 that the new Spanish government chaired by the Spanish Socialist Party decided to reform the existing regulation in response to the increasing immigration pressure towards Spain. The government's aim was to design an immigration model able to combine the management of regular migration flows with the fight against irregular migration, the strengthening of border controls, the relationships with third-world countries and, last but not least, the integration of immigrants. In this respect, the former Secretary of State for Immigration, Consuelo Rumi, explained that the objective of the new regulation was to help prevent irregular migration by enacting efficient recruitment policies "because if immigration management is efficient, if immigration channels work, if entry quotas are flexible and agile and the General Regime can respond to the needs [...] if bilateral agreements work, if the trade unions and the employers' associations collaborate, migrants will see that they can legally enter our country" (*El País*, 12/05/2004).

Hence, the new Regulation n. 2393 of 2004, which was based on a large consensus among the trade unions, the employers' associations and the Socialist government, was conceived as a systematic reform that included different admission channels, including an individual regularisation mechanism (*arraigo*), and recognised the prominence of labour migration. Thus, the

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<sup>3</sup> The Spanish State is divided into 17 territorial units, the Autonomous Communities, and the two Autonomous Cities of Ceuta and Melilla. Since the democratic transition, the Spanish state has transferred a large number of competences to the Autonomous Governments.

preamble of the Spanish immigration regulation n. 2393 of 30/12/2004 stated, “The architecture of the current migration system and the admission of new immigrants into our country are fundamentally based on the need to fill job vacancies”.<sup>4</sup> Additionally, the Socialist government transferred immigration competences from the Ministry of the Interior to the Ministry of Labour and Social Affairs by creating a special Secretary of State for Immigration and Emigration<sup>5</sup>, whereas the Ministry of the Interior maintained its competences in preventing illegal migration and continued to be responsible for the asylum procedure. The creation of the new Secretary of State reflected a clear intention to give certain priorities to the regulation of labour migration by turning immigration more into a matter of labour than of national security. In this respect, a stakeholder of the Ministry of Labour and Immigration stated, “It is important where migration management is located [...] Spain has clearly bet, and I think correctly, on the Ministry of Labour and Immigration because migration flows to Spain are predominantly labour migration flows” (MTIN, 5/10/2011).

Clearly, the main objective of the new regulation was to provide the formal tools to readjust the mismatch between labour demand and supply, which is deeply embedded in the structure of the Spanish production system. Many of the key informants interviewed for this report have highlighted the relevance of this point. According to a representative of the Ministry of Labour and Immigration, many young natives prefer to be unemployed rather than to take jobs below their “acceptance threshold” (MTIN, 11/10/2011). Likewise, the interviewed human resources manager of an important Spanish restaurant chain stated the following in reference to Spain: “We do not produce electronic chips. We are a service industry [...] However, the social conditions of the restaurant business cause people to not want to work in this sector” (RESTAURANT, 2/11/2011). Foreign labour demand concerns mainly but not only low-skilled jobs. According to several observers, Spain is also affected by a worrying lack of native workers with specific medium-level skills, which is embedded in the poor performance of the vocational training provided by the Spanish education system. The human resources manager of a large Spanish energy business stated, “In Spain, vocational training is bad [...] There is a very deep mismatch between the market and the education system” (ENERGY, 6/10/2011).

The predominance of labour migration over other types of migration flows during an era of spectacular economic growth turned Spain into one of the major labour importers in the European Union. Things changed suddenly after the big economic crisis of 2008. In fact, in that year, Spain did not only experience the consequences of the global financial crisis but also a “national” economic crisis, which resulted from the bursting of the Spanish construction bubble that had boosted the economy in prior years. The economic downturn in 2008-2009 quickly transformed one of the major labour importers in the European Union into one of

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<sup>4</sup> “En la arquitectura del sistema migratorio actual la admisión de nuevos inmigrantes en nuestro país está fundamentalmente basada en la necesidad de cobertura de puestos de trabajo”. (Translation of the author).

<sup>5</sup> The new Secretary of State had competences that were previously shared by the General Direction for the Organization of Migration Flows, the Institute of Migrations and Social Services and the Government Delegation for Foreigners and Immigration.

the European countries with the highest unemployment rate of natives and foreigners (17 and 30 per cent, respectively, in 2010). Strikingly, the recently approved Immigration Law n. 2/2009 followed by Immigration Regulation n. 557 of 30 June 2011 did not change much of the existing labour migration regime. The maintenance of the *status quo* did not only reinforce the connection between immigration and the labour market, but it also revealed the legislature's intention "to consolidate a model based on regularity and linked to the labour market". In other words, and despite the economic crisis, labour migration is still considered to be the main pillar of the Spanish migration regime. The main goal of this report is to analyse the major components of such a model as well as its strengths and weaknesses, especially considering the consequences of the economic crisis of 2008.

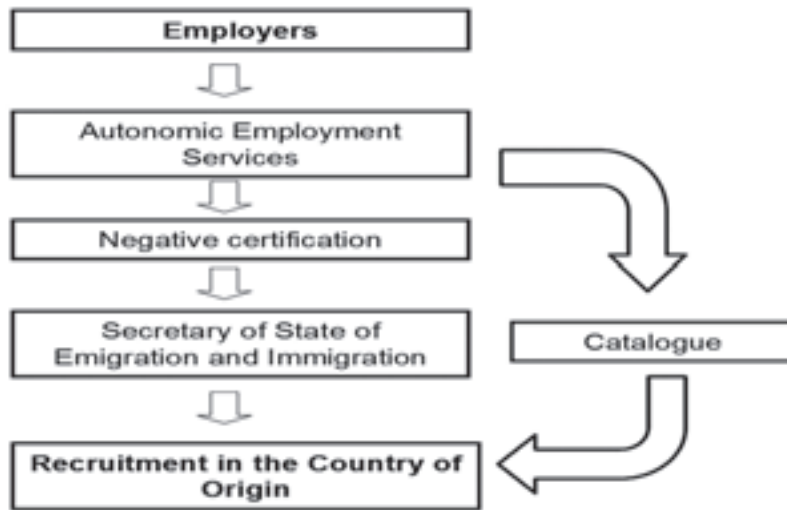
## 2. ADMISSION POLICIES FOR FOREIGN WORKERS: THE INSTITUTIONAL FRAMEWORK

The two main recruitment channels in the Spanish labour migration regime are the General Regime (*Regimén General*) and the *contingente*.

According to the General Regime, individuals are recruited based on an employer's nominative and individual application to hire a certain worker. In this case, recruitment depends on the "national employment situation" (*Situación Nacional de Empleo*) based on a preliminary labour market check. Before hiring a foreign worker, employers have to check with the corresponding office of the Public Employment Service in the Autonomous Community<sup>6</sup> whether there are Spanish or EU citizens available for the offered job. In such a case, the employment offer will be publicly made at the national level through all of the channels available to the Public Employment Service. After 25 days, the employer has to communicate the results of the selection procedure to the corresponding Employment Office. If no native or EU foreigner can perform the offered occupation, the office expedites a negative certification, which will include the number of potential workers who applied for the offered position, the number of unemployed people registered in the province who could perform the offered job and all of the workers who could be employed in the offered occupation after being adequately trained. A negative certification with the aforementioned information will be evaluated by the Secretary of State for Immigration, who has the final word on the employers' applications.

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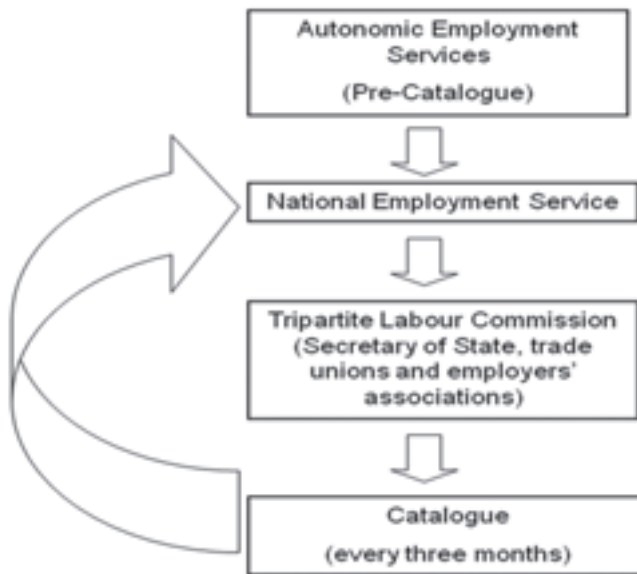
<sup>6</sup> Please note that the competences on active labour market policies have been transferred to the Autonomous Communities. Thus, the Autonomous Employment Services are responsible for issuing the negative certification for the employment of foreign workers. Nevertheless, the work and residence permits are issued by the central government. The only exception is currently represented by Catalonia, where the Autonomic Government is entitled to issue initial work permits, as will be explained later in this section.

**Figure 1: Individual Recruitment in the Spanish Labour Migration Regime**

The labour market check can be avoided only for occupations included in the “Catalogue-of-Hard-to-Find-Occupations” (*Catálogo de Ocupaciones de Dificil Cobertura*). If a vacancy refers to a job type listed in the Catalogue, an employer can immediately start the hiring process without undergoing the labour market check. In this case, an employer presents a formal recruitment offer. Based on this offer, the immigrant has to apply for an entry visa to work in Spain in his or her country of origin. The Catalogue is elaborated jointly by the National Employment Service, the Autonomous Employment Service and the Secretary of State of Immigration. The Autonomous Communities elaborate a pre-catalogue that is then sent to and evaluated by the central office of the National Employment Service. The Catalogue has to fulfil fixed criteria. It will not include those occupations that could be filled by unemployed people who have participated in occupational training sessions organised by the Public Employment Service. In the last stage, the content of the Catalogue has to be approved by the Tripartite Labour Commission of Immigration (*Comisión Laboral Tripartita de Inmigración*), which is composed of the representatives of the employers’ associations, the trade unions and the Secretary of State of Immigration. The final version of the Catalogue is published every three months as a resolution of the Public Employment Service.<sup>7</sup>

<sup>7</sup> Please note, that until 2011, the elaboration of the Catalogue was based on a top-down procedure. The central office of the Public Employment Service elaborated a type of pre-catalogue based on the available statistical information that was sent to the Employment Services of the Autonomous Communities. The provisions contained in the pre-catalogue were then negotiated with the employers’ associations and the trade unions. The pre-catalogue was changed according to the labour offers submitted to the offices of the Employment Services in each Autonomous Community and sent back to the central office of the Public Employment Service in Madrid, where the final version of the Catalogue was elaborated.

**Figure 2: The Elaboration of the Catalogue-of-Hard-to-Find-Occupations**



In contrast to the Catalogue, which regulates individual recruitment, the *contingente* allows Spanish companies to recruit a group of people to be employed in a specific business to perform a specific type of occupation. In this case, foreign workers are not selected based on nominal recruitment but on generic offers in the country of origin. Yearly, the *contingente* also offers entry slots for temporary jobs in the agricultural sector for a maximum of nine months and a certain number of stable occupations. Since 2006, the number of available stable and temporary occupations has been published yearly by the Secretary of State of Immigration.<sup>8</sup>

In general, recruitment is possible only in the countries which have signed bilateral agreements with Spain related to the recruitment of foreign workers (see also point 5 in this report). The selection process occurs in the country of origin after the interested businesses have submitted their formal requests for workers to the Secretary of State. The selection commission is composed of representatives of the Spanish government and delegates of the country of origin. Additionally, the selection commission may include (though it is not obliged to do so) representatives of the employer and employers' associations. The selected workers sign a pre-contract in the country of origin, and the real contract is then signed in Spain. The contract must contain the worker's net salary provisions, which have to respect the minimum salary conditions established by the collective agreements signed between the employers and trade unions of each job category. It is also important to note that the *contingente* also accounts for the possibility of training foreign workers in their countries of origin.

As can be seen in table 1, the number of stable occupations offered through this channel was relatively low compared with the initial work permits issued between 2006 and 2010:

<sup>8</sup> See Resolution of 30 December of 2005, Resolution of 26 December of 2006, Resolution of 26 December 2007, Resolution of 26 December of 2008, Resolution of 23 December of 2009, and Ordinance of 28 December 2011.

**Table 1: *Contingente* of foreign workers (2006-2011)**

	Contingente	Initial Work Permit
2006	16,878	101,079
2007	27,034	222,561
2008	15,731	69,020
2009	901	26,699
2010	168	18,675
2011	14	n.a.

Source: Mtin

For this reason, the *contingente* is considered a small engine in the overall Spanish recruitment system. A delegate of the Public Employment Service highlighted this secondary role stating, “The only important thing about the *contingente* is the name” (SEPE, 28/11/2011).

In contrast to other Southern European countries, the regular entry channels of the new Spanish admission regime have never been limited to the recruitment of low-skilled foreign workers. As a matter of fact, the *contingente* and the Catalogue can also include high-skilled occupations, such as doctors and engineers. Additionally, since 2007, Spain has used a special migration avenue to hire high-skilled workers, called the “Unit for Large Companies and Strategic Groups” (*Unidad de Grandes Empresas*). The Unit was first introduced by ministerial agreement and allows Spanish businesses to recruit high-skilled workers from non-EU countries under certain conditions without undergoing a labour market check.<sup>9</sup> One of the main reasons for creating this department in 2007 was that the negotiations concerning the European directive on high-skilled workers in Brussels were proceeding more slowly than expected. At the same time, some large Spanish firms needed a rapid supply of high-skilled workers for their businesses. Thus, the government created the Unit to provide large Spanish companies with a faster procedure for recruiting high-skilled workers during a period in which most of the offices of the Ministry of Labour and Immigration were overwhelmed by a high number of applications. As a Spanish state official noted, “The idea behind the *Unidad de Grandes Empresas* is that there are strategic groups which need a more agile recruitment channel. In this respect, the Spanish public administration shows its intention to collaborate in this task. We are talking about strategic groups which include universities, large companies, and artistic collectives” (MTIN, 5/10/2011)<sup>10</sup>. In 2009, the Unit was institutionalised as part of the Spanish admission system by the new immigration law n. 2/2009. Two years later, the Spanish government adopted the EU directive on the recruitment of high-skilled foreign

<sup>9</sup> This regulation is mainly addressed to large companies. Businesses that intend to recruit workers through this Unit must fulfil at least one of the following conditions: i) have more than five hundred workers; ii) have an international business volume of 200 million euros per year in Spain; or iii) not less of one million Euros of foreign investments in the three years preceding the application. Additionally, the businesses have to demonstrate that, in the three years before the application, they benefited from foreign investments of no less than one million euros. In the case of small and medium-sized companies, the recruitment of foreign workers is limited to the sectors of information technology, renewable energy, the environment, water, health, bio-pharmacy, biotechnology, aeronautics and aerospace.

<sup>10</sup> A detailed list of the interviews conducted with Spanish and Canadian key-informants is provided at the end of this article.



workers as part of its national legislation. Under the EU system, however, the employer has to perform a labour market check, which makes the “Blue Card” less attractive for employers than the “Large Companies Unit”, where the absence of a labour market test favours a quick and less bureaucratised micro-matching between labour supply and demand (UGE, 12/07/2011).

Besides the individual or group employment by a Spanish company or employer, the Spanish labour migration regulation also accounts for the self-employment option. In this case, however, labour migrants have to demonstrate that they have: i) the credentials required for the proposed activity; ii) the necessary financial funding to start their business and, since 2011; iii) the capacity to create new jobs through their business. As noted by a Spanish civil servant, the self-employment option does not seem to be very appealing to foreigners willing to come to Spain. The reasons for this do not only lie in the restrictiveness of the entry criteria, but also in the same Spanish production system, which is characterized by a high demand of low-skilled jobs whereas self-employment (especially the creation of business) is often focused on medium- and high-skilled activities (MTIN, 17/11/2011). This makes it difficult “to ground a business in a country in which the majority of the requested occupations are low-skilled occupations” (MTIN, 3/06/2011).

As highlighted, the recruitment of foreign workers in Spain mainly depends on the institutional cooperation between the Secretary of State of Immigration, the National and the Autonomous Employment Services, with the support of employers’ associations and trade unions. It was only recently that Autonomous Communities were further involved in what is predominantly a competence of the central state. The *Generalitat* (the Catalanian Autonomous Government) was given the competence to proceed and issue initial work permits for those foreign workers who will be employed in Catalonia (Art. 138 *Estatut de Catalunya*). The acquisition of this competence has been described as part of a general process of administrative simplification, in which the immigrant deals with one administration only (GEN1 7/07/2011).<sup>11</sup> In this process, the state and the autonomous administrations are completely independent from each another: the Autonomous Community cannot intervene in the state’s decision to issue a residence permit, whereas the state cannot intervene in the Autonomous Community’s decision to issue a work permit. Certainly, the starting phase of such a competence transfer was not easy. Nevertheless, the interviewed delegates from the autonomous administrations were satisfied with the final result of the process, which was also facilitated by the small volume of requests.

All in all, the Spanish case reflects an effort to establish a rational entry policy which combines individual and collective recruitment for stable workers, temporary recruitment schemes and a fast-track entry channel for high-skilled workers. In the following section, we will analyse whether, to what extent and on which criteria the Spanish regime succeeded in matching labour offer and demand at least before the crisis of 2008.

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<sup>11</sup> For the moment, Catalonia is the sole Autonomous Community that has implemented this new procedure. The Autonomous Community of Andalusia also foresees implementing this competence into its autonomous regulation but has not done so yet.



### 3. QUALITATIVE VERSUS QUANTITATIVE CRITERIA

The Spanish labour migration regime is based on a mix of quantitative and qualitative criteria. Where quantitative criteria are used, the regime's regulations show a clear preference for provisional numbers of entry slots instead of caps. The *contingente*, for instance, determines a yearly number of entry slots for stable and temporary occupations, whose number can be changed depending on the state of the labour market. According to a high-ranking state official of the Spanish General Directorate of Immigration, the existence of provisional entry slots allows for more recruitment flexibility, whereas "the existence of caps forces you to calculate efficiently the caps, which is not always easy." Thus, caps are seen less as an instrument of efficient recruitment and more as an instrument of control that would stiffen the system as a whole (MTIN, 5/10/2011). However, there have also been state officials who criticised the extreme flexibility of the Spanish *contingente*. For instance, according to a senior advisor of the Public Employment Service, the absence of caps (and therefore the lack of limitations) reflects an unwillingness to pursue any form of planning: "To limit means to plan ahead. In Spain, there has been no planning in this sense [...] I would prefer that the key did not lie in the hands of the employers, that there were planning and quotas and that the system was transparent. The point system is better and more democratic" (SEPE 28/11/2011). The lack of rational planning in the Spanish migration regime<sup>12</sup> was also outlined by the delegate of the Spanish Doctors' Trade Union: "In 2006, the increase in the number of immigrants together with the increasing number of hospitals built in the Autonomous Communities produced the sensation that more doctors were needed [...]. Now that the Ministry has decided to return to the previous situation, the sensation is that there are too many doctors in Spain" (CESM, 17/10/2011).

The Catalogue represents the most relevant qualitative selection criterion because it allows faster employment procedures for certain occupations. As previously noted, the type of occupations included in the Catalogue depended on the estimations based on the national employment situation. However, more than one interviewed state official pointed out that a general policy of *laissez faire*, which favoured the inclusion of as many occupations as possible, existed during the years of the economic boom. Only recently have political criteria clearly predominated in the elaboration of the Catalogue. The length of the Catalogue and the number of professions included in it has been reduced considerably. Currently, most of the professions in the Catalogue are related to the health sector and the shipping industry.<sup>13</sup> For instance, lifeguards and electricians have not been included in the most recent Catalogue, even though demand for these occupations exists. Including these occupations would have

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<sup>12</sup> In fact, some rough estimates for nominal recruitments were only provided by the Secretary of State in 2006 and 2007.

<sup>13</sup> In this respect, the author was informed about the existence of an agreement between the trade unions and employers of the shipping industry which allows some professions such as boat mechanics and boat cooks, to be included in the Catalogue. The agreement was aimed at facilitating the recruiting procedures for those employers who decided to keep their boats under the Spanish flag. However, according to the information obtained, the agreement will be withdrawn in the near future.

incurred high political costs at a time when Spain is experiencing one of the highest unemployment rates in its history (MTIN, 3/6/2011).

Finally, Spain has never implemented recruitment programs for specific types of occupations. The only example in this respect could be the job search visa which was introduced by regulation n. 2393/2004. Formally, the job search visa allowed foreigners to search actively for jobs in Spain for three months after their arrival. However, this type of visa was only issued for the sectors and occupations in which lack of labour was recognised by the government. Eventually, the use of job search visa was limited to a very limited number of slots in the domestic sector and only used for a couple of years.

The Spanish regime also accounts for qualitative criteria based on the workers' nationalities. According to the bilateral agreements signed by their governments with Spain, Peruvians and Chilean citizens are allowed to access the Spanish labour market without undergoing a labour market check. Moreover, the children of Spanish citizens living abroad can access the Spanish labour market without passing through the labour market check. Finally, the limitation of the *contingente* to the third-world countries with which bilateral agreements have been signed can also be considered a qualitative criterion (and positive selection for the citizens of these countries). By contrast, there are no explicit criteria which produce a negative selection, although the new employment stop for Romanian citizens in 2011 could be considered a type of negative selection towards Romanian workers with respect to other European citizens.

The requirement of foreign credentials recognition seems to be particularly relevant in the case of high-skilled occupations in the public health sector. In the case of low-skilled and medium-skilled qualifications, which represent the majority of the occupations demanded by the Spanish labour market, foreign credentials only need to be recognised in those occupations for which a certain degree of monitoring responsibility is required. To conclude, language has never been a selection criterion in Spanish migration policies. Only recently has language become a selection criterion for the recruitment of foreign doctors who want to start their medical training in Spain after finishing their medical degrees in a foreign country. Hence, a doctor from a country whose official language is not Spanish has to demonstrate sufficient knowledge of the Spanish language (Level C1 or C2) according to the classification of the Cervantes Institute or the Official Language Institute in the applicant's country of origin. It is worth noting that the language criterion is not a consequence of the economic crisis. Rather, the requirement resulted from the enforcement of the European directive on the regulated professions. However, this innovation could also be seen as a form of positive discrimination because Latin Americans are implicitly favoured by the language requirement.

#### **4. MATCHING LABOUR OFFER AND DEMAND**

The Spanish migration regime is a demand-oriented regime in which labour market needs predominate. As stated by a high-ranking state official of the Public Employment Service, the national employment situation and the employer's interests were the driving forces of the Spanish recruitment system (SEPE, 28/11/2011). However, the predominance of the demand factor is confirmed by the general request for a labour market check and the central role

played by the employers in the labour recruitment procedure. By contrast, there is no points-based system, whereas the use of channels driven by formal offers, such as the job search visa, was limited to a few years and only possible for certain occupations and geographical regions. A state official of the Spanish Ministry of Labour and Immigration explained, “The job search visa represents a variant of the *contingente* and cannot be compared with the job search visa that exists in other countries in which the migrant looks for a job” (MTIN, 3/06/2011). In sum, it can be argued that, although the Spanish labour regime was more open than those of the other European member states to foreign labour, the regime still adhered closely to the European philosophy, which states that the entry of foreign workers should be closely linked to the employment situation and the market demand. In fact, residence permits for work purposes in Spain have to be renewed two times before becoming long-term residence permits and renewals always depend on the pre-existence of a labour relationship. This procedure reflects a certain reluctance to permanent migration schemes in Spain that still characterizes most EU migration regimes. The lack of formal offer-oriented channels has been outlined as one of the system’s weaknesses. A state official of the *Generalitat* stated, “With respect to the Spanish immigration model, what is conditioning us is the inertia of our tradition. Spain has to understand that it is not only the labour market that sets the trend. Spain does not know how to compete for human capital. We still understand immigration as a problem of social services instead of as a resource” (GEN2, 22/06/2011).

Employers’ and employers’ associations played a very important role in the Spanish labour migration regime. As the interviewed member of CECOT, the Catalan employers’ association, explained, “Our participation in the recruitment procedure in the country of origin was related to our role as intermediaries for those businesses that asked us to find workers with a given profile. In particular, we were asked to recruit medium-skilled workers, such as welders, tinkers or bus drivers. We were never asked to recruit high-skilled workers. When we could not find the requested workers in Spain, we checked the Catalogue and went to Eastern European countries to search for workers. When we had a special office for this goal in the country of origin, as we had in Bulgaria, we also used the individual recruitment channel. Otherwise, we resorted to the *contingente* (I mean, to the ministry)” (CECOT, 21/06/2011).

Despite the significant role played by employers in the overall recruitment procedure, interviewed civil servants outlined that the jobs included in the *contingente* and the Catalogue did not always reflect the market demand but were much more the outcome of a political negotiation, in which the Autonomous Employment Services played a major role. For instance, almost all of the interviewees from the public administration and the trade unions noted that the first few catalogues were extremely long. This length mainly depended on whether and how the Autonomous Communities intervened in the construction of the Catalogue. According to the representative of the trade union UGT, during the economic burst, some Autonomous Communities “included an infinite list of occupations in the Catalogue, and nothing was done to stop this practice” (UGT, 27/5/2011). The Catalogue was also criticised for being too specific for the “generalised” needs of the Spanish labour market. In fact, the job categories included in the Catalogue refer to specific types of jobs, even though the greater part of the demand for labour in Southern Europe (including Spain) concerns unspecified,

low-skilled activities in agriculture, domestic service and construction. Only in the case of large companies does the application for very specific positions seem to allow the speeding up of recruitment procedures even in cases where a negative certification is necessary. As the human resources manager of a large communication company stated, “If you want to recruit somebody with a very specific professional background to do a certain job (...) it is not too difficult to demonstrate that we effectively need somebody with a profile that we do not have here in Spain (COMM, 12/11/2012)”. Additionally, the representatives of the Spanish trade unions have reported that the use of the Catalogue is not necessarily exempt from fraud. As a senior Spanish state official has noted, many employers have recruited foreign workers through the Catalogue specifically to avoid the labour market check, and these same workers have then been employed in positions that differed from the positions for which they were originally recruited.

By contrast, more satisfaction was reported with respect to the implementation of the *contingente*, which “responded to the needs of large and established businesses that demanded special treatment” (SEPE, 28/11/2011). Even though the initial implementation phase was difficult, the *contingente* is currently considered by the public administration to be a “rapid instrument that goes well and is completely fitted to the needs of the labour market” (MTIN, 3/6/2011), where the public administration and the employers complement each other. On the one hand, the interviewed human resources managers were quite satisfied with the functioning of the *contingente*, particularly with the role played by the Spanish public administration. The CECOT delegate stated, “At that time, the advantages of the system offered by the Ministry were that it allowed businesses to respond to the problem related to a serious and quite urgent labour demand” (CECOT, 21/06/2011). Several interviews showed that both the public administration and employers agree on this point. The human resources manager of the energy business argued that, without the help of the public administration, recruitment in this form would not have been possible. Additionally, a delegate of the General Directorate of Immigration stated, “The work performed by the employers’ association is very important, because the employers that search in the countries of origin and create determinate networks” (MTIN, 5/10/2011). In a similar vein, the human resources manager of the restaurant chain highlighted the positive experience of the *contingente*, which, in his opinion, reflected a “model within a legal framework which allowed us to do things in the proper way” (RESTAURANT, 2/11/2011). Satisfaction was also expressed with respect to the *contingente* for temporary workers. Certainly, the recruitment of temporary workers still has weaknesses that are mainly related to the length of the procedure. In addition, the success of these procedures depends primarily on the region in which they are implemented (González-Enriquez, Reynes Ramón 2011). Nonetheless, employers still show quite a high level of satisfaction with regard to this recruitment method, which has been considered to provide a certain degree of security and protection for both the employers and the workers.

## 5. REGULARISATION PROCESSES AS FUNCTIONAL EQUIVALENTS IN THE SPANISH LABOUR MIGRATION REGIME

Regularisation processes deserve special attention in the analysis of the Spanish labour migration regime. Due to the inefficiency of formal recruitment channels for almost 20 years, they became a key tool for readjusting the balance between ineffective state regulations and the large flow of immigrants. Their function as “crisis management” policy tools must be embedded in the dysfunctional mechanisms that have characterised the Spanish migration regime in the past 20 years. During this time period, irregular migration became a structural component of the Spanish migration regime because of the country’s inadequate recruitment procedures, extended informal economy and insufficient internal controls. In fact, the informal labour market is calculated to be approximately 22 per cent of the national GDP, and it is particularly extended in precarious labour sectors, such as domestic work or construction sectors. These sectors have attracted a large number of irregular migrants. Yet, regularisations seemed to be the most useful tool for rebalancing the contradictions of the Spanish migration regime, where irregularity and informality constantly feed each other.

Since 1985, Spain has conducted six regularisation programmes. Each programme was presented as a special “one-off” measure. The first regularisation programme occurred in 1985-1986 and was followed by others in 1991, 1996, 2000, 2001 and 2005. Most of the processes targeted irregular workers. However, the programmes have sometimes been extended to other migrant categories, such as relatives (1996, 2000 and 2001), asylum seekers (2000) and specific nationalities (e.g., Ecuadorians) (2001). The requirements for applying to the programmes were not always clear. A general condition common to all of the regularisation processes was that applicants had to prove that they had been living in Spain prior to a certain date (reference date). The lack of a criminal record was another essential condition for most schemes. In some cases, the application requirements included previous employment as a desirable aspect, but the regularisation of 2005 made the residence permit binding dependent on the existence of a work contract and the foreign worker’s registration in the Social Security System. In contrast to previous regularisation processes, the employer had to apply for the regularisation of his or her employees. Legalisation only occurred if the worker had registered in the Social Security System and if the first month’s dues had been paid. For these reasons, the regularisation of 2005 has been described by state officials as a “real” regularisation.

In total, Spain regularised almost 1.2 million immigrants from 1986 to 2005. The 2005 scheme was the most successful one, as it allowed for the regularisation of 578,375 applicants. This process considerably increased the size of the legal immigrant population in Spain. In fact, compared with 2004, in 2005, the number of legal non-EU citizens increased by a total of 653,050. In addition, from 2004-2005, the number of foreign workers registered in the Social Security System increased by a total of 616,655 to 1,757,081 (Finotelli, 2011). In general, the residence permits issued after each regularisation process were valid for one year. Thus, like immigrants in Italy during that time period, a regularised immigrant in Spain had a precarious status and was required to renew his or her permit regularly. In addition, the process excluded a sizeable number of eligible applicants because they lacked the

necessary documents, such as the official certificates of their registration to the municipal registry. However, the large number of immigrants who participated and obtained residence permits remains striking. Furthermore, data suggest that most of them could also renew their residence permits in the following years (Finotelli, Arango 2011). Certainly, regularised immigrants are often more exposed than other migrants to the risk of losing their regular status. Furthermore, it should also be noted that having a residence permit does not always prevent an immigrant from working illegally if the internal controls are weak, and there is high demand for labour in the informal sector. However, it can be reasonably assumed that regularisations also contributed to the employment stabilisation of a substantial proportion of the regularised immigrants.

Taking into account that most foreigners now living regularly in Spain experienced a more or less lengthy period of irregularity before getting their first residence permit, regularisations are likely to have allowed not only the legal inclusion but also the stabilisation of almost half of the total foreign population. The stabilisation function of regularisation processes becomes even clearer when we compare the number of regular foreign residents in 2006 in Spain with the number of regularised immigrants between 2000 and 2005 (the year of the last big regularisation).

**Table 4: Foreign population and regularised immigrants in Spain (2000-2006)**

	<b>Regularised Foreigners 2000-2005</b>	<b>Regular non-EU foreigners 31/12/2006</b>	<b>% of residents regularised</b>
<b>Total</b>	<b>1,019,997</b>	<b>2,360,804</b>	43%
Bolivia	43,197	52,587	82%
Romania	127,586	211,325	60%
Ecuador	199,152	376,233	52%
Senegal	13,965	28,560	48%
Ukraine	30,576	52,760	57%
Pakistan	18,938	29,669	63%
Bulgaria	31,469	60,174	52%
Algeria	17,748	36,499	48%
Colombia	101,474	225,504	44%
Morocco	146,610	543,721	26%
China	22,397	99,526	22%
Dominican Republic	5,936	58,126	10%
Peru	6,250	90,906	7%

Source: Spanish Ministry of Labour and Immigration.

In sum, regularisations enabled governments to regain control over the presence of irregular foreigners, helped to stabilise foreign populations and enabled unwanted immigrants, the so-called “wanted but not welcome” (Zolberg 1987) immigrants, to become politically integrated into the formal labour market structures. In this vein, regularisations have helped governments to meet the structural needs of their respective national economies by providing

*a posteriori* the needed foreign labour force when official admission policies failed. In this way, regularisations turned out to be one of the most important mechanisms for repairing the inconsistencies of the Spanish migration regime, becoming, like what occurs in other Southern European countries, the main functional equivalent for active labour migration policies in the Spanish regime.<sup>14</sup>

Most recently, the Spanish government recognised the impossibility of completely preventing irregularities and it introduced the *arraigo*, a new regularisation procedure that “corrects” irregularities on an individual basis. The *arraigo* can be obtained by demonstrating either the pre-existence of a work relationship for at least one year in Spain or social integration (essentially in the form of family relationships) for at least three years. After one year, the *arraigo* can be renewed like any other residence permit under the conditions established by law. The connection of the *arraigo* to a pre-existing labour relationship turns this tool into a “third way” (Perez Infante 2009: 16) of obtaining a Spanish work permit. However, few work permits have been issued in connection with the *arraigo laboral*, and this number is much lower than the number of applications. Certainly, the volume of the individual regularisations cannot be compared with the mass regularisation processes of the past. However, the yearly stocks of residence permits always include a remarkable volume of permits for *arraigo*.<sup>15</sup> That is why the *arraigo* as an individual regularisation form can still be considered a major functional equivalent of the formal labour recruitment schemes in the Spanish regime.

## 6. THE EXTERNAL DIMENSION OF LABOUR MIGRATION POLICIES

The European Union certainly played a major role in the external dimension of labour migration policies in Spain. As Spanish state officials have noted, the relevance of the European Union can be observed both in the recent transposition of a large number of directives into Spanish law as well as in the recent boost given to high-skilled migration through the creation of the Large Companies Unit (MTIN, 05/10/2011). However, the Spanish government was also able to develop its own, very specific external dimension of migration policies based on the signing of bilateral agreements with third countries to regulate foreign workers recruitment. As can be seen in table 3, to date, Spain has signed four different types of bilateral agreements with non-EU countries: 1) The Agreements on the Readmission of Irregular Migrants; 2) The Agreements on the Regulation of Migration Flows; 3) The Framework Agreements on the

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<sup>14</sup> The number of asylum seekers and family migrants in Spain is still too low to be really considered functional equivalents to the Spanish regime. As far as intra-European mobility is concerned, most of the Spanish migrants who live in Spain are retirees, while labour migration from Romania has been interrupted in 2011 after the Spanish government decided to re-introduce the recruitment stop for Romanian citizens. It must be noted that European citizenship can be of advantage in the case of double citizenship. As stated by a Human Resources manager of a Spanish communication business, hiring high-skilled Latin American citizens to work in Spain is much easier if they also have either the Spanish or another EU citizenship (COMM, 12/11/2012).

<sup>15</sup> According to the most recent data of the Ministry of Labour and Immigration, the yearly stocks of permits issued for *arraigo* increased from approximately from 7,200 in 2006 to 76,433 at the end of 2011.



Cooperation on Immigration Issues (“new generation agreements”) and; 4) The Agreements on Operative Cooperation.

**Table 3: Agreement signed by the Spanish government**

Readmission Agreements	Agreements on the regulation of migration flows	Framework Cooperation Agreements in Immigration Matters (“new generation agreements”)	Agreements on Cooperative Cooperation
Morocco (1992)	Romania (2001)		Peru (2004)
Bulgaria (1996)	Dominican Republic (2001)	Mali (2007)	
Slovakia (1999)	Poland (2002)	Guinea (2007)	
Estonia (2000)	Mauritania (2007)	Gambia (2006)	
Guinea-Bissau (2003)	Morocco (2001)	Guinea-Bissau (2009)	
Latvia (2000)	Ecuador (2001)	Cabo Verde (2007)	
Lithuania (2000)	Colombia (2001)	Niger (2008)	
FYR Macedonia (2006)	Bulgaria (2003)		
Mauritania (2003)	Ukraine (2009)		
Romania (2006)			

Source: Ministry of Labour and Immigration

The first bilateral agreements which Spain signed with non-EU countries focused on the fight against irregular migration. In contrast, the first agreements directly addressing the regulation of migration flows were signed in 2001. However, the so-called *Plan Africa* (Africa Plan) for 2006-2009 marked “a before and afterwards” with respect to the conception of bilateral agreements (Asín Cabrera, 2008: 171). The Plan Africa was part of a new diplomatic effort to foster positive collaborations with African countries. The plan was a political reaction to the clandestine migration movement from Africa to Spain, which peaked from 2005 to 2006. The plan addressed two different groups of countries. The first was the group of countries of “priority interest” and included countries such as Equatorial Guinea, Senegal, Mali, Nigeria and Mauritania. These countries were of strategic importance, because of the relevance of their migration systems, their economic pre-eminence and their cultural links with Spain. The second group was represented by the countries of specific interest which needed a special cooperation scheme with Spain. These countries were “either the origin of or transit for irregular immigration,” had “fishing or tourism potential” or carried “intense historic, cultural or [cooperative] relations” with Spain. ([http://www.maec.es/es/Home/Paginas/20060605\\_planafricaingles.aspx](http://www.maec.es/es/Home/Paginas/20060605_planafricaingles.aspx)).

In order to foster cooperation schemes with African countries, the Spanish government opened new embassies in Mali, Sudan, and Cabo Verde as well as new offices focusing on technical cooperation in Cabo Verde, Ethiopia and Senegal. In this respect, it is worth mentioning the creation of a new Labour Office in Dakar, which received the support of the ILO and was



involved in the pilot project with Senegal. In the framework of Plan Africa, Spain signed “new generation agreements” specifically aimed at combating irregular migration with the help of effective labour migration policies. The aim of these new agreements was not only to respond to the labour needs of the receiving country but also to limit the brain drain phenomena and the loss of human capital (Ferrero-Turrión, Lopez-Sala 2009). Spain signed the “new generation agreements” with Gambia, Guinea, Mauritania Mali, Cabo Verde and Niger. These agreements included training options in the country of origin in order to ensure the adequate participation of the workers in the Spanish labour market.<sup>16</sup>

Bilateral agreements reflect a new “global perspective” on immigration, which for the first time explicitly linked the need to combat irregular migration with the imperative to pursue a positive regulation of labour migration flows. Additionally, for this reason, bilateral agreements were considered to be win-win deals for all of the parties involved. A highly ranked state official of the Spanish Ministry of Labour and Immigration stated: “The signing of bilateral agreements always entails political compensation for the country of origin. Sometimes, this compensation does not need to be explicit. Sometimes, it is simply good for some countries to show their own citizens that they have signed these types of contracts with Spain” (MTIN, 5/10/2011). Another state official of the Ministry of Labour and Immigration highlighted the relevance of political and business relations between two countries: “The success and the feasibility of bilateral agreements depend on the compatibility of the two regimes involved. It also depends on the political relations between the countries and those between the two countries’ business sectors. Moreover, bilateral relations allow for more permanent relations. For instance, we are currently creating a joint system with some Latin American countries for recognising work experience. For this reason, I think that coordination between the Employment Services of two countries is an important factor” (MTIN, 5/10/2011). Finally, the relevance of good bilateral relations was also highlighted by the business managers interviewed for this report: “It is only possible to implement recruitment policies with countries which have good relationships with Spain. We have tried to do something with Mali, but the Ministry of Labour and Immigration told us to give up” (ENERGY, 6/10/2011).

To sum up, the change in the conception of international cooperation through bilateral agreements reflected the transformation of Spanish immigration policies from a security-dominated idea of immigration into a view of immigration as a labour resource. However, the economic crisis decreased the intensity of Spain’s cooperation with non-EU countries, considerably weakening the external dimension of its immigration policies. No additional bilateral agreements have been signed since the crisis, which might not only affect the efficiency of recruitment but also of the struggle against irregular migration in the times to come.

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<sup>16</sup> At this stage, it should also be noted that the increasing cooperation with selected countries also had effects on the visa supply trend. Due to the increasing cooperation on immigration issues between Spain and Morocco, for instance, the number of tourist visa supplied by Spanish consulates in Morocco has been increasing considerably since 2004.

## 7. STRENGTHS AND WEAKNESSES OF THE SPANISH LABOUR MIGRATION REGIME

For almost a decade, the Spanish labour migration regime seemed to have achieved an almost perfect match between labour supply and demand. Its success was embedded in a period of political stability and intense economic growth which was highly dependent on the availability of a cheap labour force to compensate for the low level of technological capital in the Spanish economy (Aja et al. 2010). Especially after 2004, the government's openness towards a reform of the immigration policy which strengthened active labour governance helped to create a model in which the employers' interests clearly prevailed. The "philosophy" of the new labour migration governance approach was based on a wide institutional consensus. In fact, the immigration regulation of 2004 strengthened the institutional dialogue by reinforcing the Higher Council of Immigration and creating the Tripartite Labour Commission of Immigration in 2005. Most of the stakeholders interviewed for this report agreed that one of the main pillars of the Spanish migration regime was the high degree of consensus among the government, the employers' associations and the trade unions: "The Spanish migration regime is unique, and its uniqueness lies in the consensus among the stakeholders" (SEPE, 28/11/2011).<sup>17</sup> Apart from a high degree of institutional consensus, the implementation of the Spanish labour migration model could also count on an efficient state bureaucracy and, particularly, on a high degree of coordination between the national and autonomous administrative machine through the different employment services (Finotelli, 2012). Furthermore, the effort concentrated on signing bilateral agreements should be mentioned. In fact, the Spanish government's diplomatic contacts with third countries have proven to be a fundamental step in the correct implementation of the *contingente*. All of the interviewed stakeholders and business managers have confirmed that good diplomatic relations with third countries are highly relevant to effective labour migration governance, especially if active immigration policies are combined with joint efforts in the struggle against irregular migration.

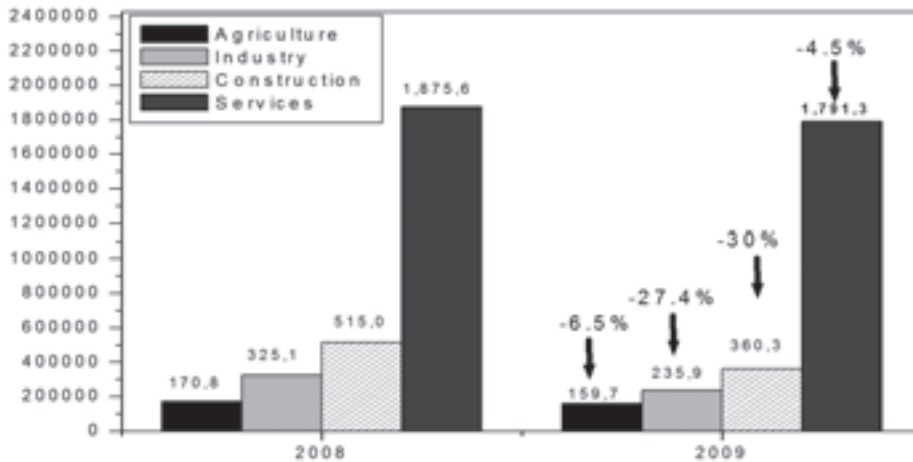
Overall, the new Spanish labour migration regime represented a praiseworthy example of efficient labour migration governance in Southern Europe. During a certain period of time, the combination of different recruitment tools was considered more efficient than more obscure recruitment systems such as the Italian one (Finotelli, 2012). The Spanish experiment has also shown that feasible labour migration governance is a cross-sectoral policy which involves other types of policies, such as foreign policy or labour market policy, and different types of actors. It was the economic crisis which eventually showed the shortcomings of the Spanish labour migration regime. In a very short period of time, Spain became a prime example of the effects of an economic downturn on a strong employer-oriented labour migration model which emphasised the recruitment of foreign low-skilled workers. The reasons lie in the same structure of the Spanish economic system. As experts have explained, one of the main characteristics of the Spanish economy is its elasticity and the close dependence between employment and

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<sup>17</sup> It remains to be seen whether the creation of the Large Companies Unit in 2007 was the only unilateral policy measure taken "outside" the institutional consensus, as the trade unions were excluded from the decision.

GDP. There is, therefore, a higher potential both to create and destroy a large number of occupations in a short period of time in the Spanish economy than in other economies. In other words, the spectacular increase in unemployment was mainly due to the breakdown of the construction sector and the elasticity of the Spanish labour market, which boosts unemployment during economic downturns.

**Figure 3: Loss of Jobs due to the Economic Crisis (absolute values, 000s)**



Source: Survey on Active Population (EPA)

The increase in the unemployment rate was considered the final proof of Spain's failure to properly assess and admit the appropriate number and types of foreign workers over the long term. As a Spanish civil servant explained, "the system has failed because it was excessively focused on the need for employment and on the employers' needs. Employers were happy because they could simply pay the minimum salary established by the collective agreements" (SEPE, 28/11/2011). Moreover, several stakeholders and interviewed persons have referred to the poor estimation capacity (or will) of the government or the tendency to estimate based on "sensations" (CESM, 17/10/2011). As previously noted, the booming economy, the withdrawal of a rigid estimation criteria and the high degree of consensus among the government, the employers and the trade unions favoured a flexible interpretation of the *contingente* and a generous elaboration of the Catalogue. It is also worth noting that little attention has been devoted to human capital. In fact, most of the jobs offered in Spain were low-skilled occupations in the construction and service industries. Although this selection approach has great advantages if employers need a rapid supply of labour, it can also turn into a heavy burden in times of economic crisis. Currently, unemployment is particularly high among less-educated migrants, who are less flexible in times of economic change and experience greater difficulties than other migrants in finding new occupations. The challenge in re-employing unemployed foreign workers supported the arguments of those espousing an immigration model oriented more towards human capital, in which recruitment depends on immigrants' skills rather than on the national employment situation.

However, it is important to observe that labour migration governance depends not only on well-designed admission policies, but also on the structural conditions of the production system in a given country. The Spanish one is characterized mainly by small and medium-sized enterprises and families have more difficulties than larger firms in recruiting foreign workers through the official recruitment schemes. Some 51 per cent of the firms on the Central Register of Companies do not have more than one registered employee. In addition, 53 per cent of the registered firms are active in the food and restaurant business (mainly small restaurants) as well as transport and personal services. This “molecular” production structure does not only hinder official recruitment schemes based on a foregoing estimation of labour market needs, but it clearly favours informal employment strategies. As a matter of fact, informal employment is particularly attractive for occupations which require a higher degree of flexibility and are located in sectors particularly difficult to control. Examples of these activities include domestic service or renovation of interiors, which are more protected from controls because of their “private” character.

Currently, it is still too early to tell how long the current crisis will last, and what its effects on immigration regulation will be. For the time being, the new government has relegated labour migration governance into a secondary position. In fact, one of the first decisions taken by the new Spanish Prime Minister was to change the name of the Ministry of Labour and Immigration into the Ministry of Employment and Social Security, in which immigration issues have a secondary importance. Moreover, it does not seem that the present government has the intention to break the close relationship between the demand for labour and immigration which has characterised the Spanish regime to date. However, it would be a mistake to face the crisis with the short-term perspective which was used to exploit the economic boom. There is no doubt that Spain urgently needs to undergo structural changes to increase its technology level and to diversify its economic structure, which was too focused on construction and services for a long time. If these changes are to occur, the structural need for low-skilled workers should be combined with increasing attention on human capital development in order to respond more effectively to the needs of a more diversified and demanding economy. A possible strategy could be the creation of a “hybrid selection system” (Papademetriou et al. 2010) of labour migration, able to select both low-skilled and high-skilled workers or to mix employer-led and offer-led elements.

Certainly, changes will have to be negotiated with social actors which still have significant influence on the design of labour migration policies. This is, for instance, the case for the Spanish trade unions, which strongly defend a demand-oriented model since a worker’s security is granted only “when he or she can enter the country with a contract in his or her hand” (UGT, 27/05/2011). Finally, the struggle against irregular migration and informal employment must not be abandoned. Otherwise, individual regularisations may become consolidated as functional equivalents to formal admission policies.

All in all, the consequences of the economic crisis pose challenges which require political elites who are willing to assess the real impact of immigration on a domestic labour market not only in the short and medium term, but also in the long term. Time will show whether the Spanish crisis provided the chance to seriously think about a more efficient model of labour

migration governance or whether it simply put the word “end” after a spectacular and (almost) unique decade of demographic and economic growth.

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**List of Interviews**

<b>No.</b>	<b>Organization /Institution</b>	<b>Department</b>	<b>Day and Place of the Interview</b>	<b>Quoted as</b>
1	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 3/06/2011	MTIN, 3/06/2011
2	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 5/10/2011	MTIN, 5/10/2011
3	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Commission for the Collective Negotiation	Madrid, 11/10/2011	MTIN, 11/10/2011
4	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Unidad de Grandes Empresas / Large Companies Unit	Madrid, 12/07/2011	UGE, 12/07/2011
5	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 17/11/2011	MTIN, 17/11/2011
6	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Servicio Publico de Empleo	Madrid, 28/11/2011	SEPE1 28/11/2011
7	Generalitat de Catalunya / Government of Catalonia	Catalan Service for the Management of Initial Work Permits	Barcelona 7/07/2011	GEN1 7/07/2011
8	Generalitat de Catalunya / Government of Catalonia	Catalan Secretary of Immigration	Barcelona, 22/06/2011	GEN2 22/06/2011
9	Unión General de Trabajadores (UGT)	Immigration Section	Madrid, 27/05/2011	UGT 27/05/2011
10	Confederación Española de Sindicatos Médicos (CESM)	Department of Research	Madrid, 17/10/2011	CESM 17/10/2011
11	CECOT	Fundación CECOT Persona y Treball / CECOT Foundation People and Work	Tarrasa, 21/06/2011	CECOT, 21/06/2011
12	Restaurant Chain	Human Resources department	Madrid, 2/11/2011	REST 2/11/2011
13	Renewable Energy Business	Human Resources department	Madrid, 6/10/2011	ENERGY 6/10/2011

# Managing Labour Migration in Times of Crisis – The Swedish Case

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## ABSTRACT<sup>1</sup>

This paper focuses on the reform of the Swedish labour migration policy, passed in 2008 by the centre-right government headed by Fredrik Reinfeldt, with the support of the Green Party.

The background of the reform was the debate, starting in the early 2000s and still ongoing, on the challenges posed by demographic decline, labour market failures and pressures for welfare state sustainability.

The discussion on the need for new rules on labour migration occurred in a time of deep changes in the Swedish political culture and power relations, witnessed by the defeat of the Social Democrats (in power since 1994) in the 2006 general elections. Thus, the need for a reform, and the content of it, was debated in the context of a more general confrontation on the competitiveness and sustainability – and, therefore, on the fate – of the Swedish model.

After an examination of the driving arguments and actors pushing for new rules on labour migration – and, at the same time, of the criticism from the trade unions and the Left – this paper analyses how the 2008 law has been implemented and what polemics this new policy has raised, coming not only from Swedish actors but also from the OECD, which has devoted an ad hoc report on the new Swedish system.

Finally, the paper raises some questions concerning the way labour migration is currently pursued, in the light of the ongoing global economic crisis and the growing feelings (according to the polls) of xenophobia.

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## 1. NATIONAL POLICY DEVELOPMENT AND CHANGES IN THE NATIONAL DEBATE ON LABOUR MIGRATION

During the post-war years, the number of immigrants in Sweden increased rapidly. In 1940, the proportion of foreign-born persons of the total population of the country amounted to only 1%. The corresponding proportion had increased to nearly 7% in 1970 and to about 11% at the beginning of the new millennium (Ekberg 2006:1).

Today the proportion is about 14%, which is more than 1.3 million individuals: it is comparable to the United States. Moreover, there is a growing group of so-called second generation immigrants (persons born in Sweden with at least one parent born abroad), who are nowadays nearly 1 million individuals. So, today more than 2 million individuals living in Sweden have an immigrant background (Ekberg 2011a:3).

In 1947, the National Board of Labour started recruiting workforce in Italy, Hungary and Austria, due to the labour shortage which affected the flourishing Swedish export industry (LO 2006:27-28). During the 1950s, a series of liberalising changes were introduced, with the approval of trade unions (Frank 2005: 212), first of all the abolition of visa requirements for citizens of a wide range of European countries and the institutionalisation of a common Nordic labour market in 1954, which maintained some restrictions but nonetheless enabled large-scale migration during the 1950s and 1960s, with Finland as the main source country (Wadensjö 2010: 7-8). All of that helped bring about (from 1955 onwards) free labour immigration from Europe, known at the time as “tourist immigration” (as well as “*laissez-faire* system”; Frank 2005: 211): people were allowed to spend three months in Sweden seeking employment (Lundqvist 2004: 3).

However, apart from this form of individual migration, the recruitment carried out by companies and public authorities must also be mentioned (SAP 2008: 353). Besides Italy, companies also turned to Yugoslavia and Greece for manpower, initiating substantial migration from these countries (and from Portugal and Turkey as well; Wadensjö). The flow of immigrants peaked in 1970 (Westin 2006).

The employment situation for immigrants in Sweden had been favourable up to the mid-1970s, as numerous studies show. The unemployment rate was low and there was full employment for both natives and immigrants. For a long time, employment rates among immigrants even exceeded those of the natives. This was especially the case in the 1960s. Upward occupational mobility among those early immigrants was also about the same as among natives (Ekberg 2011a:7).

However, already in the early 1960s the large number of job-seeking foreign citizens (mostly coming from Southern Europe) caused social tensions; both the rise in the flows and their ethnical composition alarmed trade unions, due to the feeling of losing control over labour migration (Bucken-Knapp 2009: 53). This concern led to criticism of the liberal system in force, which was abolished between 1966-1967, in spite of the opposition of the National Employers' Association; work permits were required prior to entry. The new regulation provided that the domestic labour reserve (first of all married women) was to be utilised before labour migration could be considered and that the volume of the latter was to be determined,

on the one hand, by the current situation of the labour market and, on the other hand, by the availability of social services (house, healthcare and so on) (Lundqvist 2004: 3). The new requirements were codified in the 1968 Alien Act (OECD 2011: 57). The collective transfer of labour was reintroduced and it remained the only feasible route of entry until the early 1970s, when it ended not because of a shift in politicians' attitude, but due to the LO's choice to turn down all applications for work permit. From the outset of the post-war age, indeed, trade unions had insisted on the mobilization of the domestic labour force instead of recruiting foreign workers and not incidentally LO stopped the flows until a measure providing an incentive for married women to enter the labour market – i.e., separate taxation for spouses – was introduced by the first government of Olof Palme in 1971 (Bucken-Knapp 2009: 54).

From then (early 1970s) to 2008, besides intra-Nordic migration (and, since 1994, the EEC/EU one), Sweden allowed only the following two types of labour migration: 1) short-term jobs (temporary hires, up to 18 months; international exchange, up to 48 months; seasonal workers, up to 3 months) in order to meet shortages not being filled in a short time by the domestic labour force; and 2) high-skilled workers, who were granted a permanent status. The Labour Market Board checked the labour market situation and employer and employee organizations were asked to issue an opinion (OECD 2011: 57-58).

When labour recruitment from non-Nordic countries was stopped in 1972, the number of new immigrants dropped considerably. However, refugees and their family members (spouses, minor children, and, in some cases, elderly parents) were still accepted for permanent residence. Indeed, Sweden has been one of the major recipients of refugees in the past few decades (Westin 2006).

The issue of asylum has become politicised since the late 1980s: the 1989 legislation restricted asylum seekers' chances to enter Sweden (Geddes 2003: 110-111). The timing of stricter asylum policy coincided with the collapse of the former Soviet Union and wars in the former Yugoslavia (Westin 2006).

Towards the end of the century, labour migration – which for a long time, since the early 1970s, had not been an issue – appeared again. In the light of the recovery of the Swedish economy in the second half of the 1990s, and of the challenges issued by the “demographic threat”, the Confederation of Swedish Enterprise (*Svenskt Näringsliv*, SN) initiated in the early 2000s a campaign for a less restrictive labour migration policy (Fahimi 2001<sup>2</sup>; Ekenger, Wallen 2002<sup>3</sup>).

In the 2002 general election immigration was one of the campaign issues, in a double form: integration policies (with the Liberal Party putting forward the proposal to introduce

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<sup>2</sup> The author of this pamphlet preferred to avoid the term “labour migration” as it recalled the past mass immigration of low-skilled workers and used, instead, the concept of “recruitment immigration”, i.e., immigration as an individualized process (i.e., a single employer recruiting a single foreign worker) (Fahimi 2001: 7). Fahimi's proposal was to find a middle way between a labour market closed to foreign workers (as the system in force at that time) and a completely unrestricted immigration system (Fahimi 2001: 16).

<sup>3</sup> The authors put forward economic arguments in favour of labour migration (declining labour force and the pressures of globalization), yet stressed that recruiting foreign workers could not be seen as a first choice, since the process is more demanding and more risky compared to recruiting domestic labour force (Ekenger, Wallen 2002: 15-16).

language skills tests as a condition for citizenship) and labour migration. The centre-right parties (i.e., the Moderate party, the Liberal party, the Centre party, and the Christian Democrats), together with the Green party and employers' representatives, insisted on the need for making it easier for non-EU citizens to work in Sweden, whereas the Social Democrats, the Left party and the unions replied that, before turning to labour migration, domestic unemployment needed to be reduced. The confrontation between the opposite sides went on after the election (won by the Social Democrats), and, in March 2003, a bipartisan alliance formed in Parliament by the Green party together with the centre-right parties charged the government with the appointment of a committee to examine how to manage labour migration (Borevi 2010: 111).

The Committee for Labour Migration (KAKI, after the Swedish acronym) was appointed in 2004, at a time when EU enlargement stimulated a debate on whether and how immigration from new member states was to be regulated; the Social Democratic Prime Minister, Göran Persson, raised the alarm over "social tourism" (xenophobes' main issue), i.e., the danger that people from the new EU countries, at least to some extent, moved to Sweden with the aim of taking advantage of the generous Swedish welfare state, and, particularly, of the generous compensation system for those out of work (Wadensjö 2007: 2); an alarm which, later on, proved to be totally groundless (LO). The ruling party supported a transitional, one-year permit regime, but it did not succeed in achieving a majority in Parliament and Sweden ended up as one of the very few EU countries (together with Great Britain and Ireland) which did not apply any transitional rules<sup>4</sup>. This debate, and its outcome, contributed to a more positive attitude to labour migration (Wadensjö).

The KAKI published its proposals in October 2006, just a couple of weeks before the installation of the new (centre-right) government. In order to fulfil the commitment to a regulated immigration, the committee proposed that the Labour Market Board<sup>5</sup> verify the labour shortage in the concerned occupation sector prior to approving the recruitment of TCN workers (KAKI 2006: 130-131). While accepting many of the Committee's recommendations, the centre-right government later maintained a distance from this particular point (i.e., the labour market test).

The government argued that employers' assessment of the need for recruiting TCN workers should be crucial in the process, although underlining that from the employers' point of view it was supposed to be easier to recruit someone from Sweden and not from abroad, when competences can be found inside the country (Justitiedepartementet 2007: 20 and 37); at the same time, work permits would be granted following an individualised assessment of foreign labour need as opposed to a broader sector-based assessment (Justitiedepartementet 2007: 19).

Besides the Confederation of Swedish Enterprise, most political parties, starting with the Moderates (the party the Prime Minister and the Minister for Migration belong to), also

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<sup>4</sup> Since 30 April 2006, migrants from EU countries do not need a residence permit to work in Sweden, although they have (with the exception of citizens from Denmark and Finland) to register at the Migration Board, the Swedish authority in charge of immigration issues (Wadensjö 2007: 1; 5-6).

<sup>5</sup> The Board was replaced in 2008 by the Public Employment Service (*Arbetsförmedlingen*).

share the idea that, in the end, the question is not whether to give a particular job to a Swede who is unemployed or to a TCN, but to give the job to the one who is more fit to do the job, so that economic growth will benefit from that, and unemployed Swedes as well, as more jobs will be created. Although this is a political message not easy to sell in all political quarters, the Moderates decided to go along this way, together with the other small coalition partners (AMD2).

However, despite being able to count on its own majority, the centre-right government pursued a bipartisan agreement and, in the end, got the Green Party's support (MV1). The latter has a cultural more than a socio-economic profile but as far as the economy is concerned, the party shows a liberal attitude closer to the centre-right parties than to the Left (LO).

It must be borne in mind, however, that the initiative of appointing an Inquiry Committee on Labour Migration came from a Social Democratic government (JD2).

Several arguments were put forward to support the thesis that a new immigration policy was needed:

1. *Demographic trends and labour shortages.* They seem to have been the main driving force of the reform: many people will soon be leaving working life. This development may have negative consequences for the labour market and economic growth – and therefore for the sustainability of the Swedish welfare system as well. Despite fluctuations in the world economy, labour shortage is already affecting several occupations and sectors (Minister for Migration).
2. *Changed composition of migration flows to Sweden.* After the stop to labour migration, immigration to Sweden came to be dominated by asylum seekers. The new rules have changed this perspective (Minister for Migration; SN). The decision to reform labour migration has been influenced, in fact, also by the will to convey an image of immigration that is not only connected to asylum seekers but, instead, to a more active and positive dimension in terms of contribution to the society (both of the sending and of the destination country), an idea of immigration meant as a process of mutual development (JD2).
3. *Labour market failure.* The link between an unsatisfying match between demand and supply, notwithstanding unemployment – and the need for more labour migration – is clearly present in Sweden's public debate. It is argued that the previous immigration policy did not provide all the workers Sweden was in need of; moreover, it could take years to find the right workers to fit the job descriptions. These difficulties in recruiting people prevented companies from expanding and ultimately from creating more jobs. This is where increased labour immigration can make a difference, although it is not to be seen as the only response to the demographic challenges: instead, it represents a complement to measures aiming to utilize the labour force already available in the country (Minister for Migration 2008: 1).
4. *Export-oriented industry.* Another argument made by the entrepreneurial side is that many Swedish companies (not only the big ones) depend on export: Sweden is ranked highly in the global index of countries operating in several countries; it depends on

international trade and “business and people go hand in hand” (SN). The Minister for Migration emphasizes that the “right person” for a job is not simply someone with an education, but rather someone with special competences not always available in the domestic labour market (Minister for Migration).

5. *Consistency with Swedish tradition of openness.* Quite steadily, open-door migration policies have been supported by centre-right parties and the Green party by referring to liberal values (Spehar, Bucken-Knapp, Hinnfors 2011: 27). Minister Billström believes that facilitating increased opportunities for labour immigration, apart from being of vital importance for Sweden’s chances to meet both present and future challenges in the labour market, will contribute to a more culturally diverse and open society (Billström 2008: 1).
6. *Will to be at the forefront.* The criticism to EU immigration policy is general and cross-party among the interviewees. The Minister for Migration emphasizes the role that Swedish immigration policy can play in the European context:

We hope that the Swedish reform is setting an example which others in Europe will follow. Southern European countries’ policies are sometimes worrying, when the basic principle is: well, we will let foreign workers come and work every year, paying them very little, with no chance to get a permanent residence permit and to become citizens one day. This is astonishing to me, as in my opinion the system must work in the opposite way: labour migrants must have rights and, at the same time, they have to pay taxes; they must be integrated, in other words. Employers must accomplish their duties by paying contributions and so on, but, on the other hand, immigrants must also give a contribution to the society as a whole: this is very important if a country wants its citizens to accept labour migration. (Minister for Migration)

However, two of the political arguments put forward for the reform (besides the economic ones, which have been prevailing) – i.e., a liberal shift in immigration policy and the will to reduce the financial burden of asylum seekers on State budget – show that there has been an influence by the EU with regard to the need for introducing a more restrictive asylum policy and, at the same time, facilitating more active migration (Spång).

It has been pointed out that, on the one hand, Sweden wants to teach Europe regarding labour migration, but, on the other hand, Sweden wants to learn from Europe regarding asylum policy, because it is more restrictive. “Sweden aims at ‘Europeanising’ asylum policy, and to ‘swedify’ labour migration” (Hansen 2010: 91-93).

## 2. CURRENT STATE OF ADMISSION POLICY FOR FOREIGN WORKERS: INSTITUTIONAL FRAMEWORK

The Government describes the reform, which entered into force on 15 December 2008, as one of the most significant shifts in the history of Swedish immigration policy. Minister for Migration Tobias Billström sums up this turning point by saying: “Now it is the market to

assess its needs, not 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. That is why, when processing cases involving residence and work permits, decisions are based on employers' own assessment of what kind and how much of labour force he needs, although complying with collective agreements and other requirements" (Minister for Migration).

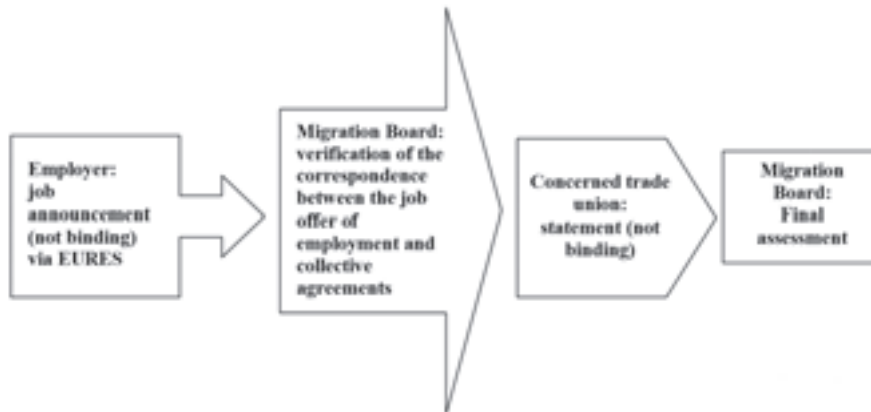
Until December 2008 the Swedish law provided that, if a company wanted to employ a foreign person, the company had first to check if this competence was available within the EU; the big change after December 2008 is that the company no longer needs to look within the EU but can choose wherever it wants. This difference between the two laws, according to one interviewee, could be defined as "*a change of paradigm*" (MV2).

In other words, under the previous rules, when an employer looked for a foreign worker, the system worked in the following way:



Those who want to work in Sweden and come from a country which is not an EU member state must have a work permit. In case they plan to work in Sweden for longer than three months, they will also need a residence permit. Those wishing to work in Sweden must normally apply for a work permit in their native country or in another country outside Sweden, where they are resident. They have to apply either on the Swedish Migration Board's website, or at a Swedish embassy in the country they live in. However, in certain cases labour migrants may apply for a work permit in Sweden in case they are: 1) a student at a university or college in Sweden; 2) someone visiting an employer in Sweden; or 3) an asylum seeker. People planning to work in Sweden for longer than three months also need a residence permit (Migration Board 2011a).

The Swedish Public Employment Service was previously responsible for checking that the Community preference was respected (posts were to be made available to job applicants in the other EU/EEA countries and Switzerland). Under the new rules, the Swedish Migration Board has taken over this task. Cases relating to residence and work permits are, thus, all dealt with by a single agency (Government Offices of Sweden 2008: 2). That does not preclude cooperation with other organizations (e.g., trade unions), but the final decision is up to the Migration Board (JD2). The Government explains that "in assessing the conditions offered with the employment, the main rule has not been changed, the employer is normally required to give the employee organisations an opportunity to issue an opinion on the terms of employment. The statements made by the employees' organisations are of great importance when making these examinations" (Government Offices of Sweden 2008: 2). That means, however, that the trade unions' statement is no longer crucial (Wadensjö).



The Labour Market Administration is now out of the picture: this is a huge difference compared to the former regulation, where a sort of labour market test was required and, in case there was no labour shortage in that occupation sector, then the Labour Market Board, after receiving a negative opinion from the trade union, had to reject the application. Instead of the labour market test, under the new law employers are obliged to advertise the position for ten days in the EURES system (The European Job Mobility Portal), but that is more of a fig leaf, based on Sweden's obligations with the EU. The Labour Market Board was also responsible for checking with the unions that the working conditions were at least in line with collective agreements. One of the most important tasks which the Swedish Migration Board has is to make sure that there is no salary dumping in Sweden; therefore, every application which is received by the Board is forwarded to the relevant labour union, which is given two weeks to look through the application and, then, the union can tell the Migration Board if the salary and the working conditions as a whole are good enough.

Time limits for work permits have been extended: they can be granted for the duration of the employment and, anyway, for a maximum of two years; if the person is still working after this, it is possible to extend the permit up to no more than four years. After this time, a permanent residence permit can be granted. The application for an extension of a work permit is processed in Sweden: the applicant will not need to return home to apply. Furthermore, simplified rules have been introduced for visiting students wishing to stay and work in Sweden after the completion of their studies and for obtaining a visa to attend a job interview in the country (both categories no longer need to return home to apply, if offered employment).

Finally, an asylum seeker whose application has been refused by a final decision may be granted a residence permit for work without having to leave the country first; the condition is that the asylum seeker has had a job for at least six months. The position must be permanent or for a period of at least one year from the date of application, and it must fulfil the general conditions for a work permit. The application must reach the Swedish Migration Board within two weeks from the final decision on the asylum application. The possibility of being granted residence permits without leaving the country is extended to the family members of the applicant (Government Offices of Sweden 2008: 2-3).



One of the most controversial points in the reform is that, for the first two years, the residence and work permit is restricted to one specific employer and a particular profession. For this reason, one has to apply for a new work permit if s/he changes employer or profession during the first two years. If the residence and work permit has been extended after two years, it will be restricted to a particular profession. But, even here, one must apply for a new work permit if s/he changes profession (Migration Board 2011e).

### **3. CURRENT STATE OF ADMISSION POLICY FOR FOREIGN WORKERS: CRITERIA FOR SELECTION**

The rules passed in 2008 do not allow for free immigration: this is still regulated. What the government has taken away is the labour market test. Nevertheless, there are still conditions: collective agreements, and also the labour migrants' capability to support themselves, which basically is a limit if one does not work full-time. To be granted a work permit a person has to: 1) be in possession of a valid passport; 2) earn one's own living thanks to the job the s/he has been offered; and 3) work to such an extent that the wage is at least SEK 13,000 (about 1,435 euro) per month (Migration Board 2011b).

There is no special program for the recruitment of high-skilled workers; proposals have been put forward in order to make it easier for international students to stay and work in the country for a while, but, besides this, the system is open to all groups. High-skilled workers have to follow the same rules as all the others: it is the employer who decides how many people and what kind of competencies are needed (Minister for Migration; MV1; JD2). This openness to low-skilled workers is definitely unusual in an international perspective, as well as the lack of a binding list of sectors affected by labour shortage: the idea behind this is that it is impossible to predict from the beginning which employments will stimulate economic growth (AMD1).

Actually, Sweden has an official list<sup>6</sup> on labour shortage, which is published twice a year, and it is based on statistics predicting the country's future labour needs. People looking for a job on the list not only have more chances of finding employment in Sweden, but they can apply for a work and residence permit from within Sweden, without returning to their home country first (SN). However, this list does not compromise at all the employer-driven character of the new Swedish labour migration policy: it is intended only as a way to facilitate those looking for certain jobs (AMD2).

What the OECD has found in its survey on Swedish labour migration policy is that labour migrants are overrepresented in shortage occupations, but the average permit duration for high-skilled workers on the shortage list is definitely shorter than that for low and medium-skilled jobs not included in the list (OECD 2011: 109-110).

The entry of labour migrants for elementary occupations in which there is a surplus is a possible point of concern, since there may be a risk of migrants substituting for less edu-

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<sup>6</sup> Sweden.se (The official gateway to Sweden), <http://www.sweden.se/eng/Home/Work/Get-a-job/Labor-shortage-list/>.



cated natives or prior immigrants in these jobs. Some of these occupations are taken up by rejected asylum seekers. On the other hand, if these occupations are in business where Swedish workers are unlikely to be employed – especially ethnic restaurants or business [...] – then labour migration into surplus elementary occupations may reflect the evolution and expansion of ethnic enterprises. The question then becomes whether expansion in the future will continue to be biased in favour of low skilled jobs, a trend which is at odd with that of economy as a whole. (OECD 2011: 113)

#### 4. CURRENT STATE OF THE ADMISSION POLICY FOR FOREIGN WORKERS: MECHANISMS FOR MATCHING OFFER AND DEMAND

The role of the State has been reduced to the lowest terms when compared to the system in force during the 1960s, when Sweden had recruitment agencies in some foreign countries (e.g., Italy) (Wadensjö). The Swedish Institute gets money from the State to finance a website (*Work in Sweden*), in order to facilitate people who are considering moving to Sweden to work. But the Public Employment Service has no specific task in trying to get migrants outside the EU to move to Sweden (AMD2).

If there is no striking problem, it is more or less automatic that the Migration Board grants the work permit.

Recruitment channels are diverse: sometimes, for instance, companies (especially big companies) benefit from their local contacts. The easiest way is to advertise the job with the Public Employment Service for a period of ten days. This will also provide access to EURES (Migration Board 2011c). Once that is accomplished, the employer has to look for the right person; “how” – whether to rely on local contacts or instead on head-hunters – depends on the employer’s network. But there is no public channel supporting employers in this task (SN).

To employ a TCN may be less expensive – although the job contract must be in line with collective agreements – but, on the other hand, it is more demanding in terms of bureaucracy, language, and so on. For instance, it is not possible to meet the worker before recruiting him/her. There are many unknown factors when employing a TCN (AMD1). This is one of the starting points of the reform after all.

The possibility of introducing bilateral agreements does not ultimately seem to be able to achieve widespread consensus, mainly because of the idea of spontaneous migration as the basic principle of the Swedish system (IT company; SN; MV1). The only bilateral agreements are, besides those regarding the tax system and the portability of social rights like pensions (Wadensjö), international students exchange programs, with Canada, South Korea, Australia and New Zealand, but they do not require any work permit (JD2).

For the recruitment of berry-pickers (coming mostly from Thailand) there is a well-established cooperation between Swedish companies and the sending country (JD2), without any state intervention (UD).

However, employment agencies play an important role in the recruitment system in general, and particularly when berry-pickers are concerned. In 2009 and 2010, berry-pickers from China, Thailand and Vietnam paid a great deal of money to some of these agencies for working in Sweden, which promised that they would earn a lot, but things went differently (Andersson Joona, Wadensjö 2011: 14).

The biggest group among labour migrants is IT engineers, almost 40-50%. They are mostly intra-company transfer personnel; this means that when, for instance, Ericsson – which has employees in India – needs 500 engineers quickly, the company just calls them from there, there is no need “to recruit” them in the labour market (MV2; see also JD2). As far as non intra-company transfer personnel is concerned, big companies, which have production units all over the world, have campaigns for the recruitment of engineers and IT technicians, going to other countries but also cooperating with universities in China, sometimes in partnership with the Swedish Institute and sometimes on their own. Ericsson has its “Eric-clubs” in China, intended to attract people and make them interested in Sweden. Engineers are recruited in Serbia, too. In other sectors, there are temporary agencies both in Sweden and abroad which the employers can turn to if they do not have their own connections (AMD2: 15).

Local authorities, as well, have campaigns in order to recruit foreign doctors in specific countries. However, despite the emphasis put by the Minister for Migration as well as by some experts on the public sector (particularly, the health sector) as a potential big recruiter of labour migrants, a limited number of work permits have been issued to municipalities, county councils and hospitals (OECD 2011: 91). According to the Swedish Medical Association (*Sveriges Läkareförbund*), the reason why few TCN doctors are recruited is that the certification process of foreign education and job experiences makes it shorter and easier to recruit doctors from EU countries instead (Petersson 2012: 14-15).

There are also campaigns for recruiting engineers, but again with no public coordination (MV2).

When it comes to labour migrants, recognition of foreign education and experiences is not so relevant: compared with many other countries, in Sweden there are fewer professions which are protected by this kind of requirement, mainly in the health sector (TCO). When an organization wants to hire a doctor from Iraq, for instance, the Migration Board waits until the Social Department has checked the doctor’s education before granting the work permit (MV2).

The validation system is used also with engineers, for example; the point here is convincing Swedish employers that the person has the qualifications to do a specific job. The high education system (*Högskoleverket*) is in charge of this certification, but usually it is not enough, since the job applicant (not so much engineers, as many companies work in English, but rather doctors and nurses) needs some specialized Swedish language skills. And then comes the difficult part: getting the first experience in the Swedish labour market. Usually, people (for example, an engineer from Iraq) work in a company for a short period, thus companies can see if s/he is the right person, and report on that. When their skills have been

evaluated not by an authority, but by a real employer in a real work situation, then they can go on (TCO).

On the whole, the certification of foreign education and experiences is one of the problematic areas of the Swedish labour migration policy (OECD 2011: 126): highly qualified immigrants need the special permission of the Swedish authorities in order to enter the Swedish labour market, but the time needed to issue that kind of permit is very long (Ekberg).

The validation system is very heterogeneous: different authorities (Swedish National Agency for Higher Education, the National Board of Health and Welfare and others) dealing with different kind of validations for different jobs in different sectors. New attempts are being made to make the system more transparent, as it currently gives a confusing impression, due to the lack of coordination (AMD2).

What is pointed out, furthermore, is that the Swedish validation system has worked quite a lot on refugees' education, and it should now be developed in order to be effective in validating labour migrants' competences as well (SN). But it is to be noticed that, if few asylum seekers find jobs, it is also because of the poor efficiency of this system (LO).

Where recruitment is carried out is, however, an unclear point, as far as the implementation of the new system is concerned. Although the law provides that TCN workers have to apply from their own country (with the exceptions pointed out in par. 2), perception about how the match between demand and supply is, in fact, achieved varies quite a lot: both in Sweden and in sending countries (JD1; JD2); only in Sweden (TCO; UD); usually in Sweden (LO); depending on the sector (Wadensjö). Actually, only 7% of the job applicants were recruited in Sweden between 2009 and 2011; rejection rates are definitely higher for in-country applications (among rejected asylum seekers trying to switch track, 1,059 out of 1,787 were granted work permits; among people with visa, applying under the shortage list, 150 out of 292) (OECD 2011: 83-84).

## **5. FUNCTIONAL EQUIVALENTS: POLICIES FOR THE ACCESS OF NON-LABOUR MIGRANTS TO THE LABOUR MARKET**

Before the reform, the need to keep labour migration and humanitarian migration separated was constantly emphasized; but then the possibility to change track came about, thanks to the 2008 reform (see par. 2). The background of this shift is that, in Sweden, asylum seekers are allowed to work from the first day. There were a number of cases in which newspapers pointed out: asylum seekers got a job, they were working and taking part in the community in the small cities, but then their asylum application was denied and they were supposed to be sent home. By the change of track, a kind of possibility was opened in these cases. But there is a condition: this possibility to change track only exists if one applies for a work permit in the two weeks following the final decision on his or her application (TCO).

On the other hand, the argument was made that those applying in Sweden for asylum are not always in actual need of it, being attracted rather by Swedish generosity in terms of social policy; after the reform it can be expected that some of them will take, instead, advantage of the labour migration track (JD1).

In order to be granted a work permit, the applicant must prove that:

- s/he has a passport covering the whole period of validity of the permit;
- s/he has been employed for at least 6 months as an asylum seeker, and that the employment will continue for at least 12 months from the date of application;
- s/he has had the same employer;
- s/he has earned at least SEK 13,000 per month;
- s/he can earn her/his own living (Migration Board 2011).

The Migration Board acknowledges that there are not so many asylum seekers who have turned into labour migrants because of the current system (post-2008) being very bureaucratic and making it more difficult for asylum seekers to get a work permit.

The high rejection rate (40% from 2009 to May 2011) for asylum seekers trying to change track is due to the following reasons: working conditions (wage, working hours) not in line with the requirements; delay in applying; and a too-short work history (less than 6 months) (OECD 2011: 84).

In September 2011, the Migration Board made the argument that it is unacceptable that asylum seekers have to wait for the final decision on their application before applying for a work permit; according to the proposal put forward by the Board, they should rather be allowed to apply on both tracks at the same time (Persson, A. 2011). The Migration Board believes that this would be a better system (both for the applicants and for Sweden) than the current one. But the Board acknowledges that it is quite a controversial suggestion (MV2). And, indeed, the proposal has been criticized both by trade unions and the Confederation of Swedish Enterprise, arguing that refugee and labour migration are two completely different channels of immigration, and they are to be kept separate: all those moving to Sweden are welcome in the Swedish labour market, but the point is that the refugee policy cannot be evaluated merely in economic terms (Sörman, Ågren, Ekström, Lindqvist, Arrius, Nordmark 2011).

However, while the government is positive on the possibility to switch track, many voluntary organizations are critical about it; their argument is that the overlap between the two categories risks compromising asylum seekers' rights (Spång): a fear shared by the Social Democrats (Yohansson).

For some groups among the asylum seekers (e.g., those coming from Somalia), it may not be easy to find a job in Sweden. For doctors and engineers from Iraq, it is somewhat better (TCO).

A sector employing a number of asylum seekers and refugees is the home service industry, which is expanding in Sweden following the decline in public expenditure, privatization of public services, flexibilization of labour force and tax deductions such as RUT (*Rengöring, Underhåll och Tvätt*, i.e., home services) (Gavanas 2010: 10). The latter were introduced in 2007, with the aim, on the one hand, to stimulate the sector, and, on the other hand, to reduce the black labour market (Wadensjö).

A recent research focuses on the interchangeability of formal and informal labour in the home service sector: a company may offer regular work to its customers to be carried out by named workers, officially registered, but then the work is done by someone else, possibly an irregular migrant, in a shorter time and for a lower wage, paid off the books. In other words, companies (sometime the big ones) working in the formal sector may turn to intermediaries (subcontractors), who hire workers on the black labour market. Furthermore, migrants' lack of language skills and needed ID documentation can be easily exploited in this sector: home services may be one of the few accesses to labour market for some migrants, regardless of their education (Gavanas 2010: 27-3124).

From the mid-1980s up to the mid-1990s, and also later on, Swedish authorities placed out immigrants in different areas, in order to avoid ethnic enclaves. The result was that authorities spread out many refugees in areas where there was plenty of dwellings, but that was because many natives had to move out from the area due to lack of jobs. Studies show that this has been negative for the refugees and their access to labour market. Nowadays, politicians acknowledge that such a system is not sustainable, and that authorities have to find areas where refugees have good opportunities to get jobs. In this respect, the debate has changed. But, still, many refugees are placed in municipalities where there the chances of getting a job are low; the reason is that many municipalities want refugees because of the fees they receive from the government. If a refugee is unemployed in many years in that area, the municipality is compensated by the government (Ekberg).

However, the home service sector is in constant need of staff, as it has been growing continuously since the introduction of RUT in 2007. Workers are sometimes recruited through advertisements on *Metro* (a free newspaper with worldwide circulation), since the people the companies are looking for cannot afford an ordinary newspaper but they still read *Metro*. Besides this channel, companies turn to the Public Employment Service (Home Service Company).

## 6. THE EXTERNAL DIMENSION OF LABOUR MARKET POLICY

Supporters of the reform stress that immigration to Sweden contributes to increased economic growth, for instance thanks to improved Swedish foreign trade, as has been shown by the "Kosmopolit" project (MV1), started in 2007 by Minister for Trade Ewa Björling in order "to make use of the unique skills of people born abroad to increase Swedish trade with the rest of the world". A study showed, for instance, that an increase in the number of people born abroad by some 12,000 individuals would lead to an increase in exports by as much as 7 billion Swedish crowns: entrepreneurs who were born abroad have good knowledge of the culture of their former home countries. They are in an excellent position to conduct cross-border trade and can also help pave the way for other Swedish companies (Government Offices of Sweden 2011).

The Minister for Migration believes that, after the reform passed in 2008, a step further is needed, and that is why the government – once again, with the support of the Green Party – appointed in 2009 a Committee on Circular Migration (CIMU), with representatives of all

political parties (excluding the xenophobic party of the Sweden Democrats, the committee being appointed before the last general election). In its intermediate report, the committee analysed the concept of circular migration (the Minister reminded that in Brussels there are diverse understandings of it), and then (April 2011) it released a report with recommendations on how to facilitate the mobility of people planning to work in Sweden for a while, and then to return home or to move to another country (Minister for Migration). The main proposals by CIMU were:

- Allowing migrants with a permanent residence permit to leave Sweden for up to five years (under the current system, the period is one year), while holding their permits.
- Granting a time-limited work permit longer than the four-year period currently in force (after which, a foreign worker is allowed to apply for permanent residency), under special conditions (people who wish to work in Sweden but do not plan to settle in the country).
- Introducing the ability of fulfilling the total qualification period of four years for a time-limited residence permit within an eight-year period (instead of the current five).
- Relaxing the requirements for rejected asylum seekers wishing to change track (from at least a six-month employment to a three-month one, and through two employments; extension of the deadline from two to four weeks after receiving the final decision on the application for asylum).
- Appointing an independent economic authority to verify whether the business plans of TCN entrepreneurs wishing to start their own business activity in Sweden are reliable.
- Granting students who have completed their education in Sweden a six-month residence permit allowing them to look for a job.
- Allowing migrants who have been granted an unemployment insurance to benefit from it for three months, while looking for a job abroad (CIMU 2011: 32-37).

The Minister for Migration reaffirmed his commitment to circular migration in a speech at the London School of Economics (May 2012):

The links between migration and development is a prioritized policy area of the Swedish Government. We believe that if migration is managed responsibly it has the potential to benefit receiving countries, countries of origin and migrants themselves [...]. A key aspect of such an approach is to promote coherent policy approaches that promote synergies between migration and other relevant policy areas, including development cooperation, trade, foreign affairs and integration [...]. There are many definitions of circular migration, but in Sweden the term is used to describe how migrants that have a residence permit in Sweden, can have the opportunity to return and contribute to development in their country of origin. Circular migration in the Swedish context is not a temporary migrant worker program, but a view that it should be possible for migrants to make a decision to

leave Sweden either on a temporary or more permanent basis, and still have the possibility to come back again. (Billström 2012)

However, the impact of circular migration on sending countries is a controversial issue of debate in Sweden. Research shows that, while the emigration of high-skilled workers may have a positive effect on large sending countries, in the case of small and poor countries negative effects seem to prevail (Lundborg 2010: 33).

Furthermore, although some experts believe that there is no contradiction between the support by centre-right parties and the Green party for circular migration and the current labour migration policy allowing TCN migrants to get permanent residence permits in Sweden (Spehar, Bucken-Knapp, Hinnfors 2011: 14), others point out that the new labour migration law is better compared to several other equivalent countries, but, as far as the question of permanent residence is concerned, there is no strong guarantee that there is a citizenship path and today, with Europe being affected by the crisis, no one would commit to the social incorporation of migrants, whether irregular or regular (Hansen).

## 7. STRENGTHS AND WEAKNESSES OF SWEDEN'S APPROACH TO LABOUR MIGRATION MANAGEMENT

Prior to the 2008 reform, the number of labour migrants was very low (with the exception of seasonal workers). After 2008, however, labour migrants have increased and are now the second category of inflows after family reunification (the third being free movement migration from EU countries) (OECD 2011: 48)<sup>7</sup>. The number of accompanying family members being granted a work permit has increased as well, although it is hard to say how many of them have actually found a job, and in which kind of employment (OECD 2011: 77).

Experts agree that, in the first few years after the passage of the law, the number of foreign job seekers has not at all increased as much as some people were afraid of. The OECD draws some lessons from Sweden's new labour migration policy:

The first lesson is that a shift from a restrictive to one driven exclusively by employer demand with a minimal verification that the demand is legitimate does not necessarily lead to an explosion in labour migration [...]. The second lesson is that the assumption by the Swedish authorities of a natural preference of employers for locally available employees seems to be borne out by the experience since the introduction of the reform (OECD 2011: 132).

Despite the economic crisis, in 2009 there was a small increase in the number of applications to the Migration Board, but not at all a mass immigration: this shows that the system is flexible enough to adapt itself to economic ups and downs (SN).

As was the case in the previous system, under the new regulation many permits are issued for short periods, either for intra-corporate transfers or for seasonal jobs. Moreover, employers

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<sup>7</sup> Work permits issued in 2009: 14.481; in 2010: 13.612; in 2011: 14.722; in 2012 (up to August) 13.500 ([www.migrationsverket.se](http://www.migrationsverket.se)).



may choose to offer a short-term contract in the first place, in order to be able to get rid of workers more easily if they do not fit the job (employment protection is quite strong in Sweden) (OECD 2011: 78-79). In view of these developments, one could assume that, even if it is too early to evaluate its impact, the reform seems to have to do mainly with circular migration (Spång).

Within a general satisfaction about the implementation of the reform, the Minister for Migration admits, however, that there are some problems – which nonetheless were put on the bill – but nonetheless he appears to be confident of the administration's will and capability to solve them: "by the new regulation it is possible to oppose workers' rights violations" (Minister for Migration).

However, the poor correspondence between the conditions promised to foreign workers in the offer of employment and the ones applied in fact are not only a polemic by trade unions, but rather a problem which officers, researchers and media – and now OECD as well – are fully aware of.

The Migration Board acknowledges that there is no certainty about how a job will actually be carried out once the foreign worker has moved to Sweden. At this moment, it is very difficult for the Migration Board to have an in-depth look at an application, so as to assess whether it is a fake (MV2). Problems occur in different sectors, restaurants and the building industry first of all, but sometimes also in jobs covered by the "white-collar" union (TCO).

The rejection rate of permit applications was low (less than 11%) in an international perspective over the period 2009-2011, but nonetheless it doubled compared to the average rejection rate (5-6%) reported in the two years before the reform. Unsuccessful applications come mostly from small businesses and organizations (sometimes run by immigrants) (OECD 2011: 117-118).

The point is that the offer of employment is not legally binding: this is one of the main criticisms from the union (LO). Bound to the same employer for two years and with no legal instruments on his/her side, the worker cannot do much when the employer pledges to offer, for example, 16 Swedish crowns per hour in the job contract, and then pays 10 crowns only in reality. Another way to bypass collective agreements is to hire a foreign worker (a berry-picker, for instance) through a foreign company (e.g., in Thailand), based on the working conditions in force in that country, although the worker is granted a Swedish work permit ("posted workers"). The Committee on Labour Migration (KAKI) was well aware of both the dangers and the recommended controls, especially the fiscal ones, but not much attention seems to have been paid to this part (UD).

The work permit duration has been extended, and this is a positive development from the unions' point of view: the employer can plan his/her business on a long-term perspective, the immigrant feels safer, and Sweden becomes more attractive as a labour marketplace. The problem is that, for some time, the residence and work permit are restricted to one named employer and a particular profession. This obligation brings with it an advantage and a disadvantage: it is not easy for irresponsible employers to hire foreign workers and then subcontract them; at the same time, even if the worker is not satisfied with his/her working conditions, s/he cannot change employer (LO).



## Seasonal workers

In the public discourse, polemics focus mainly on berry-pickers working in summer in Northern Sweden. The OECD points out that, under the new system, identification of seasonal workers is complicated: they are granted the same work permit as any other labour migrant. The companies recruiting seasonal workers were, in 2009 and 2010, fewer than 50; in both years, 75% of this group of workers were sponsored by five employers only (OECD 2011: 82).

Minister Billström talks about “secondary problems” – and anyway foreseen – related to berry-pickers, within a new system which is working altogether very well. What happened before was that those workers moved to Sweden (not with a work permit, but with a visa) and did their job for some months, returning home afterwards without paying any tax (Minister for Migration). In 2010 a new regulation came into force; berry-pickers have the guarantee of some basic rights (SN), including a guaranteed minimum wage (LO).

This change followed a poor berry season in 2010, when many workers were laid off and found themselves with no means to return home (OECD 2011: 83).

That is why, prior to the berry-picking season of 2011, the Migration Board established new requirements for those who want to pick berries in Sweden. In order to be granted a work permit, they must be offered conditions of employment which are on par with Swedish collective agreements or – the specification is due to the lack of collective agreements in the sector – “whatever is customary within the occupation or industry”. Berry-pickers are expected to earn at least 13,000 Swedish crowns (approximately 1,450 euro) a month. Furthermore, the employer must prove that s/he can pay the salary stated in the offer of employment and, in case s/he has previously hired berry-pickers, that s/he has paid their wages from the year before. Finally, the employer must give the trade union organisations concerned the opportunity to comment on the conditions in the offer of employment (Migration Board 2011).

Despite these requirements, what might happen, as the liberal newspaper *Dagens Nyheter* has warned, is that berry-pickers are forced to sign two distinct contracts: one in line with law requirements, and another one by which they give up completely the official wage, probably without understanding what they are giving their consent about (Smedslund 2010). Moreover, there are media reports that companies in the sector have started recruiting workers from Bulgaria and Romania instead of people from Asia just to get out of the new rules (Wadensjö).

The union has always had difficulties in organizing berry-pickers: they are often formally self-employed (although, in fact, they are employees), and therefore cannot be represented by the union (LO); and they stay in Sweden for a short time, earn some money and then return home and are very scared of the danger of losing their jobs in case they denounce violations of their rights (AMD1).

## Posted workers

At the same time, when EU enlargement took place, the “Vaxholm affair” raised the issue of foreign workers’ working conditions and, above all, of the challenges posed by “globalization”

to the Swedish model. In 2004, a Latvian company (*Lavall un Partneri*) was awarded a public tender in Sweden to renovate a school in Vaxholm (near Stockholm). Laval posted workers from Latvia; they were employed to work through a subsidiary of Laval and negotiations began between it and the Swedish building and public works trade union. When these negotiations broke down, Laval signed collective agreements with the Latvian building sector trade union, to which 65 per cent of the posted workers were affiliated. The Swedish trade union then took collective action by means of a blockade of all Laval sites in Sweden and this action was supported by other Swedish trade unions. Laval brought proceedings in the Swedish courts and then the case was transferred to the European Court of Justice (ECJ) (Eurofund 2010; see also Persson, I. 2006). On 18 December 2008, the ECJ passed the verdict on the Laval case, ruling that the right to industrial action can sometimes be justified under EU law to protect against social dumping, but at the same time the Court also pointed out that “the exercise of that right may be subject to certain restrictions”. The ECJ noted that industrial action aimed at obtaining terms and conditions which went beyond the minimum established by law made it less attractive for companies to carry out their business in the member state and, therefore, represented a restriction on the freedom to provide services, guaranteed under the Treaty. In Sweden there was no statutory minimum wage, nor were collective agreements universally applicable. Consequently, industrial action to impose terms could not be justified under EU law. The court also held that failure to take account of the collective agreement reached between the employer and the Latvian trade union amounted to discrimination against both organisations (Eurofund 2010).

Swedish laws on working conditions apply to everybody who is posted to Sweden; the obligation that foreign employers have to follow Swedish laws is based on regulations in the EU Directive on posting. There is also a Swedish law which is based on the EU Directive; it was altered in 2010 following the verdict of the European Union Court of Justice. Since then, the union organisations may only take industrial action against foreign employers under certain conditions and must hand in a copy of the conditions applying to their collective agreements to the Swedish Work Environment Authority (Swedish Work Environment 2011).

The blue-collar trade union, LO (*LandsOrganisationen*), is a strong critic of the reform passed in 2008, putting forward arguments that the white-collar trade union, TCO and SACO (the latter being the Swedish Confederation of Professions) partly agree with. The Social Democratic Party and the Left party were critical as well when the new rules were presented. Yet, it is noteworthy that the Social Democratic Party was not united in its opposition.

According to the blue-collar trade union, the previous system had proved to work quite well and borders were not as close as the centre-right parties described them (LO 2006: 7). The competent authority for labour market defined the need for labour force thanks to lists of shortage-affected sectors and occupations, and the cooperation between social partners (unions and employers), who were given ten days to state their joint opinion on the single offer of employment, was effective, thanks to their knowledge of local labour markets (LO).

When the centre-right government proposed new rules for labour migration, the trade unions were rather negative, because they predicted that the system would be misused, as labour force coming to Sweden can slow down wages; today this is an argument made by the

xenophobic Sweden Democrats as well. Trade unions also pointed out the problem with low-educated labour force such as berry-pickers. LO was and is afraid that if such low-educated immigrants enter the labour market, there will be competition for LO members.

The proposals put forward by the Social Democrats and the unions in order to improve the implementation of the reform are the following:

- The offer of employment ought to be legally binding. As long as it is perfectly legal to write one thing in the offer of employment and then a different thing in the employment contract, what follows is that the individual cannot base his rights on the offer of employment, and that is abused by the system (TCO).
- An employer who was responsible in the past for workers' rights violations should not be allowed to hire labour migrants (SAP).
- The Tax Agency should check if the employer's contributions do correspond to the wage s/he promised (this would be a very easy thing, if the Tax Agency and the Migration Board just exchanged information by computer) (TCO).
- Controls would be easier if labour migrants moved to Sweden only after being granted the work permit; with a visa it is the opposite, and this increases the danger that the worker, once in Sweden, becomes more willing to accept unsatisfactory working conditions, just to stay in the country (LO).
- The Migration Board is not competent in the field of labour market; hence its difficulties in preventing workers' rights violations; the responsibility for ensuring that the actual working conditions are in line with collective agreements should be transferred to another authority, as it was in the previous system (LO).
- The labour market test (and the cooperation between social partners) should be restored in order to avoid labour migration being absorbed by sectors with bad working conditions (which make it difficult to recruit domestic labour force) (Larsson 2010).

The unions concerned with the tourism and restaurant sector complain that the presence of a cheap foreign labour force makes collective bargaining difficult because responsible companies have to compete with employers who underpay workers; and that implies as well that free competition is undermined (SAP; LO).

Nevertheless, it is not only the unions and the Left who express their concern over the shortcomings of the new labour migration policy. In the long run, difficulties are to be expected when it comes to monitoring working conditions (i.e., whether the employer follows what he has promised in the offer of employment or not). In Sweden it is mostly up to the unions to accomplish this task and it is not easy for unions to monitor sectors/areas where they do not have members or with workers whose language they do not speak, and/or who are scared of or prevented from getting in touch with trade unions: this is a remark also made by the OECD (OECD 2011: 126). Thus, maybe in the long run, a public monitoring system will be needed. In the service sector, for instance, the rate of unionization is going down, and this may mean that, in the future, the public authority will be forced to be more inquisitive compared to today (AMD2).

However, in the face of these controversies, in December 2011, the Board introduced tighter rules for granting work permits in certain industries:

The goal is to prevent people from being exploited on the Swedish labour market as much as possible within current legislation. The new rules mean that businesses in the cleaning, hotel and restaurant, service, construction, staffing, trading, agriculture and forestry, and automobile repair industries, as well as all newly-started operations, must show in connection with a work permit application that wages can be guaranteed for the time that an offer of employment is valid.

Businesses in these industries that previously employed people from outside the EU must show documentation of wages paid. In the event the employee is hired by a foreign business (outside the EU) conducting operations in Sweden, the company must have a branch office registered in Sweden. Furthermore, the company must show that the employee has received information on the conditions of the employment offered. (Migration Board 2011d)

The new controls have gone into effect on 16 January 2012.

At the same time as when unions and left parties complained that the new rules on labour migration have weakened workers' position in the labour market, what is mostly criticized by the employers is the Migration Board's ineffectiveness and, particularly, its handling of time. The Minister actually acknowledges that this is a problematic area (Minister for Migration).

The waiting time for recruiting a foreign worker is lower than in most other countries; nevertheless, it adds one month for Swedish firms to the hiring time, compared with hiring on the domestic labour market (OECD 2011: 121).

What the Migration Board is doing is to modernize and strengthen its IT system, making it easier to apply for a work permit through the internet<sup>8</sup>. The Board is also reflecting on how to increase knowledge of the Swedish labour migration policy abroad (MV1).

Furthermore, in autumn 2011, the Board started a certification system, which would make it easier for companies which the Board – and the unions – trust (big companies like Ericsson mostly) to get a decision within twenty days (or five days, when the application also includes the statement from the concerned union). This certification system is both qualitative and quantitative: a company can be part of it if it applies for at least 25 work permits for TCN citizens per year (the reference year is not only the current one, but the past one as well), if it fulfils all the legal requirements, and if it has a good relationship with the union. When all this is met, the Migration Board issues a certificate which means that the applications will be given a priority line (Migration Board 2012).

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<sup>8</sup> About four out of ten applicants apply online. The amount of the application fee, which can be paid either by the employer or by the employee (usually the latter) is 2,000 Swedish crowns (about 220 EUR), while for a permit extension it is 1,000 Swedish crowns (about 110 euros) (OECD 2011: 64). In an international perspective, the Swedish fee is low, but when it comes to seasonal workers – who have to pay the same amount – it is in the upper range (OECD 2011: 125).

In the end, neither the xenophobic party (Sweden Democrats) gaining representation in the Parliament in 2010 nor the ongoing recession are likely to threaten the open-door labour migration policy formulated by the centre-right coalition. The open question in the Swedish public debate is, rather, whether and how the government will be able to improve the implementation of the reform, getting rid of unnecessary red tape, but in the first place safeguarding employees' rights in a more effective way.

It is to be stressed, on the other hand, that the tighter regulations introduced by the Migration Board and in force since January 2012 show the government's will to agree on at least some of the recommendations made both by domestic and international organizations on this point.

Nonetheless, it is reasonable to expect that the degree of this commitment to improve the policy will also depend on the understanding of labour migration, i.e., whether it is meant in a traditional sense (and, as such, one entailing measures promoting immigrants' social and economic inclusion) or instead more as circular migration, which – despite all the emphasis on it as a key factor in international cooperation, benefiting destination as well as sending countries – resembles closely the old “guest workers” system.

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# List of Interviewees

Name	Position	Organization	Identification Code	Date and Place
Tobias BILLSTRÖM	Minister for Migration	Ministry of Justice	Minister for Migration	April 4, 2011; Stockholm
Anonymous	Government Officer	Migration Board ( <i>Migrationsverket</i> )	MV1	March 29, 2011; Stockholm
Anonymous	Government Officer	Migration Board ( <i>Migrationsverket</i> )	MV2	September 23, 2011; Stockholm
Anonymous	Government Officer	Justice Department ( <i>Justitiedepartementet</i> )	JD1	April 4, 2011; Stockholm
Malin BERGMARK	Government Officer	Justice Department ( <i>Justitiedepartementet</i> )	JD2	April 5, 2011; Stockholm
Anna SANTESSON	Government Officer	Labour Market Department ( <i>Arbetsmarknadsdepartementet</i> )	AMD1	April 5, 2011; Stockholm
Anonymous	Government Officer	Labour Market Department ( <i>Arbetsmarknadsdepartementet</i> )	AMD2	September 27, 2011; Stockholm
Peter SPRINGFELDT	Government Officer	Foreign Office Department ( <i>Utrikesdepartementet</i> )	UD	April 5, 2011; Stockholm
Ylva JOHANSSON	Vice-Chairman of the Swedish Parliament's Labour Market Committee	Swedish Social Democratic Party ( <i>Socialdemokratiska Arbetarepartiet</i> )	SAP	April 6, 2011; Stockholm



Name	Position	Organization	Identification Code	Date and Place
Monika ARVIDSSON	Expert of migration issues	Swedish Trade Unions Confederation ( <i>Landsorganisationen</i> )	LO	April 8, 2011; Stockholm
Samuel ENGBLOM	Labour lawyer	Swedish Confederation for Professional Employees ( <i>Tjänstemännens centralorganisation</i> )	TCO	September 22, 2011; Stockholm
Karin EKENGER	Expert of labour market	Confederation of Swedish Enterprises ( <i>Svenskt Näringsliv</i> )	SN	April 1, 2011; Stockholm
Christer WALLBERG	Chief Executive Officer	Tacton	IT company	September 27, 2011; Stockholm
Jan EKBERG	Senior Professor	Linnaeus University	Ekberg	September 28, 2011; Växjö
Peo HANSEN	Associate Professor	Linköping University	Hansen	September 23, 2011; Norrköping
Mikael SPÅNG	Associate Professor	Malmö University	Spång	March 31, 2011; Malmö
Eskil WADENSJÖ	Senior Professor	Stockholm University	Wadensjö	April 4, 2011; Stockholm
Monica LINDSTEDT	President of Board of directors	Hemfrid	Home Service Company	September 28, 2011; Stockholm

# Managing Labour Migration in Times of Crisis – The UK Case

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## ABSTRACT<sup>1</sup>

The UK regime aims to bring in foreign skills from outside of the European Economic Area in order to ensure economic growth and international competitiveness. While UK labour immigration policy has traditionally been biased towards skilled foreign workers, this basic aim has become more emphasised over the past fifteen years.

Foreign workers have also long found employment in low-skilled occupations in the UK. Indeed, the massive movement of A8 nationals after the 2004 enlargement and their employment in low-skilled work is the most recent example of the sourcing of workers for low-skilled jobs outside the formal labour immigration regime.

The UK labour immigration regime remains a demand-led one, in which the primary criterion for entry is a job offer.

The Points Based System (PBS), introduced between 2008-9, represents an attempt to objectify decisions on the entry of foreign workers. The PBS is made up of 5 Tiers, four of which are for labour immigrants. The most used route of the system is the Intra Company Transfer route in Tier 2.

Evidence-based policy has become the byword of UK policymaking since Labour came into office in 1997. The historic opening to labour immigration in the early 2000s, the creation of the PBS and the recent re-introduction of restrictions on immigration are all ostensibly based on publicly available scientific evidence.

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<sup>1</sup> This paper benefits from the research carried out in the framework of LAB-MIG-GOV (“*Which labour migration governance for a more dynamic and inclusive Europe?*”), a comparative research project coordinated by FIERI under the supervision of Ferruccio Pastore, with the support of the “Europe and Global Challenges” Programme promoted by Compagnia di San Paolo, Riksbankens Jubileumsfond and VolkswagenStiftung. EPC is one of the partners of LAB-MIG-GOV, in charge of the analysis of policy developments at EU level. The preliminary research results of LAB-MIG-GOV are available on the website [www.labmiggov.eu](http://www.labmiggov.eu).

## 1. INTRODUCTION

During the past decade, the UK received historically high levels of net immigration and a larger proportion of labour immigration, as a result of strong economic growth and a liberal immigration policy. Since the mid-1990s, net immigration has exceeded 100,000 people per year, rising above 200,000 in some years since 2000. The largest inflows came from within the European Union (EU). On the accession of eight Eastern European countries (the A8) to the EU in May 2004, the UK, Ireland and Sweden were the only three member states to give workers from these states immediate unrestricted access to their labour markets. About 1.3 million A8 nationals arrived in the UK between May 2004 and May 2009; though it is estimated that about half left by the end of that period.

The British labour immigration system can be described as a hybrid system; it is historically demand-led and while supply-side schemes have been introduced over the past decade, they remain marginal. The work permit system, which granted work permits to a specific employer for a particular skilled foreign national for a specific job and has accounted for the majority of non-EEA workers entering the UK for work purposes, was introduced in the aftermath of the First World War. While it has been subject to many revisions, the basic principles underpinning the system have remained the same, at least until the rolling out of the new points-based system (PBS) in 2008.

During the Labour governments, in office between 1997 and 2010, and the current Coalition government, in office since May 2010, the labour immigration system has been the object of constant reform. There have been three main phases of reform: phase 1 (1998-2004) involved liberalising and expanding the existing demand-led system, as well as introducing some new supply-side channels; phase 2 (2005-2008) was one of restructuring and consolidating previous policy innovations into a “points-based system” (PBS), which was aimed at better control of immigration and increased objectivity in admission decisions; and phase 3 (2009-) has involved qualitative adjustments to entry criteria and quantitative restrictions on entry, both with the pronounced aim of reducing the levels of non-EEA labour immigration.

The broad thrusts of policy have reflected a cross-party consensus based on shared views of Britain’s rightful place in the global economy, the complexity of “race relations” and public opinion on immigration. Indeed, a restrictive stance has dominated British labour immigration policy over the past half century and most stakeholders have supported this. The short-lived and much hyped liberalisation of labour immigration policy in the early 2000s was also largely supported by the main parties and stakeholders, including the trade unions, which were historically adverse to inflows of foreign workers (Krings 2009). The return to a more restrictive stance over the past five years has generally been viewed as a necessary response to what are perceived to have been excessive levels of inward migration over the past decade and to the economic downturn and rise in unemployment since 2008. Another aspect of continuity is the restrictive stance towards non-European immigration. Non-European immigration has been heavily restricted since the 1960s, while Irish and, following the UK’s

accession to the EU<sup>2</sup> in 1973, nationals of most EU member states have benefited from free movement (Somerville 2007). UK labour immigration policy has thus long held a European bias, despite the fact that it has stronger linguistic, and one could argue cultural ties, with ex-colonies such as India and Jamaica than it does with the rest of Europe bar Ireland.

In the late 1990s, British labour immigration policy underwent a radical reform. Labour governments decisively broke with the previous policy regime, emphasising the contribution that economic migration can make to the economy. References to the need for skilled foreign workers, particularly for the booming ICT sector, emerged in 1998/9 in the Treasury, the Department for Trade and Industry (DTI) and the Cabinet Office, in the context of a general focus on increasing the UK economy's international competitiveness (Glover, Gott et al. 2001).

The new policy approach which developed was based around the concept of “managed migration” as introduced in the 2002 Home Office White Paper “Secure borders, safe havens: Integration with diversity in modern Britain” (Home Office 2002). Managed migration involves strong controls on unauthorised and non-economic migration, in particular asylum, and the facilitation of economic migration. This White Paper argued that “developed economies are becoming more and more knowledge-based and more dependent on people with skills and ideas. Migrants bring new experiences and talents that can widen and enrich the knowledge base of the economy” (Home Office 2002, 11).

This change in approach to labour immigration can be explained by sustained economic growth, labour shortages and international human capital competitiveness concerns. Employers lobbied the government to open up to labour immigration, with high profile campaigns for high skilled foreign workers in sectors like ICT, and the trade unions preferred a managed system of labour immigration than irregular migration and work, which would result from a combination of restrictive policy and labour shortages. There was thus a consensus around opening up to regular labour immigration. Between 2000 and 2004, the work permit system was eased and new schemes were introduced for high and low skilled workers. The opening up to labour migration resulted in a rise in the number of work permits issued; work permit holders and their dependents increasing from 62,975 in 1997 to 137,035 in 2005 (Somerville 2007; Boswell 2008; Menz 2009).

Due to strong and sustained economic growth and the pervasive ideology of economic liberalism, introduced by the Conservative party in the late 1970s, the Labour government's liberalisation of labour immigration to the UK did not immediately have to confront opposition from the political opposition or the media. Indeed, while there was some concern regarding the social impact of opening up to foreign workers, the economic arguments for immigration were accepted by the Conservatives.

The decision 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 turned out to be the most significant decision taken by the Labour government in the arena of labour migration governance. In keeping with the traditional bias towards European immigration, the strategy was

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<sup>2</sup> Then called the European Economic Community (EEC).

to fill low skilled labour needs with workers from the A8 and restrict non-EU migration to the highly skilled. Prior to the decision, the debate was focused on how many migrants would come and the potential for an increase in the welfare burden as EU citizens have the same rights to welfare as UK citizens.

The numbers were far greater than expected; between May 2004 and December 2006, 579,000 A8 migrants registered in the UK. The gradual return to a more negative, restrictive approach to labour immigration emerged in the aftermath of the enlargement with concerns regarding the impact of the large inflow of Eastern Europeans on local public services. The Conservative party criticised the government for underestimating the extent of migration from the A8 and for a lack of planning in terms of the impact on public services and local communities and proposed putting an annual cap on immigration. Public opinion polls generally showed an increasingly negative stance on immigration, with a majority preferring a reduction in inflows. Labour received particular criticism from the right wing tabloid press and a technocratic policy debate developed, with government opposition questioning the efficiency of the system and the accuracy of government research (Boswell 2009).

Immigration policy is always a balancing act between opposing interests. The Labour government was under pressure to give the appearance of better control over labour immigration, while at the same time giving employers the certainty that they could continue to source highly skilled migrants. As the government could not control inflows from the A8 – though it decided not to give labour market access to workers from Romania and Bulgaria, on their accession to the EU on the 1st of January 2007 – the main response to growing concerns regarding labour immigration was to reform the non-EEA labour immigration system. The role of the state was reinforced, while at the same time externalising some of the responsibility for decision-making and implementation in this area to outside experts, employers and agencies.

Labour's third term saw a major consultation on how to manage economic migration, the outcome of which was the PBS, which was rolled out from 2008 and which I discuss below in more detail. The PBS represents an attempt to maximise the economic benefits of immigration and to establish better government control over it by means of clear objective qualitative admission criteria. The new system was relatively well received by opposition parties and the main stakeholders and received relatively little attention in the tabloids.

The approach to labour immigration changed definitively as the economic crisis set in in 2008. In that year, the House of Lords Select Committee on Economic Affairs published a report on the "Economic Impact of Immigration", which argued against 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 in 2009.

The far right made significant gains in European and local elections; however, the anti-immigrant British National Party did not achieve its expected breakthrough in the 2010 general election (Murray 2011). Indeed, just as Thatcher's Conservative party won the 1979 elections, the Conservative party, which is now in a Coalition government with the Liberal

Democrats, co-opted extreme Right votes in 2010 due to its tough line on immigration. In line with the Conservative electoral commitment, the government has introduced an annual cap on some categories of non-EEA economic migrants. In an apparent *quid pro quo*, the Liberal Democrats have accepted the more restrictive stance on numbers in return for an assurance that migrants' rights are to be protected (Interview HL2).

As noted above, there seems to be a general acceptance of the Conservative “tough line” on immigration among the main parties and stakeholders with 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 non-economic labour inflows, qualitative restrictions appear to be less controversial. In any case, the changes introduced by the Conservatives are far less influential than might appear from the party rhetoric. Only a few employer associations that are affected by the restrictions, in particular the ethnic catering industry, have been vociferously critical of the current policy. 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, BIS, BHA, TUC).

## 2. ADMISSION POLICIES FOR FOREIGN WORKERS: THE INSTITUTIONAL FRAMEWORK

Unlike many other West European states, where labour immigration was under the jurisdiction of Labour Ministries in the post-war period, the UK Home Office (HO) – the equivalent of European Interior Ministries – has been responsible for immigration since the 1793 Aliens Act. The Immigration and Nationality Directorate (IND) comprises around 80 per cent of HO staff. In Spring 2007, under the Labour government, the IND was transformed into a separate executive agency, the Border and Immigration Agency (BIA), within the HO. This agency was renamed the UK Border Agency (UKBA) in Spring 2008 (Boswell 2008). The current Coalition government has since moved policy staff back into the HO, while operations remain in the UKBA (Interview HO).

The other main departments involved in the policy arena are Business, Innovation and Skills (BIS),<sup>3</sup> the Treasury, the Department of Health (DH), the Department for Education (DE) and the Department for Work and Pensions (DWP). Since late 2007, a new actor has entered the debate, which has quickly become extremely influential. The Migration Advisory Committee (MAC) is an independent advisory committee of economists, which the government consults on specific questions related to immigration policy.

Prior to the introduction of the PBS in 2008, there were a number of schemes which granted non-EEA workers temporary permits for employment in the UK; the largest of which was the work permit system. Non-EEA skilled labour migrants were granted work permits for skilled jobs with UK-based employers in particular locations.<sup>4</sup> The prospective employer

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<sup>3</sup> Previously Business, Enterprise and Regulatory Reform and before that Trade and Industry.

<sup>4</sup> “Work permits” were granted if an immigrant was abroad and “first permissions” were granted if the immigrant was already in the UK.

applied for the work permit to Work Permits (UK), which was part of the UKBA. The employer had to attest that the migrant worker would fill a genuine vacancy for an *additional* role being created in the UK, in order to ensure against the displacement of resident workers. Employers had to show that the role could not be filled from within the resident labour market (resident labour market test (RLMT)) and that the migrant would be paid the *going rate* (not just the minimum wage) for the job in the UK. Furthermore, within the work permit system a shortage occupation route allowed employers rapid access to foreign skills identified as being in short supply in the UK (MAC 2008).

While skills have always been important criteria for gaining entry to the UK as a labour migrant, the focus on skills has been further emphasised since the turn of the millennium. A Labour government policy innovation during the early 2000s, which has received much attention, was the introduction of supply-side points-based schemes. With the Innovator Scheme, introduced in the summer of 2000 and the Highly Skilled Migrant Programme (HSMP), introduced in December 2001, migrant workers gained access to the British labour market solely based on their skills.

The HSMP was a scheme for attracting highly skilled migrants without a specific job offer in the UK. Candidates had to reach 75 points based on the following attributes: qualifications; previous earnings; age; prior UK experience; and successful completion of an MBA programme from a specified list. The threshold for entry was eased over the years and the numbers gaining entry grew from just over 1,000 in 2002 to over 17,000 in 2005. A HSM would be granted a year's leave and a three-year extension if they could show that they had taken all reasonable steps to become economically active in the UK. After four years they would be granted permanent residency if they could show that they were economically active. In the face of evidence of abuse of the programme, in 2006, the Government extended the required period of residence from four to five years and tightened the requirements for an extension of leave (Somerville 2007; MAC 2008).

In 2005, within the framework of the five-year strategy on immigration and asylum, the Labour Government launched a consultation on a more selective points-based system for immigration (Home Office 2005). The government aimed to create a system which would fulfil the following objectives: improve public confidence in the system; fill skills gaps; attract highly productive and highly skilled workers and students; attract investment and increase productivity and flexibility in the labour market; and ensure that people left at the end of their stay. In 2006, the Government published more detailed proposals in "A Points Based System: Making Migration Work for Britain" (Home Office 2006). Explicitly based on the Australian points-based system, the key outcomes of the new system were to be better identifying and attracting of migrants who have most to contribute to the UK; a more efficient, transparent and objective application process; and improved compliance and reduced scope for abuse. The government also aimed to make the system simpler to use, as it had emerged that many users found the work permit system too complex and bureaucratic.

Between February 2008 and March 2009, the government rolled out the new PBS for admitting non-EEA workers and students, which was said to consolidate over 80 existing work and study routes into five main categories or "tiers" (see section 3 for details).



### 3. QUALITATIVE VERSUS QUANTITATIVE CRITERIA

#### 3.1 Qualitative selection

The UK labour migration system has always been based on qualitative selectivity; both the skill of the migrant and the wage of the job being criteria for issuing work permits to foreign workers. This was based on the historic tradition of importing key skills from the British Empire and Commonwealth, notably for the health and education sectors, and the assumption that skilled well-paid foreign workers were less likely to displace resident workers. The qualitative criteria for admission have been subject to revisions over the years with the aim of easing or increasing restrictions on inflows. More recently, the system was translated into the PBS in which a minimum threshold of points must be met based on various qualitative criteria including wage, skill, linguistic competence and maintenance funds.

The criteria for admission under the various tiers of the PBS have been the object of almost constant reform. I present the system as it was initially set out as well as the qualitative reforms made to it by the Labour government (between 2008 and 2010) and the current Coalition government.

- **Tier 1:** Highly skilled migrants to contribute to growth and productivity. The “entrepreneurs” category must have at least £200,000 of disposable capital in a regulated financial institution; “investors” must hold at least £1,000,000; “graduate students” must have a qualification from a UK institution.<sup>5</sup> The “general highly-skilled”<sup>6</sup> are admitted on the basis of points for age, qualifications, previous earnings (weighted to reflect the distribution of salaries around the world) and previous work experience or qualifications gained in the UK, English language ability and maintenance requirements. This category replaced the Highly Skilled Migrants Programme. Entrants under this category have unlimited labour market access, and are allowed to bring dependents with them. After a two-year period, the points will be re-assessed and, if the person has high earnings or a highly skilled job, they will have their leave extended. For recent reforms to this category, see section on quantitative selection below.
- **Tier 2:** Medium and highly skilled workers with a job offer. This tier replaces the work permit system and covers the majority of skilled migrants entering the UK. See the Tier 2 focus section below for details on this tier.
- **Tier 3:** Quota-based low-skilled schemes for filling specific temporary labour shortages. This tier is currently suspended based on the view that A8 nationals currently meet demand. The schemes will only be with countries with which the UK has effective return arrangements. Two low-skilled labour schemes, the seasonal agricultural workers scheme (SAWS) and the sector-based schemes (SBS), remain open to

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<sup>5</sup> This post-study route ceased to exist from April 2012.

<sup>6</sup> This general route was substituted with an “exceptional talent” route in 2011.



Romanian and Bulgarian migrants, who do not yet have unrestricted access to the UK labour market.

- **Tier 4:** Students, covering the period of study at a specified and registered institution in the UK.
- **Tier 5:** Youth mobility and temporary workers, permitted to work for a limited period of time, for primarily non-economic objectives. This covers the previous Working Holiday-Maker scheme, as well as the au pair scheme. These migrants gain entry for cultural, charitable, religious or international development reasons or to satisfy the UK's obligations under certain international treaties.

Employers are requested to meet certain conditions before hiring non-EEA workers. Employers and educational institutions must apply to a register of sponsors to acquire a certificate of sponsorship from the Home Office (except under Tier 1, where immigrants do not gain admission for a specific job). Recognized sponsors are attributed either "A-rated" or "B-rated" sponsor status, based on their compliance with various reporting and record-keeping duties. Certificates can be withdrawn based on non-compliance. A-rated sponsors have the "full confidence" of the Home Office, while sponsors are B-rated based on evidence of abusing the system or not putting the correct systems in place. The B-rating is a temporary status while measures are put in place in order to gain full accreditation. Unlike the previous work permit system, the migrant, rather than the UK employer, applies to come to the UK. The sponsor issues the certificate of sponsorship to the migrant worker, who then makes an application via the points-based system.

In April 2012 the UKBA launched a new two-tier premium customer service programme which offers sponsoring employers an enhanced level of customer service for a fee. To qualify for premium service, an employer must be A-rated and have received no civil penalties in the preceding three years.

To qualify for each tier, individuals must earn a given number of points. Points are awarded through different combinations of "attributes tests" such as English language, skills, qualifications, previous salary, age and a "control test" regarding the likelihood of compliance with conditions of leave, such as availability of funds, compliance with immigration conditions, and, for Tiers 2-5, a recognized sponsor. For Tiers 1 and 2, points are awarded on the basis of attributes and control tests; for Tiers 3-5, points are solely based on control tests.

The UK PBS can be described as a hybrid demand-supply-led system. Tier 1 is supply-led, as applicants are not required to have a job offer in the UK. However, Tier 2, the largest route of entry, is largely demand-based as a job offer is required and provides the most points. The other tiers are only nominally points-based (Murray 2011).

## ***Tier 2***

The majority of non-EEA labour migrants are admitted through Tier 2. Tier 2 migrants are entitled to three years leave in the UK, which can be extended by two years if the migrant still meets requirements. Points, with an overall pass mark of 70, are awarded for a sponsored

job offer, prospective earnings (and qualifications or equivalents until April 2011), as well as the maintenance requirement and competence in English.

Following changes introduced by the current Coalition government, Tier 2 is now divided into four routes: Tier 2 general, which includes the shortage occupation list and the Resident Labour Market Test (RLMT), Intra-company transfer (ICT), Sportspeople and Ministers of Religion. Qualitative changes have been made to the points criteria by the Coalition government in order to reduce the number of applicants; raising the job skill threshold first to National Qualifications Framework (NQF) level 4 (diploma level) in April 2011 and then to NQF level 6 (graduate/professional certificate level) in June 2012, raising the language requirement for entry from basic to intermediate English and raising the minimum pay threshold to £20,000. A significant change from the previous rules is that the qualifications of the migrant are no longer assessed, only the skill level of the job.

**Table 2: PBS Tier 2 general**

Attribute	Points available
Assigned a certificate of sponsorship, because: 1. the job has an annual salary of £150,000 or more; 2. the job is on the shortage occupation list; 3. your sponsor has completed a resident labour market test; 4. you are switching from a post-study category; 5. or you want to extend your stay and continue working in the same job for the same employer	30
Appropriate salary and allowances: Minimum £20,000	20
English language ability	10
Maintenance (funds)	10

Source: UKBA website

With the increase in minimum skill levels, 27 occupations will no longer qualify. To lessen the impact on employers, Tier 2 will remain open to NQF 4 occupations that appear on the UK's Shortage Occupation List and to various occupations in creative fields, such as artists, authors, actors, dancers and designers.

ICTs accounted for 60 per cent of applications under Tier 2 between November 2008 and May 2009. The RLMT accounted for 32 per cent, while shortage occupations accounted for just 8 per cent. The MAC is charged with drawing up shortage occupation lists, to be reviewed at six monthly intervals. The committee uses a three-stage approach in drawing up the shortage lists. First, they determine whether particular occupations or categories of jobs are sufficiently skilled to be included on the lists. Second, they assess whether these occupations are experiencing a shortage. Third, they consider whether it is sensible to fill these shortages with non-EEA workers. The MAC uses both "top-down" quantitative national-level data and qualitative "bottom-up" evidence relating to particular jobs or sectors from individual employers and sectoral/occupational representatives.

The RLMT is the second largest channel within Tier 2 of the PBS after the ICT route. This route already existed under the work permit system. It is notable that the test was more stringent under the work permit system than it is under the PBS. Previously, the RLMT

involved providing Work Permits (UK) with documentary evidence that no resident worker could be found for the vacancy, including details of the vacancy, the recruitment methods used to advertise the post, responses to advertisements, an explanation for why the resident workers who applied were deemed inappropriate,<sup>7</sup> as well as showing how the requested foreign worker had the necessary skills and experience for the job. The job had to be advertised in English and in a publication that was available throughout the EEA, no more than six months before the work permit application was submitted. The process of attempting to recruit an EEA resident worker was to be given four weeks.

Within the PBS RMLT route, employers were initially required to advertise the vacancy for at least two weeks, at earnings levels deemed reasonable by the UKBA for that job. For jobs paying in excess of £40,000 the advertising period was reduced to a single week. In December 2009, the advertising period was increased to four weeks through the public employment services, Jobcentre Plus and through another channel as set out in a sector “code of practice”. However, the sponsor must simply attest to the UKBA that the test has been conducted and does not need to show evidence unless s/he is the subject of an infrequent spot check.

Since June 2012, RLMT requirements have been eased for the highly paid (over £70,000 per annum) and select PhD positions. For example, for these positions, employers will no longer have to advertise in Jobcentre Plus (public employment agency, which mainly caters for low-skilled positions).

Unlike under the work permit system, there is no requirement for employers to confirm that the ICTs have company-specific knowledge and experience required for the post on offer that could not be provided by a resident worker. The requirement for six months’ previous employment with the company is held by the UKBA to be a proxy for this. In response to complaints that the ICT route accounts for most entrants within Tier 2 due to the relatively lax restrictions, the Coalition government has introduced a new minimum salary of £40,000 for firms using ICTs for more than a year. Staff earning at least £24,000 will still be able to come for up to 12 months.

Tier 2 differs from the old work permit system in various ways, in particular the inclusion of English language competence, the role of the MAC in defining shortage occupations and the easing of the ICT and RLMT routes (House of Lords 2008).

### 3.2 Setting qualitative criteria

As noted above, in June 2007, the government established the MAC, an independent advisory committee of five economists headed by Professor David Metcalf, Emeritus Professor of the London School of Economics. The MAC was to some extent modelled on the Low Pay Commission, which makes recommendations to government on the minimum wage level (Interview MAC). The committee includes a representative from the UK Commission on Employment and Skills (UKCES) and the UKBA and has a permanent secretariat. The MAC was set up to provide “transparent, independent and evidence-based advice to the Government on where shortages of skilled labour can sensibly be filled by immigration from outside the

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<sup>7</sup> Resident workers could only be judged on the basis of the skills requested in the advertisement.

EEA” (MAC 2008 p.11). Despite the Conservative Party’s “bonfire of the quangos”, the remit of the MAC has continued to be expanded by the Coalition government. The remit is now rather broad; for example, over the past four years, the committee has been asked to assess the economic impact of dependents, whether to abolish the Worker Registration Scheme for A8 migrants and what the limits should be on non-EEA skilled worker inflows.

The MAC is generally given three to six months to respond to government questions and its response is generally based on academic research and a formal consultation process. The government decides whether or not to take onboard MAC recommendations; however, the majority have been adopted. The consultation documents and recommendations are all available to the public online; which makes the process transparent. The economic rationale used by the MAC in making recommendations makes for clear, apparently unbiased, arguments.

The MAC does not work in isolation; however, members underline its independence from political influence. The MAC secretariat is physically based within the Home Office building and informal discussions between Minister, Home Secretary, Home Office officials, MAC economists and officials regularly take place.

The Migration Impacts Forum (MIF) set up by the Labour government to focus on the impact of immigration on local communities and public services, in particular on crime and housing, failed to institutionalise itself. It did not meet after June 2009 and has been disbanded by the Coalition government.

### **3.3 Quantitative limits**

The UKBA consultation on the “Limits on Non-EU Economic Migration: A Consultation”, published at the end of June 2010, asserted that the government’s aim was to reduce net migration to the “tens of thousands, not hundreds of thousands” during this Parliament. The target of tens of thousands is based on the level of immigration in the 1990s, prior to when Labour were in office. The government has explicitly based its new quantitative approach to immigration on policy in Australia, Canada and the US (Murray 2011).

Restrictions on intra-EU mobility, family and asylum migration as well as ICTs are constrained by EU membership, human rights law and international treaty obligations. Furthermore, non-EEA labour and student inflows are not easily reduced due to influential interests, namely employers and educational institutions. The government is focusing on restricting three inflow channels for non-EEA nationals – work, study and family – and increasing outflows of non-EEA nationals by taking away the automatic right to settle in the UK for those resident for more than five years.

As regards non-EEA labour immigration, the coalition government introduced an interim cap in July 2010 of just over 24,000 until April 2011 – a reduction of 5 per cent on the previous year – and asked the MAC “at what levels should limits on Tier 1 and Tier 2 of the Points Based System be set for their first full year of operation in 2011/12, in order to contribute to achieving the Government’s aim of reducing net migration to an annual level of tens of thousands by the end of this Parliament, and taking into account social and public service impacts as well as economic impacts?” (MAC 2010 p. 7). In their report, published in November 2010, the MAC provided a general analysis of the impact of labour immigration

– not Tier 1 and Tier 2 migrants, on which there is no data – on the UK economy, society and public services.<sup>8</sup> This analysis did not appear to be directly related to the calculation of the figure for the cap, which was based on the “tens of thousands” target. As students accounted for around 60 per cent of non-EEA immigration in 2009 and the work and family routes accounted for approximately 20 per cent each, the MAC recommended a proportionate cut in numbers; for Tier 1 and Tier 2 a limit somewhere in the 37,400 to 43,700 range.

However, the government set the cap at 21,700 – 20,700 for Tier 2 and 1,000 for Tier 1 – far below the MAC recommendation. This annual cap on Tier 1 and Tier 2 entries came into operation in April 2011. ICTs are not subject to the cap, despite the MAC recommendation to the contrary, due to the employer lobby, in particular MNCs, and diplomatic pressure from the Indian and Japanese governments (Interview MAC). The government also decided to close Tier 1 (General) category and limit the Tier to investors, entrepreneurs, and people of “exceptional talent.” The exceptional talent route is capped at 1,000, while investors and entrepreneurs will not be capped. Businesses had made it clear in the UKBA consultation that they were in the main interested in Tier 2 and the government further justified the closure of Tier 1 (General) by referring to a UKBA survey of some Tier 1 migrants applying for family reunion in June 2010, which argued that about a third of Tier 1 migrants are employed in low skilled jobs (Interview HO).<sup>9</sup> The Tier 2 limit will not apply to those who apply from within the UK (in-country applicants), dependents or to the sportspeople and ministers of religion routes. Those who will earn over £150,000 per annum are also excluded from the cap. Tier 2 permits are issued on a monthly basis. If a month’s allocation is oversubscribed, the government will use a ranking system to determine which applicants receive a permit, based around the shortage list, qualifications and prospective earnings. The cap on Tier 1 and Tier 2 entries was expected to reduce net migration by 6,000 or less than 3 per cent compared with 2010.

The cap on some Tier 1 and Tier 2 routes introduced in April 2011 was substantially undersubscribed. In the first five months of the cap, which releases Certificates of Sponsorship (CoS) to employers of non-EEA workers on a monthly basis, a total of 10,200 certificates were made available, but only 4,323 were applied for by employers. The annual cap on Tier 2 will remain at the level of 20,700 for 2012-13 and 2013-14. The UKBA introduced a two-year cap cycle based on feedback from employers, who asked for fewer and less frequent policy changes.

#### 4. MATCHING LABOUR OFFER AND DEMAND

Apart from the 1,000 entries under the “exceptional talent” route of Tier 1, non-EEA labour migrants enter the UK on the basis of a job offer. Recruitment takes place in countries of

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<sup>8</sup> The analysis took into account the impact on Gross GDP and GDP per capita, inflation, pay, employment, net fiscal contribution, provision and consumption of public services, housing market, crime, congestion, social cohesion and population.

<sup>9</sup> A MAC survey of December 2009 found that 90 per cent of entrants via the Tier 1 general route were in employment and 90 per cent of these were in highly skilled work.

origin and in the UK. Most migrants are recruited abroad, though over one-third of certificates of sponsorship used under Tier 2 have been for immigrants already in the UK.

In-country applicants include those with an existing work permit applying to extend their stay, as well as those who are switching from a post-study category. In-country applications (i.e., applications from non-EEA migrants already resident in the UK) are not subject to the constraints of the cap. A high proportion of those applying from abroad are ICTs (MAC 2009).

There is no requirement for employers to recruit via public or private intermediaries and agencies cannot act as sponsors. The role of private agencies depends on the sector and occupation. For example, while the recruitment of doctors for the UK's National Health System (NHS) is centrally coordinated by the Department of Health and recruitment specialists play a limited role (as many doctors draw on personal contacts and the examination and registration process is clear), NHS trusts and the private health sector often use recruitment agencies in sourcing nurses (Bach 2008).

## **5. FUNCTIONAL EQUIVALENTS TO FOREIGN MIGRANT LABOUR ADMISSION**

### **5.1 A8 workers**

A8 workers have been the main “functional equivalent” to non-EEA low-skilled labour migrants in the UK since 2004. In the context of sustained economic growth in the early 2000s, it was decided to source low-skilled labour needs from within the expanding EU. This choice was very much in keeping with UK labour immigration policy, which has traditionally favoured European immigration. The UK, Ireland and Sweden were the only EU member states to grant immediate labour market access to nationals of the A8 on their accession to the EU on 1 May 2004. The UK and Ireland received a disproportionate number of A8 migrants, partly due to their flexible labour markets and proliferation of low-paid, low-skilled employment (Tamas and Münz 2006; Devitt 2010).

A8 nationals can work in any occupation in the UK. They are simply requested to register with the Workers Registration Scheme (WRS), which was introduced in the UK as a transitional measure, which monitors A8 nationals' access to the UK labour market. The registration scheme collects information about A8 migrants' employment in the UK until 12 months of continuous employment have elapsed. The A8 migrant must pay a one-off registration fee.

As noted above, the number of A8 migrants entering the UK following accession was far greater than expected. A total of 1.24 million National Insurance numbers were allocated to A8 nationals between April 2004 and September 2008. The evidence tends to suggest that A8 migrants often stay in the UK for a temporary period before returning home. They are generally young, educated and are gainfully employed in the UK. Indeed, they have higher employment rates than UK-born workers.

A8 workers have filled low-skilled labour shortages (as well as taking up newly created jobs in the expanding economy) and are often over-qualified for the work they engage in. Over three-quarters of A8 migrants are employed in lower skill occupations, compared to less than half of UK-born workers and other immigrants. They are mainly employed in elementary occupations and process, plant and machine operative occupations. The main sectors of employment for workers registering with the WRS in 2008 were hospitality and catering, agriculture, manufacturing and food processing. A8 migrants are distributed across the country in both urban and rural settings; they are disproportionately resident in areas like Wash and Herefordshire (Anderson, Ruhs et al. 2006).

Member states could only maintain transitional measures beyond the 1st of May 2009 (five years following the 2004 accession) if they could demonstrate that their removal could generate or exacerbate a serious disturbance to the domestic labour market. On the basis of a MAC recommendation, the UK government chose to retain the Workers' Registration Scheme (MAC 2009). Labour Force Survey (LFS) data suggests that the stock of A8 citizens decreased slightly towards the end of 2009, but began to increase again during the second quarter of 2010 (Vargas-Silva 2011).

UK governments took a different stance on the accession of Romania and Bulgaria to the EU in 2007; transitional arrangements were placed on the access of nationals from these states to the UK labour market, based on the fact that larger than expected numbers had arrived from the A8 and that there was a decline in demand for low-skilled labour (Interview MAC). Romanian and Bulgarian nationals are, however, prioritised in terms of sourcing additional temporary low-skilled labour in the agricultural and food-processing sectors as discussed above in section.

## 5.2 Family migrants

The number of work permit holders given leave to enter the UK in 2006 was 97,000. The total number of National Insurance numbers issued to foreign nationals from outside the EEA in the same year was 289,000. The difference between the work permit numbers and National Insurance numbers is explained by the fact that the latter covers workers on the Highly Skilled Migrant Programme (new Tier 1), the self-employed, working holidaymakers, students working part-time and dependants of migrants eligible to work without a permit, among other non-economic migrant categories (MAC 2008). This data shows the importance of "functional equivalents" to labour migrants in the UK; indeed, a larger number of non-EEA migrant workers enter via non-labour migrant routes than the work permit channel.

An important source of functional equivalents to non-EEA labour immigrants are non-EEA labour migrants' spouses/partners. 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.

Dependants (children, spouses, civil partners, same-sex partners, and unmarried partners) can participate in the labour market provided that the PBS immigrant has been granted more than 12 months' permission to stay in the UK. However, there is a prohibition on



undertaking employment as a doctor in training and family members of Tier 4 immigrants granted less than 12 months' leave to enter or remain are not allowed to work.

There is a lack of data on dependants' participation in the UK labour market. According to Control of Immigration statistics, in 2007, 37,700 dependants of work permit holders were admitted to the UK, while 86,300 entered with a work permit. The majority of dependants were connected to permit holders from wealthier countries. Most dependants have come through Tier 1 and 2 of the PBS, in particular Tier 1 general and Tier 2. According to the 2008 Q1 ad hoc LFS module, 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. Between 80 per cent and 92 per cent of Tier 1 and Tier 2 dependent spouses/partners are female.

The MAC maintains that LFS data on qualifications held by immigrants are highly unreliable. Based on this data, it appears that 17 per cent of spouses/partners have a bachelor's degree and over 50 per cent of spouses/partners maintain that they have "other qualifications" (i.e., not PhD, master's, bachelor's, A levels, NVQ3). Equally, the evidence on spouses/partners' jobs is weak. It appears that the employment rates of spouses/partners fall following migration to the UK. LFS data record that 59 per cent of spouses/partners were employed, while 33 per cent of spouses/partners were inactive and 9 per cent were seeking work. 81 per cent of spouses/partners were employed in unskilled occupations, compared with 38 per cent of principal immigrants and 26.8 per cent were employed in personal service jobs.

In the context of rising concern regarding unemployment and displacement of resident workers by 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).

### 5.3 Foreign students

Since around 2007, student migration has constituted the largest category of migration to the UK. Foreign students are another source of labour in the UK, and is effectively a functional equivalent to labour migrants. However, a smaller proportion of them participate in the labour market than family migrants. Note that asylum-seekers do not have access to the labour market in the UK.

According to LFS data, only about 1 in 4 foreign-born students (both EU and non-EU nationals) have paid employment. This percentage has not increased over the past 15 years; the figure has been between 22 per cent and 29 per cent since 1995 (observatory on students). It is important to note, however, that LFS data probably undercount students, especially those living in dormitories and other communal dwellings.

In 2009, 75 per cent (156,000) of student inflows were from outside the EU and over the past few years there have been sharp increases in inflows from the Indian sub-continent and the Middle-East and rest of Asia. Just over half are male. Over half are in universities with



another 40 per cent in Higher Education or Further Education institutions. Only 7 per cent are in English language schools (Blinder 2011).

Concerns over abuse of the system prompted the Labour Government to introduce a number of changes, including restricting the work rights of students on courses below degree level and raising the minimum level of English language study permitted under Tier 4. Without seeking the approval of UKBA, students on a course at or above NQF 6/QCF 6/SCQF 9 at a UK higher education institution, or a short-term study abroad degree programme at an overseas higher education institution, are allowed to work for up to 20 hours per week during term time and work full-time during vacations, while those on a course below this level at a UK higher education institution or publicly funded further education college are allowed to work for up to 10 hours per week during term time and work full-time during vacations. Students are not allowed to work in the UK if they are studying with an education provider that is not a UK higher education institution or a publicly funded further education college (unless they are on a short-term study abroad degree programme at an overseas higher education institution). 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 enables foreign students to remain in the UK for up to two years after obtaining a UK degree. If they find skilled or highly skilled work during the two years they can “switch” into Tier 1 or Tier 2 of the points-based system, which can lead to permanent settlement. After April 2012, international graduates will only be 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”).

## 5.4 Undocumented foreign labour

Estimates for the irregular migrant population in the UK range between 417,000 and 863,000; comparatively high figures in terms of Western Europe. London is argued to be home to a large proportion of the total (Somerville, Sriskandarajah et al. 2009; Vollmer 2011). Migration scholars often argue that irregular foreign workers are a functional substitute to legal labour immigration as they represent cheap, vulnerable labour and allow governments to give the impression of an apparently restrictive labour immigration policy (Guiraudon and Joppke 2001).

However, the political attitude towards undocumented migrant labour has become less tolerant over the past decade in response to security and human rights concerns. Regarding the latter, the death of twenty-three Chinese cockle pickers in Morecambe Bay in February 2004 was a key focusing event which emphasised the need to create channels for safe legal labour immigration – namely providing access to workers from the A8 – and to enforce controls on undocumented immigration. Indeed, the level of interest in contrasting undocumented immigration and the employment of undocumented migrants is in stark contrast to attempts to reduce illegal work in general (Scott 2007; Ruhs and Anderson 2008).

Despite the fact that the majority of irregular migrants in the UK are visa over-stayers, the UK has traditionally emphasised border control in contrasting undocumented immigration, as opposed to internal controls. However, biometric identity cards for non-EEA nationals working in the UK for six months or more have been rolled out from 2008 onwards in order to aid employers and the authorities in checking residence and work status (Boswell 2008). As sponsors, employers are obliged to keep records of their migrant workers and inform the UKBA if the latter do not turn up for work or even if they change their mobile number. The UK has also increased the penalties for employing undocumented migrants, with fines of £5,000 per illegal employee, and enforcement appears to have been reinforced (Somerville, Sriskandarajah et al. 2009).

In the main, the Conservative and Labour parties are against the idea of regularisation while the Liberal Democrat Party is generally the most open to it. At the same time, the government has regularized between 60,000 to 100,000 people over the past decade by means of administrative changes and ad hoc decisions. Those regularized have tended to be in the country for 13 years or more (seven if in a family), and are often failed asylum seekers (Boswell 2008; Somerville, Sriskandarajah et al. 2009).

## **6. THE EXTERNAL DIMENSION OF LABOUR MIGRATION POLICIES**

The UK government is not a member of the Schengen Area and negotiated an “opt in” arrangement for all areas of cooperation on borders, immigration and asylum under the 1997 Amsterdam Treaty. While the UK seeks cooperation in the control of undocumented immigration and asylum system harmonisation, the policy has been to protect national sovereignty in the area of labour immigration management and integration.

Based on a concern with maintaining control over its borders, the UK has opted out of any measures on legal immigration (Boswell 2008; Menz 2009). As a result, EU policy-making in this area is not on the radar of UK policymakers and stakeholders. The Conservative Party has a strong anti-EU element, which may use the current negative public sentiment towards A8 immigration – which cannot be restricted by the UK government – to further their cause of exiting from the EU (Interview HL1).

UK labour migration policy is in the main not based on bilateral agreements with source countries. However, Tier 3 of the PBS, which is currently suspended, will allow for temporary low-skilled labour migration from source countries which have signed return agreements with the UK; this is a similar policy to the Italian one, which offers labour migration entry quotas to key source countries on the condition that they readmit undocumented migrants. Another programme, which is based on international agreements, is the Youth Mobility Scheme within Tier 5. This scheme replaces the Working Holiday scheme and is for young people from participating countries who would like to come and experience life in the UK. The countries currently involved in the scheme are Australia, Canada, Japan, New Zealand and Monaco; “low risk” countries, with which the UK has return agreements and which offer the UK a similar scheme (Interview HO).

The General Agreement on Trade in Services (GATS) is the first binding multilateral trade agreement to explicitly address the movement of persons. GATS Mode 4 service suppliers gain entry for a specific purpose, are normally confined to one sector and are temporary. Mode 4 commitments have priority in any national labour migration considerations. An EU/India Free Trade Agreement is currently being negotiated, and the key aspect demanded by India is “Mode 4”. The UK is expected to be the main recipient of Indian Mode 4 migrants, about 25,000 out of a total of about Indian 40,000 ICTs who will be able to come to Europe. This has caused a certain tension between government aims of promoting UK trade interests and reducing levels of immigration (Interviews HO, MAC, TUC).

## **7. STRENGTHS AND WEAKNESSES OF THE UK LABOUR MIGRATION REGIME**

In order to measure the effectiveness of labour immigration governance systems, we can attempt to assess whether they are successful in meeting set goals. These goals include responding to the needs of clients – employers, migrants and the resident labour force as well as public opinion – ensuring compliance with immigration regulations and responding to broader socio-economic goals, such as increasing productivity and investment levels. In the case of labour immigration policy, different clients’ interests are often in complete opposition (i.e., employers and the resident labour force). Furthermore, the meeting of some objectives (e.g., migrants’ contribution to increasing productivity) is harder to assess than others (e.g., the objectivity of the admission system).

The PBS is widely viewed as an efficient system for admitting non-EEA labour migrants. A HO survey of PBS users published in January 2011 found that satisfaction was high among both applicants and sponsors; around 8 out of 10 applicants and sponsors were very or fairly satisfied with the process. The same proportion maintained that the PBS was meeting its objectives of being easy to understand, open/transparent, user-friendly, efficient and fair. Of those applicants and sponsors who had experience of previous immigration systems, they generally believed the PBS was an improvement on those systems (Home Office 2011). A HO official maintained in October 2011 that after a natural teething period, employers have come to prefer the PBS to the previous system, due to its objectivity: “Nobody likes change so it has taken a while, but I think employers prefer the PBS, it’s more objective so you don’t have a person in Sheffield saying ‘hum I don’t like you and I don’t see why you should come here’, which is what could happen in the work permit system. Under this system the employer issues the potential employee with a certificate of sponsorship, which contains all the information on the job, the applicant submits supporting evidence and if everything is in order and if the person doesn’t have a poor immigration history, then that person is in” (Interview HO). A BIS official was equally positive about the system: “What’s clear to me is there is no such thing as a perfect system because of the variety of needs in terms of business, the variety of skills and salary levels, there is such a range of them that the PBS seems to go a considerable way to addressing the disparities between for example research where you’ve got high skills but perhaps salaries which don’t compare at all to the private sector. No, it’s not perfect

and we're always working with different areas of business to make sure that their specific areas are not damaged by the fact that it's not nuanced enough without creating a system which becomes so complex because we have to balance the system with UKBA's focus on controlling borders" (Interview BIS). A recent House of Commons Public Accounts Committee report also maintained that decisions are reached more quickly than under the work permit system (Public Accounts Committee 2011). However, in the above-mentioned HO survey, applicants were evenly split over whether the PBS was faster or slower than pre-PBS routes.

Furthermore, according to the same Public Accounts Committee, applicants to the PBS have needed more support than expected in understanding how the system works, with half of them using the helplines. Moreover, the policy of "evidential flexibility" whereby case-workers can request additional information rather than simply rejecting applications is not used consistently.

Employers also complain about the cost of fulfilling sponsor obligations. Since UKBA can remove sponsorship with no recourse to appeal, employers are obliged to pay for legal advice throughout the process. As the House of Commons HAC asserted in July 2009, "There is clearly great nervousness amongst sponsors over the possible penalties attached to any failure, even unwitting, to report changes in circumstance of their migrants". The CBI estimates that it costs £500,000 to meet sponsorship rules, which may make Tier 2 route unfeasible for small and medium-sized firms (Home Affairs Committee 2009).

In general, the establishment of the MAC has elicited positive responses from the main stakeholders. Employers present a rosy picture of the MAC, which is contrasted with UKBA and the Conservative Party's restrictive tendencies: "The complaints we hear from members are about delays and a slightly 'wrong door no door' approach that UKBA takes occasionally, like if there is a problem and somebody doesn't fit the criteria, there is a tendency to say 'no', not 'how can we work around this'. But on the positive, I think the involvement of the MAC is really important, we are very supportive of their role; members really value a sound economic evidence base for policy; this is a political commitment that's been taken as regards the cap but the economic recovery has to take priority, so for us the role of the MAC is important" (Interview CBI). In its 2009 report on the PBS, the HAC found that most interested parties considered the MAC to be doing a good job; including witnesses with preferences as diverse as Sir Andrew Green of Migration Watch and Jabez Lam of the Chinese Immigration Concern Committee. The latter did suggest that the MAC should include a social policy expert, however, in order to ensure that the social aspects of migration were explored adequately.

The system can be said to be rather efficient as regards facilitating the entry of skilled foreign workers. The numbers of work permits increased steadily since the late 1990s, which reflects sustained economic growth and skill shortages. It has been emphasised, however, that the PBS overemphasises quantifiable skills and does not give due emphasis to ability or work experience. Indeed, as in Australia and Canada, previous professional experience could be used as a proxy measure (Murray 2011). In terms of ensuring that the needs of another client group, the resident labour force, are met, the system is supposed to ensure that the latter have

a chance to take up the available jobs before employers request non-EEA migrant workers.<sup>10</sup> The UK employment rate has declined since 2003, while those of other countries such as the Netherlands and some Scandinavian countries, with relatively high employment rates, continued to rise. The fall in employment appears to involve the low qualified as the gap between the employment rate of the low qualified and the average working age population is continuing to widen; only 46 per cent of those without qualifications are in work compared to 86 per cent of people with a degree or equivalent (UKCES 2009).

There is no evidence that there is any relationship between non-EEA labour immigration and the declining UK employment rate; indeed, most non-EEA labour migrants are employed in skilled jobs and thus would not be directly competing with low qualified resident workers. Nevertheless, the PBS system imposes relatively weak employer obligations in terms of attempts to fill vacancies with resident labour before requesting workers from outside of the EEA. Furthermore, it is notable that such requirements for the RLMT and ICT routes were relaxed in the PBS and have not been made more stringent by the current Coalition government, despite its restrictive rhetoric.

Regarding the RLMT, in the UK, employers are expected to attest that they have advertised the job in the UK for the required amount of time (currently four weeks) in two outlets, JobsCentrePlus and a sector outlet. However, 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). As noted above, the ICT route, through which about 60 per cent of Tier 2 applications are made, does not require any form of RLMT. Moreover, while in many countries, ICTs are required to have worked for 12 months in the company abroad, the requirement in the UK is 6 months (MAC 2009). The size of this route can partly be explained by the fact that the UK is the location of a large number of MNCs; in fact, it is the second largest destination for foreign direct investment after the US. However, despite the fact that the MAC found that it was, in the main, more expensive to bring in people via the ICT route than hire a local worker, the Public Accounts Committee has expressed concern that ICT migrants may be displacing resident workers with IT skills; also because the number is not capped (Public Accounts Committee 2011). The HAC had voiced similar concerns in July 2009: “We were presented with conflicting evidence on the requirements of the information and communications sector in the UK and internationally. On the one hand, the global businesses we met in India argued persuasively for the need to allow skilled workers to transfer between their different international offices...On the other hand...the Sector Skills Council for IT denied the existence of any serious shortage, and the Professional Contractors’ Group suggested to us that the use of intra-company transfers was removing jobs from the UK workforce” (Home Affairs Committee 2009).

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<sup>10</sup> Furthermore, a high employment rate is not only a question of responding to the labour force’s need for paid work, it also contributes to economic growth; according to UKCES, a one-percentage point increase in the employment rate adds between £8–11 billion to GDP.

Public opinion in the UK is generally for a reduction in levels of immigration, which is to some degree reflected in the Conservative Party's electoral commitment to reduce inflows from hundreds of thousands to tens of thousands. On the other hand, employers have expressed concern about shortages of skilled labour in the recovery due to the cap. The business community has also voiced concern that the cap on some Tier 1 and 2 routes and more restrictive migration rhetoric may give the impression that the UK is closed for business. In this sense, responding to clients' needs in terms of labour immigration is always a delicate balancing act. Is the coalition government's attempt to reduce inflows over the course of this Parliament expected to be effective? According to most commentators, this is unlikely. This is largely due to the fact that the government cannot control UK/EU mobility and the reductions made to non-EEA immigration and settlement will not achieve the targeted reduction. Indeed, net emigration of British citizens fell from 130,000 in the year to March 2007 to just 30,000 in the year to March 2010, which is one of the main reasons net migration rose in 2010 (Murray 2011). The Migration Observatory estimates that in order to achieve the target of tens of thousands, net migration would have to be cut by 142,000. This means cutting non-EEA labour, family and student migration by this figure at a minimum. However, the government's forecasted reductions in work, student and family inflows only constitute about half of the reduction in non-EU net migration required to meet their target by 2015 (Migration Observatory 2011).

In terms of compliance with immigration regulations, the House of Commons Public Accounts Committee 2011 report on the PBS work routes highlighted the concern that the UKBA is not adequately ensuring that migrant workers and employers comply with immigration rules. It argued that the Agency does not monitor whether migrant workers leave when they are supposed to (and estimates that there are 181,000 migrants in the UK whose permission to remain expired in December 2008). Furthermore, the UKBA visits less than a fifth of employers before granting licences. Finally, the UKBA does not have adequate management information to manage inflows and ensure compliance and the committee welcomed plans to introduce an integrated casework system by 2013 (Public Accounts Committee 2011).

The contribution of skilled non-EEA labour migrants to the UK economy, for example as regards productivity growth, is of course rather difficult to determine. Whilst the level of UK productivity is relatively moderate, its growth has been relatively strong in recent years, at least up to the current economic recession. In 2009, productivity had increased by more than the OECD average in 10 of the past 14 years, and had increased by more than the Euro Area average in 12 of those years (UKCES 2009). We could correlate increased levels of productivity with rising inflows of skilled non-EEA labour immigrants, but a causal relationship and its direction is hard to assess. The difficulty of generating any overwhelmingly positive or negative conclusion regarding the impact of labour migrants, in particular certain categories of labour migrants, on the economy and society is exemplified by the MAC's response to the government's request of a numerical limit to be placed on Tier 1 and Tier 2 labour immigration. The MAC reviewed the data and academic literature on economic, public service and social impacts of migration and took evidence from stakeholders. In terms of economic impacts, it was maintained that it is likely that Tier 1 and 2 migrants, on average, have a



positive impact on GDP per-head and that they are less likely to exert downward pressure on wages than low-skilled migrant workers. While they assert that these skilled migrant workers are unlikely to reduce the employment of resident workers in general, there is some anecdotal evidence of negative effects in certain sectors and occupations. Tier 1 and 2 migrants are expected to make a positive net fiscal contribution, especially in the short-term, while they are young. They are argued to contribute to public services by filling skill shortages, particularly in health and education and to be light consumers of health services. In terms of social impacts, they are expected to contribute to higher rents and as they settle, housing prices. Their impact on crime is expected to be negligible; however, they are expected to generate more congestion as they tend to live in London. It is considered that the fact that Tier 1 and 2 migrants are skilled, have good English skills and are often employed in the public sector tends to make it more likely that they will have less problems integrating into UK society (MAC 2010).

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## LIST OF INTERVIEWS WITH POLICYMAKERS, STAKEHOLDERS AND RESEARCHERS (SEPTEMBER-OCTOBER 2011)

<b>No. of interview</b>	<b>Organisation</b>	<b>Place of interview</b>
1	Home Office (HO)	Croydon
2	Migration Advisory Committee (MAC)	London
3	Business Innovation and Skills (BIS) Skills and Migration division	London
4	Business Innovation and Skills (BIS) Migration division	London
5	Department for Work and Pensions (DWP)	London
6	Department of Health (DH)	Telephone
7	Confederation of British Industry (CBI)	London
8	British Hospitality Association (BHA)	London
9	Engineering UK	London
10	Intellect	London
11	Trade Union Congress (TUC)	London
12	Migrant Rights Network (MRN)	London
13	Conservative MP (HL1)	London
14	Liberal Democrat MP (HL2)	London
15	Dr. Georg Menz (Menz)	London



# EU Integration Policy: An Overview of an Intricate Picture

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## ABSTRACT

According to the Lisbon Treaty, the EU is entitled to intervene in the field of integration but only through coordination. However, developments that have taken place at EU level over the last 10 years show a different picture. On the one hand, the EU has adopted rules, the effects of which have been to force Member States to harmonise national rules and policies in fields which fall within integration policies. On the other hand, and in order to circumvent “the harmonisation prohibition”, the EU and Member States have developed a series of “soft law tools” which create the conditions of *de facto* harmonisation. At the end of the day, it is possible to claim that an integration policy is taking place at EU level which influences the convergence and, to a certain extent, the harmonisation, of national policies. This paper tries to give an overview of this blurred picture.

## INTRODUCTION

Discussing immigration and asylum policies involves addressing, at some point, the issue related to the integration of third country nationals legally residing in the receiving society. However, this question is intricate as it is sometimes hard to clearly delineate what integration covers and who is responsible for its management and proper implementation. It goes from questioning the role of the state, the receiving society and the migrants in this process as well as the definition of fields involved in this policy. In other words, addressing the issue of integration policy is all but simple.

### **Amsterdam Treaty and Tampere European Council conclusions**

The picture is even more complicated when trying to identify these questions at EU level. Indeed, the development of an EU immigration and asylum policy since the entry into force of the Amsterdam Treaty, in May 1999, has not been accompanied by the development of a clear and fully fledged integration policy.

This derives from the Treaty provisions as well as political orientations. With respect to the Treaty provisions, the Amsterdam Treaty is silent on this issue. With the exception of one provision addressing the issue of family reunification, the Treaty does not contain any legal basis granting the EU any specific competence to intervene in the field of the integration of legally residing third country nationals. This lack of legal entitlement is somehow reflected in the Tampere European Council conclusions adopted in October 1999.

In a paragraph entitled “fair treatment of third country nationals”, the heads of State and government declared, “A more vigorous integration policy should aim at granting them [third country nationals legally residing in the EU states] rights and obligations comparable to those of EU citizens. It should also enhance non-discrimination in economic, social and cultural life and develop measures against racism and xenophobia”. When looking more closely to the conclusions, the picture related to integration policy is divided into two main types of actions.

The first one is based on the fight against racism and xenophobia and the development and implementation of non-discrimination rules.<sup>1</sup> In these domains, the EU has already acted and is able to further take decisions, in particular on the basis of article 13 of the Amsterdam Treaty<sup>2</sup>. However, policies related to these fields are mainly national policies which are dealt with within the national ambit. This means that EU action in this field is mainly based on the coordination of national policies.

With respect to the objective of granting comparable rights, the conclusions are in fact more narrow. Indeed, the scope of third country nationals who may be entitled to benefit from comparable rights is limited to the category of long term residents, i.e., those who have already resided for some years (almost five) in the EU Member State. Those rights, which should be as close as possible to those enjoyed by EU citizens, are to be granted in the fields of residence, education and work. In practice, the objective enshrined in the Tampere conclusions reflected an already existing situation where the idea of granting more rights to long term residents was shared by the vast majority of Member States<sup>3</sup>.

To sum up, the Treaty of Amsterdam did not define any specific legal basis to act in the field of integration of third country nationals. On the other hand, the highest EU political body, i.e., the European Council, composed of heads of State and governments, called for further action in this field but in a restricted way. Indeed, and given the Treaty limitations, these

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<sup>1</sup> With respect to the principle of non-discrimination, see in particular, E. Bribosia, “Les Politiques d’Intégration de l’Union européenne et des Etats membres à l’Epreuve du Principe de Non-Discrimination”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>2</sup> Article 13, paragraph 1: “Without prejudice to the other provisions of this Treaty and within the limits of the powers conferred by it upon the Community, the Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, may take appropriate action to combat discrimination based on sex, racial or ethnic origin, religion or belief, disability, age or sexual orientation”.

<sup>3</sup> Groenendijk K., Guild E., Barzilay R., “Le statut juridique des ressortissants de pays tiers résidents de longue durée dans un Etat membre de l’Union européenne”, Commission européenne, Direction générale de la justice et des affaires intérieures, OPOCE, Luxembourg, 2001.

actions should address the coordination of national policies in the field of racism, xenophobia and non-discrimination and enable the approximation of national legislations but with respect to long term residents in targeted fields (residence, education and working conditions).

This situation reflects a quite intricate picture which is basically grounded on the following question: how could the EU act in the field of integration without having received any clear-cut competence? From the outset, the role of the EU with respect to integration is unclear. This is somehow misleading as “legal migration and integration are inseparable and should mutually reinforce one another”<sup>4</sup>.

## **Lisbon Treaty, coordination and subsidiarity**

The Lisbon Treaty, which entered into force in December 2009, brought some clarification in this policy field. Article 79.4 of the Treaty on the Functioning of the European Union (TFEU) states: “The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, may establish measures to provide incentives and support for the action of Member States with a view to promoting the integration of third-country nationals residing legally in their territories, excluding any harmonisation of the laws and regulations of the Member States”.

This provision is highly important because it indicates that the EU can intervene in the field of integration but only in order to support, or coordinate, national policies. This means that the competence in this field is limited to the minimum and may not in any case go further than the coordination of national policies, i.e., EU institutions are not entitled to adopt for instance a Directive, for which the transposition would impose the modification or adaptation of Member States legislations and/or regulations<sup>5</sup>.

The solution developed in the Lisbon Treaty is consistent. Indeed, when considering the fields covered by integration policies and corresponding EU competences, it looks evident that the EU is not embedded with the appropriate legal means of action. Integration of third country nationals covers the following fields: access to employment, education, vocational training, healthcare, public services, housing and culture. While all of these fields are addressed by the Treaty, EU competence in all of these fields is limited to supporting or coordinating national policies and does not harmonise them.

This initial assessment is reinforced by another element: subsidiarity<sup>6</sup>. Integration policies cover a wide diversity of fields but involve as well an impressive number of actors. In

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<sup>4</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, “A Common Agenda for Integration Framework for the Integration of Third-Country Nationals in the European Union”, COM(2005)389 final, 1.09.2005.

<sup>5</sup> On this issue, see J. Handoll, “Integration Policy in the European Union: the Question of Competence”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>6</sup> According to article 5, paragraph 3, Treaty on European Union: “Under the principle of subsidiarity, in areas which do not fall within its exclusive competence, the Union shall act only if and in so far as the objectives of the proposed action cannot be sufficiently achieved by the Member States, either at central level or at regional and local level, but can rather, by reason of the scale or effects of the proposed action, be better achieved at Union level”.

the Member States, these policies are defined and implemented by several levels of national, regional and local players. This then implies the involvement of a myriad of political, administrative and private actors. At the end of the day, one can wonder whether the European Union is the appropriate level to deal with the issue.

Finally, historical reasons may also be taken into consideration when it comes to considering how an EU integration policy could be set up. More precisely, it is not entirely clear whether Member States share the same history, views and experiences with respect to immigration and integration policies. Hence, some States may portray themselves as immigration countries whereas others consider themselves as emigration countries<sup>7</sup>. This may consequently have an effect on integration policies as some States may have opted for a “multicultural” policy where others have opted for a so called “assimilationist” policy<sup>8</sup>. In the end, could the EU find its way out in this system without breaching the principle of subsidiarity?

## Simple but...still complex

At first sight, the Lisbon Treaty has made things clear: the EU is entitled to intervene in the field of integration but only through coordination. However, when looking at several developments that have taken place at EU level in the last 10 years, this legal frame fails to convince for at least two main reasons.

First, the EU has adopted rules, the effects of which have been to force Member States to harmonise national rules and policies in fields which fall within integration policies. Second, in order to circumvent “the harmonisation prohibition”, the EU and Member States have developed a series of “soft law tools” which create the conditions of *de facto* harmonisation. At the end of the day, it is possible to claim that an integration policy is taking place at EU level which influences national policies.

This paper tries to give an overview of this blurred picture. It will first show that EU directives have been adopted with the effect of harmonising national policies linked with the integration of third country nationals (I). Second, the paper will enumerate the huge diversity of “soft law instruments” that have been put in place in the last couple of years (II). Finally, some conclusions will be drawn to try to outline trends that have been followed by some Member States with respect to integration in the field of immigration (III).

## I. EU RULES HARMONISING NATIONAL INTEGRATION POLICIES

The entry into force of the Amsterdam Treaty gave the EU the ability to adopt EU rules, i.e., Directives and Regulations, in the fields of visa, asylum and immigration. While some rules are clearly devoted to border management, visa policy, irregular migration or asylum issues, others do concern integration of third country nationals.

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<sup>7</sup> R. Penninx, D. Spencer & N. Van Hear, “Migration and Integration in Europe: the State of research”, COMPAS, 2008.

<sup>8</sup> R. Garbaye, “Emeutes vs Intégration. Comparaisons franco-britanniques”, Les nouveaux débats, Les Presses de Science-Po, Paris 2011.

Two categories of rules may therefore be identified. The first one is made of Directives that are clearly aimed at facilitating the integration of third country nationals (A). The second set of rules is composed of Directives that are initially aimed at defining rules of admission but contain also a series of rights which contribute to better integration of aliens (B).

## **A. Rules aimed at fostering integration of third country nationals**

Two different instruments have been adopted in this field: the family reunification Directive<sup>9</sup> (1) and the Long term residents Directive (2).

### ***1. Directive 2003/86/EC on the right to family reunification***

#### ***a. Family reunification as a condition for integration***

Point 4 of the Directive's preamble states: "Family reunification is a necessary way of making family life possible. It helps to create sociocultural stability facilitating the integration of third country nationals in the Member State, which also serves to promote economic and social cohesion, a fundamental Community objective stated in the Treaty".

According to this point, family reunification serves integration in many different ways. Social stability is highlighted as the first point. Here, the sponsor, i.e., the migrant already residing in the EU and entitled to ask for his/her family to join, gains in social stability as his/her family joins. This creates a stable emotional environment. But this social stability focus may also be used to exercise some "social control" over migrants. This was for instance the case in some Member States where the possibility to benefit from family reunification was kept open in order to keep migrant workers "at home". In these cases, family reunification aids the social inclusion of migrants.

The promotion of economic and social cohesion is also highlighted as an added value. The fact that migrants are able to live with their families releases emotional tensions and eases their ability or capacity to take part in social life. With respect to economic cohesion, the more people are entitled to reside legally in a country, the more they are also inclined to take part in economic life, such as using services or buying goods.

In this sense, family reunification should contribute to enhancing the integration of third country nationals legally residing in the EU Member States.

#### ***b. Integration as a condition for family reunification***

The Directive contains several provisions which condition or make family reunification dependent on integration skills. These provisions are of three kinds.

##### ***For minors***

Family reunification of minors may be limited in two specific circumstances. Article 4, paragraph 1, indicates: "where a child is aged over 12 years and arrives independently from the rest of his/her family, the Member State may, before authorising entry and residence under this Directive, verify whether he or she meets a condition for integration provided for by

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<sup>9</sup> Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251, 3.10.2003.



its existing legislation on the date of implementation of this Directive". This derogation is explained as follows in the Preamble of the Directive (point 12): "The possibility of limiting the right to family reunification of children over the age of 12, whose primary residence is not with the sponsor, is intended to reflect the children's capacity for integration at early ages and shall ensure that they acquire the necessary education and language skills in school".

This provision has been challenged before the European Court of Justice (ECJ) by the European Parliament (EP)<sup>10</sup>. The latter has considered that the provision "renders family reunification unachievable and negates this right". The ECJ did not follow the EP. The possibility of limiting family reunification intends to reflect children's capacity to integrate at early ages and to ensure they acquire the necessary education and language skills in schools. On the other hand, the Court stresses that Member States are not entitled to implement this derogation in a manner that would be contrary to the right to respect family life. This means that Member States are not able to use an "unspecified concept of integration" but have the duty to apply integration conditions provided for by existing laws. They also have to examine each specific situation with respect to the best interest of the child and the nature and solidity of the person's family relationship. Such an assessment should make sure that the right to family life is respected.

Article 4, paragraph 6, states: "Member States may request that the applications concerning family reunification of minor children have to be submitted before the age of 15, as provided for by its existing legislation on the date of the implementation of this Directive. If the application is submitted after the age of 15, the Member States which decide to apply this derogation shall authorise the entry and residence of such children on grounds other than family reunification".

According to the Council, the objective of this provision is to encourage immigrant families to have their minor children come at a very young age, in order to facilitate their integration. This article was also challenged by the EP. The ECJ dismissed the EP's action. Following the lines previously drawn, the Court states that article 4, paragraph 6, should be read in the light of the principles to have due regard to the best interests of minors, and to take account of a number of factors, one of which is the person's family relationships. As long as Member States proceed with an examination of the application in the interests of the child, and with the view to promote family life, the possibility to ask for the application to be introduced before the age of 15 does not run counter to the fundamental right to respect family life.

In both cases, integration concerns may allow the possibility for Member States to restrict the reunification of minors. This possibility is however framed by the ECJ. When using the derogation, Member States must proceed to an individual examination, and take into account the best interest of the child and the family relationship. In other words, the Court did not cancel the provisions of the Directive and has instead defined a framework within which the use of derogation is admissible. While in practice the Court's decision has had little effect – as only two Member States are using the 12 years old derogation, and none is implementing

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<sup>10</sup> ECJ, 26 June 2006, European Parliament vs. Council of the European Union, Case C-540/03.

the 15 years old one – it has shown how the ECJ has decided to interpret leeway given to the Member States by the Directive. In other words, the Court considers that Member States are allowed to use derogations insofar as those derogations are implemented with respect to strict requirements.

### *For the spouse*

Article 8 of the Directive opens the possibility for Member States to “require the sponsor to have stayed lawfully in their territory for a period not exceeding two years, before having his/her family members join him/her”. According to the Member States, a waiting period which may last up to two years pursues the objective of enhancing integration. Indeed, it ensures that “family reunification does not take place until the sponsor has found in the host State a solid base, both economic and domestic, for settling a family there”<sup>11</sup>.

This provision of the Directive was also challenged by the EP. The ECJ did not consider that this article runs counter to the right to respect family life. However, and as was already pointed out previously, the Court has underlined that the implementation of a waiting period does not preclude national authorities to take into account other relevant factors such as the family ties and the best interest of the child.

Here again, the Court dismissed the EP’s action but set clear lines within which national authorities actions should be conducted.

### *Integration measures to be satisfied in the country of origin*

Finally, Article 7, paragraph 2, of the Directive contains the option for Member States to accompany the family reunification procedure with the possibility of requiring applicants for family reunification to comply with integration measures. The fulfilment of such measures may be requested before entering the Member State, i.e., in the country of origin, or after.

The term “integration measures” is somehow misleading. It does not help to define the content of those measures. On the other hand, it does not define either the regime of those measures<sup>12</sup>, i.e., does the requirement to comply with integration measures enable national authorities to refuse family reunification because the applicant did not properly fulfil the requirement?

In practice, such integration measures have been implemented by some Member States and have mainly been linked with language and civic knowledge. They have also been put in place in migrants’ country of origin and have led to some legal problems, which we will come back to later.

The Directive on the right to family reunification is a legal instrument which principally aims to facilitate the integration of third country nationals legally residing in the EU Member States. However, this Directive bears in its own provisions a paradox: the main derogations are based on the purposes of integration. In other words, the right to family reunification

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<sup>11</sup> ECJ, 26 June 2006, European Parliament vs. Council of the European Union, Case C-540/03.

<sup>12</sup> See on this issue, Groenendijk K., “Legal Concepts of Integration in EU Migration Law”, *European Journal of Migration and Law* 2004.

may be refused or limited due to considerations based on integration. This portrays a certain ambiguity with respect to integration.

## ***2. Directive 2003/109/EC concerning the status of third country nationals who are long term residents***<sup>13</sup>

In the Tampere conclusions, the paragraph devoted to integration of third country nationals paid specific attention to long term residents. In the Tampere conclusions, the paragraph devoted to integration of third country nationals paid specific attention to long term residents. The long term residents were quoted as a category of persons who should be granted “rights and obligations comparable to those of EU citizens”. This objective is linked to the shared idea of enhancing the rights of migrants with respect to the length of their stay in the Member States<sup>14</sup>. When presenting the legislative proposal, the Commission emphasised: “with this proposal, the Commission is giving practical expression to its intention and to its commitment to a matter that is crucial in terms of securing the genuine integration of third-country nationals settled on a long-term basis in the territory of the Member States”<sup>15</sup>. In other words, the improvement of migrants’ rights with respect to employment, education, vocational training, social protection and assistance as well as enhanced protection, as opposed to expulsion, contributes to their better integration.

Directive 2003/109/EC follows that path in its articles 11 and 12, respectively dealing with “equal treatment” and “protection against expulsion”. In order to give long term residence added value, the Directive organises also the conditions under which long term residents acquire the right to reside in another Member State for a period exceeding three months in order, for instance, to exercise an economic activity in this second State.

In short, holders of an EU long term residence permit are granted a reinforced status and enhanced freedom of movement. This confirms the long-standing idea that the more people reside in a country, the more their rights are reinforced and the more their integration into that society is secured. The long term resident Directive gives this idea an EU echo as intra-EU mobility is open to this category of migrants which was not the case beforehand.

However, and along the same line as what has been said for the family reunification directive, the procedure for a migrant to be granted an EU long term residence status, and therefore enter the process of enhanced integration into the society, may be conditioned to the fulfilment of integration requirements.

Article 5 of the Directive, establishing the conditions for acquiring long term resident status, contains a second paragraph which reads as follows: “member states may require

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<sup>13</sup> For an analysis of the Directive, see in particular D. Acosta, “The Long Term Residence Status as a Subsidiary Form of EU Citizenship. An Analysis of Directive 2003/109”, Martinus Nijhoff Publishers, Leiden-Boston, 2011

<sup>14</sup> K. Groenendijk, E. Guild, R. Barzilay, “Le statut juridique des ressortissants de pays tiers résidents de longue durée dans un Etat membre de l’Union européenne”, Commission européenne, Direction générale de la justice et des affaires intérieures, OPOCE, Luxembourg, 2001.

<sup>15</sup> Proposal for a Council Directive concerning the status of third-country nationals who are long-term residents, COM(2001)127 final, 13.3.2001.

third-country nationals to comply with integration conditions, in accordance with national law”.

This provision is different from the ones laid down in the family reunification directive. The text deals with “conditions”, whereas it was dealing with “measures” with respect to family reunification. This entails major consequences as it derives from this provision that the EU long term resident status may be conditioned to the fulfilment of integration requirements<sup>16</sup>. The latter are, most of the time, linked, as previously underlined, with language and civic knowledge as well as knowledge of the receiving country’s values<sup>17</sup>.

Such a requirement is also applicable for the exercise of the right to reside in another Member State. But here requirements related to “integration” are worded in a different manner and has a different effect. As a principle, any long term resident wishing to reside in another Member State has to apply for a residence permit in the second State. Within this procedure, authorities of the second States may ask the applicant to fulfil some conditions among which the fulfilment of “integration measures” could be requested. Article 15, paragraph 3, nevertheless indicates that this condition is not applicable where the persons concerned have been required to comply with integration conditions in order to be granted the long term residence status in the first Member State. Nevertheless, the provision adds that the applicant may in any case be required to attend language courses.

To sum up, persons holding an EU long term residence status in one Member State can apply for a residence permit in another Member State. The application can be accompanied with the obligation to fulfil “integration measures” insofar as the applicant has not previously been requested to comply with “integration conditions” where he/she applied for the EU long term status. But, the second Member State may ask the applicant to attend language classes despite the fact that attendance of such classes was already mandatory in the first State...

This looks quite intricate. In order to clarify things, the situation may be summarised as follows: integration requirements may condition the granting of the long term residence status in the first Member State but the application for a residence permit in the second State may not be dependent on the fulfilment of such conditions. The only possibility left to Member States is to ask applicants to comply with measures, i.e., actions that may not hamper the right to reside in the second State.

The idea that the longer and more secure the stay in a State is, the more integration is improved, is reflected in the long term residents Directive. It grants additional rights to migrants and improves protection against expulsion. However, the possibility to benefit from enhanced protection is conditioned by integration requirements, i.e., proving that the applicant for the status and resulting rights has the required skills and/or knowledge (language, civic, etc.). Where he or she is not able to fulfil integration conditions, the possibility to

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<sup>16</sup> See, K. Groenendijk “Integration of Immigrants in the EU: The Old and the New Way?”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>17</sup> Report from the Commission to the European Parliament and the Council on the application of Directive 2003/109/EC concerning the status of third-country nationals who are long-term residents, COM(2011) 585 final, 28.09.2011.

continue the path towards better integration on the basis of a reinforced status will not be awarded. Here again, the Directive seeks to enhance integration but contains integration provisions aimed at limiting this process.

The family reunification directive and the long term residents Directive both pursue the objective of enhancing integration of third country nationals legally residing in the Member States. This therefore shows that the EU has been able to adopt rules directly linked with integration, despite the limitation now introduced in the Lisbon treaty.

It should be emphasised that EU action in this field is not limited to these Directives. Other legal instruments do have an indirect effect on foreigners' integration in the Member States.

## **B. Rules helping integration of third country nationals**

The action of the Union in the field of immigration and asylum is mainly devoted to the adoption of rules defining conditions of entry and residence of specific categories of persons, i.e., migrants, asylum seekers or beneficiaries of international protection. In all of the Directives adopted in this regard, one can find provisions which help to improve the integration of third country nationals in the Member States. These provisions are mainly related to the status of admitted persons and concern mainly the possibility for migrants to have access to work (1) and to have access to a series of rights (2).

### ***1. Access to work***

Access to employment and self-employment is an important part of integration into the receiving society. With this in mind the Common Basic Principles for Integration, adopted by the Justice and Home Affairs Council in November 2004<sup>18</sup>, designate access to employment as a top priority. Employment is described in this political document as “a key part of the integration process and is central to the participation of immigrants, to the contributions immigrants make to the host society, and to making such contributions visible”.

It is clear that access to work allows migrants to gain in autonomy and independence and enhances their ability to interact with other individuals at work as well as in society as a whole. In this view, employment or self-employment is to be considered a principle to be put into action ahead of language, history knowledge, education, and even access to institutions.

The question relating to the adoption of EU rules related to the admission of migrant workers has always been and remains highly sensitive. In practice, Member States have proven reluctant to adopt general EU rules in this field. Desiring to keep control over the admission of migrant workers, Member States have opted for the development of a limited and piecemeal approach. Existing directives in this field are related to specific categories of

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<sup>18</sup> Council Justice and Home Affairs, 19 November 2004, Doc. 14615/04.

migrants – such as students<sup>19</sup>, researchers<sup>20</sup>, highly skilled workers<sup>21</sup>, seasonal workers<sup>22</sup>, intra-corporate transferees<sup>23</sup> and remunerated trainees – and have a low harmonising effect over Member States rules<sup>24</sup>.

However, it would be limiting to consider that access to employment is, with the exception of the abovementioned Directive, only regulated by national legislation. When looking more closely to the enormous number of rules adopted at EU level, it can be seen that some of them deal with migrants' status and therefore define rules regarding their access to employment and self-employment.

Hence, family members, asylum seekers, refugees and beneficiaries of subsidiary protection have the right to have access to work under EU law and under defined conditions. In some cases, access to work is automatic, as in the case of refugees. In other cases, access to work is made conditional upon a labour market test or a waiting period, or both.

With respect to family members for instance, the exercising of an employed or self-employed activity may be conditioned by a time limit which shall in no case exceed 12 months. The Directive adds that during this time frame Member States may examine the situation of their labour markets before authorising family members to exercise an employed or self-employed activity.

Directive 2003/9/CE, laying down minimum standards for the reception of asylum seekers, contains a provision on employment. It states as a principle that Member States determine a period of time, starting from the date on which an application for asylum was lodged, during which an applicant shall not have access to the labour market. The Directive adds however that access to the labour market should be allowed where no decision on the application has been taken after one year and where this delay cannot be attributed to the applicant.

In the end, both examples show that EU rules impose specific conditions on Member States to open access to their labour market to some categories of legally residing third country nationals. Under such a scenario, it can hardly be asserted that EU law does not concern

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<sup>19</sup> Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service; OJ L 375, 23.12.2004.

<sup>20</sup> Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289, 03.11.2005.

<sup>21</sup> Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155, 18.06.2009.

<sup>22</sup> Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals for the purpose of seasonal employment, COM(2010) 379 final, 13.07.2010.

<sup>23</sup> Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer, COM(2010) 378 final, 13.07.2010.

<sup>24</sup> Y. Pascouau, "la politique européenne d'immigration de travail. Etat des lieux et perspectives", Policy Paper, Fondation Roi Baudouin, 2012.

migrants' access to labour market. As a consequence, EU laws have also had an impact on the ability of third country nationals to properly integrate into the labour market and society<sup>25</sup>.

## 2. Access to rights

Directives adopted in the field of asylum and immigration consider various scenarios where third country nationals, according to their specific needs and condition, are entitled to benefit from rights which contribute to the integration of third country nationals.

A first series of rights comprises access to education and vocational training. Access to education is recognised in almost all of the Directives. It is mainly addressed to children of migrants legally residing in the member states. Alongside access to education, Directives recognise the right to have access to vocational training

Other social rights are also recognised in different Directives. These rights depend on the specific situation of the persons concerned as they may be applicable to asylum seekers, family members, refugees or workers. Hence, different rights are open to third country nationals such as *inter alia* access to medical screening, social assistance, equal treatment covering working conditions, recognition of diplomas and qualifications, branches of social security, tax benefit, access to goods and services and the supply of goods and services made available to the public.

All of these rights contribute to the sound integration of third country nationals in the receiving society. They serve the purpose of including migrants into society.

When analysing the potential number of persons covered, from family members to refugees and workers, the existence of EU rules obliging Member States to grant equal treatment or other rights to foreigners is significant. EU law may be considered an important framework granting third country nationals with basic rights which they would perhaps not benefit under national law. Hence, EU law is not disconnected from the possibility of harmonising national rules related to the integration of migrants.

The assertion included in article 79, paragraph 4, from the Lisbon Treaty may therefore be reconsidered. More precisely, it looks like the EU will not develop a specific and defined set of rules related to access to healthcare or social services. However, when it comes to determining the conditions of entry and in particular residence of third country nationals, it may prove difficult to ignore individuals' basic rights. Indeed, in the framework of common rules and in the perspective of the single market and the establishment of a single European labour market, EU law may not leave the decision to grant full or partial social protection and inclusion rights solely to the Member States. Therefore, minimal harmonisation is in this context needed. In the end, the EU is intervening in the field of integration.

The possibility to grant a set of rights to legally residing migrants must be put into perspective with respect to the global discussions around migration policies. Indeed, in the last couple of years the idea to develop temporary migration, or circulation migration schemes,

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<sup>25</sup> For an overview, see K. Groenendijk, "Access of Third-Country Nationals to Employment under the New EC Migration Law" in F. Julien-Laferrière, H. Labayle, Ö. Edström (sous la direction de), *La politique européenne d'immigration et d'asile : bilan critique cinq ans après le traité d'Amsterdam*, Bruylant, Bruxelles, 2005.



has gained in importance. But this project runs counter to the basic philosophy of Member States in the field of immigration, where they have agreed to award basic rights to migrants, such as family reunification and long term residence status, the effect of which is basically to incentivise for permanent migration. Put differently, it is unlikely that migrants will decide to move when their family has joined and where children are registered at school. Moreover, the possibility of obtaining a long term residence permit after five years of legal residence is also an encouragement to settle for some time in a Member State.

Article 79.4 should therefore be understood as preventing the Union from adopting specific rules on integration which would for instance harmonise conditions for accessing education or healthcare systems. This situation is nonetheless circumvented as the Union has developed an impressive number of soft law instruments, the effect of which is to coordinate national integration policies.

## II. THE DEVELOPMENT OF SOFT LAW INSTRUMENTS

Alongside EU legal instruments that, directly or indirectly, address issues related to migrants' integration, the EU has developed an impressive series of soft law instruments aimed at better coordination of national policies. These instruments could be divided into two categories: instruments and tools setting up the political orientations (A) and instruments and tools enhancing the exchange of information between stakeholders or a wider audience (B).

### A. Political orientations

As the issue of migrants' integration falls primarily within the remit of the Member States competence, orientations are defined in political documents adopted during meetings where Member States are represented (1). The European Commission is not side-lined in this process. Its contribution is linked with the putting into effect of these orientations (2).

#### *1. Member States in the driving seat*

The coordination of integration policies on the basis of EU guidance has been framed in three main types of documents.

##### *a. Common basic principles of integration*

The first document, which remains a basis in this field, is the Common Basic Principles of Integration<sup>26</sup>. Adopted by the Justice and Home Affairs Council in November 2004, these principles pursue three main objectives. First, to assist Member States in formulating integration policies by offering a non-binding guide of basic principles against which they can judge and assess their own efforts. Second, to serve as a basis for Member States to explore how EU, national, regional, and local authorities can interact in the development and implementation of integration policies. Third, to assist the Council to reflect upon and, over time, agree

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<sup>26</sup> Council Justice and Home Affairs, 19 November 2004, Doc. 14615/04.



on EU-level mechanisms and policies needed to support national and local-level integration policy efforts, particularly through EU-wide learning and knowledge-sharing<sup>27</sup>.

The document then defines a series of 11 Common Basic Principles to be developed in this perspective. The 11 Common Basic principles are:

1. Integration is a dynamic, two-way process of mutual accommodation by all immigrants and residents of member states.
2. Integration implies respect for the basic values of the EU.
3. Employment is a key part of the integration process.
4. Basic knowledge of the host society's language, history and institutions is indispensable for integration.
5. Efforts in education are critical for preparing immigrants to be more successful and active.
6. Access to institutions for immigrants, as well as to public goods and services, on a basis equal to national citizens and in a non-discriminatory way is an essential foundation.
7. Frequent interaction between immigrants and member state citizens is a fundamental mechanism.
8. The practices of diverse cultures and religion as recognized under the Charter of Fundamental Rights must be guaranteed.
9. The participation of immigrants in the democratic process and in the formulation of integration policies, especially at the local level, supports their integration.
10. Integration policies and measures must be part of all relevant policy portfolios and levels of government.
11. Developing clear goals, indicators and evaluation mechanisms to adjust policy, evaluate progress and make the exchange of information more effective is also part of the process.

It derives from these principles that national authorities as well as migrants have together in their respective capacities a duty to improve migrants' integration into the receiving society. While those principles are still quoted on a regular basis, documents adopted afterwards and developments at national level have shown some modifications aimed at increasing the burden on migrants' shoulders rather than on the State<sup>28</sup>. This is for instance the case with language knowledge which has become mandatory in some Member States and conditions

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<sup>27</sup> For an evaluation of the Common Basic Principles, see M. Illamola Dausá, "Les Principes de Base Communs: Le Cadre de la Politique d'Intégration de l'Union Européenne", in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>28</sup> K. Groenendijk, "Integration of Immigrants in the EU: The Old and the New Way?", in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

the residence of migrants. In the same vein, some Member States are requesting migrants to take language classes but do not provide for any financial or material support<sup>29</sup>.

### *b. Ministerial conferences*

Ministers in charge of integration issues has met on a regular and informal basis since 2004 to discuss integration issues. The first conference of that kind was organised in Groningen under the Dutch presidency in November 2004. Entitled “Turning Principles into Actions”, this two-day conference aimed to give practical relevance to the vision for integration in two areas: introductory programmes and youth with a minority/migrant background.

The second conference was held in June 2007 in Potsdam under the German presidency. During this conference, ministers were invited to discuss how European cooperation and the exchange of experience within the EU regarding integration policies can be improved and how the intercultural dialogue can be strengthened.

The third conference was organised by the French presidency in November 2008 in Vichy. This conference was devoted to specific concerns shared by several Member States, i.e., language learning, promoting Member States values and access to employment.

A fourth conference took place in 2010 under the Spanish presidency in Zaragoza. Discussions during this conference encompassed several issues, such as the development of human capital through employment and education, social cohesion in neighbourhoods and areas with a high rate of immigrant population, the role of civil society in the mutual adaptation process that the integration of immigrants entails, and the general evaluation of integration policies.

The Conferences’ conclusions were adopted by the Justice and Home Affairs Councils respectively in November 2004, June 2007, November 2008 and June 2010. These conferences are designed to ease the debate among ministers on integration issues. In this regard, they might improve common understanding or, conversely, serve some States running the six months’ presidency to highlight some issues they would like to discuss and push forward on the agenda.

### *c. European Council Conclusions: The European pact on immigration and asylum*

Normally, heads of States and governments intervene in this field to define multi-annual orientations once every five years on the basis of programmes (Tampere 1999, The Hague 2004 and Stockholm 2009). In each of these multi-annual programmes, Member States have devoted some sections to integration issues.

The French presidency of the Council of the European Union made clear that migration-related issues were on the top of the presidency’s agenda. After negotiations that were at times

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<sup>29</sup> See for instance Y. Pascouau, “Mandatory Integration Schemes in the EU Member States: Overview and Trends”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

hard, French authorities successfully convinced their counterparts to adopt the European Pact on Immigration and Asylum during the October 2008 European Council<sup>30</sup>.

Focused on migration management issues, the European pact did address integration issues in a quite detailed manner. It stated on the one hand, that the European Council agreed “to invite Member States, in line with the common principles approved by the Council in 2004, to establish ambitious policies, in a manner and with resources that they deem appropriate, to promote the harmonious integration in their host countries of immigrants who are likely to settle permanently; those policies, the implementation of which will call for a genuine effort on the part of the host countries, should be based on a balance between migrants’ rights (in particular to education, work, security, and public and social services) and duties (compliance with the host country’s laws). They will include specific measures to promote language learning and access to employment, essential factors for integration; they will stress respect for the identities of the Member States and the European Union and for their fundamental values, such as human rights, freedom of opinion, democracy, tolerance, equality between men and women, and the compulsory schooling of children. The European Council also called upon the Member States to take into account, through appropriate measures, the need to combat any forms of discrimination to which migrants may be exposed”.

On the other hand, the European Council emphasized “the importance to promote information exchange on best practice implemented, in line with the common principles approved by the Council in 2004, in terms of reception and integration, and on EU measures to support national integration policies”.

The Pact portrayed concerns shared at that time by a number of Member States, principally by France, the Netherlands and Germany, to enhance the focus of integration policies on migrants’ knowledge of the host country language and values. To put it differently, the two-way process called for by the Common Basic Principles is endangered by the willingness of some States to link the migrant’s status, i.e., the security of his/her residence, to his/her capacity to prove his/her language or civic skills. In this view, migrants are becoming ever more the main actors of the integration process and States are more engaged in an evaluation of their willingness or capacities to properly show active integration through language and civic knowledge.

All in all, these documents, the Common Basic Principles, the informal ministerial conferences and the European Pact are several steps which enable Member States to discuss integration issues but also to highlight priorities<sup>31</sup>. The analysis of the documents and the priorities deriving from them highlight a shift in the sphere of integration towards greater

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<sup>30</sup> European Pact on Immigration and Asylum, Doc. 13440/08

<sup>31</sup> Y. Pascouau “Mandatory integration provisions in EC and EU Member States Law” in S. Bonjour, A. Rea & D. Jacobs (eds), *The Others in Europe*, Editions de l’Université de Bruxelles, Bruxelles, 2011.

demands on migrants. This is more precisely the case regarding the development of language learning duties which are becoming more and more important in Member States' schemes<sup>32</sup>.

## 2. *Implementing orientations*

There are two main ways to put into effect orientations agreed upon by Member States. The first one is to leave the European Commission the duty to precisely define the steps to be taken on the basis of so-called "Integration Agendas". The second way is to allocate specific funding, managed by the European Commission, in order to reach targeted objectives.

### *a. Commission's agenda on integration*

The Commission has adopted two communications dealing respectively with a common<sup>33</sup> and an European agenda for integration<sup>34</sup>.

The first communication, adopted in September 2005, followed the adoption of the Common Basic Principles less than one year earlier. Hence its main objective is to present concrete measures to put the Common Basic Principles into practice together with a series of supportive EU mechanisms.

The document takes the 11 Common Basic Principles one after the other, and provides some guidance, i.e., proposes actions to be undertaken, for both EU and Member State's integration policies. For instance, the communication puts an emphasis on integration programmes as well as pre-departure measures such as information packages and language and civic orientation courses in the country of origin.

The second "Integration Agenda" was published nearly six years later, in July 2011. Recognising that all EU actions presented by the Commission in the 2005 Common Agenda for Integration had been completed, the Communication also highlights that not all integration measures have been successful in meeting their objectives and that integration policies also require the will and commitment of migrants to be part of the society that receives them. The Commission also points out that some pressing challenges need to be addressed, such as:

- the prevailing low employment levels of migrants, especially for migrant women,
- rising unemployment and high levels of "over-qualification",

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<sup>32</sup> For a broad view see, R. Van Oers, E. Ersbøll & D. Kostakopoulou, "A Re-Definition of Belonging? Language and Integration Tests in Europe", Martinus Nijhoff Publishers, Leiden – Boston, 2010; Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012. For specific examples, see S. Bonjour, "Between Integration Provision and Selection Mechanism. Party Politics, Judicial Constraints, and the Making of French and Dutch Policies of Civic Integration Abroad", *European Journal of Migration and Law*, 2010.

<sup>33</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "A Common Agenda for Integration. Framework for the Integration of Third Country Nationals in the European Union", COM(2005) 389 final, 01.09.2005.

<sup>34</sup> Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, "European Agenda for the Integration of Third Country Nationals", COM(2011) 455 final, 20.07.2011.

- increasing risks of social exclusion,
- gaps in educational achievement, and
- public concerns with the lack of integration of migrants.

On this basis, the Commission identifies three key areas of actions: integration through participation; more action at local level; and involvement of countries of origin. All of these key areas are covered by the Communication and accompanied with specific recommendations.

In addition to this, the Agenda also underlines the necessity to intensify the coordination between Member States' policies. To do so, it proposes to develop a flexible European toolbox which should allow Member States to choose the measures which are most likely to prove effective in their context. This "Toolbox" should be made of "European Modules" which would constitute a European reference framework for the design and implementation of integration practices in Member States. "European Modules" are developed in three thematic areas: 1) introductory and language courses; 2) strong commitment by the receiving society; and 3) active participation of migrants in all aspects of collective life.

The Commission's Agendas for Integration are important documents for at least two main reasons. First, they translate the orientations agreed upon by Member States into concrete actions. Second, these concrete actions should, in a coherent framework, receive financial support from the European Integration Fund.

### *b. European Integration Fund*

The EU has created a European Integration Fund for Integration<sup>35</sup>. This Fund, which benefits from a budget of 825 million Euros for the period 2007-2013, aims at assisting Member States in their effort to support third country nationals' integration. The Council decision establishing the Fund defines the objectives of the Fund, the available funding, as well as conditions under which funding is awarded.

Alongside the substantial amount of money made available for migrants' integration, the Fund underlines where priorities are identified. In this view, pre-entry measures and integration programmes for newly arrived migrants including language and civic acquisition are high on the list of priorities. In other words, funding also point to political priorities which are outlined by Member States and then implemented by the European Commission on the basis of financial support.

Guidelines adopted by Member States are reflected in the series of implementing instruments adopted and/or managed by the European Commission. This consistency also reflects issues which are becoming even more important in Members States' views, i.e., pre-entry measures and introductory programmes. This trend is also fully taken into account in the development of new tools such as the "European Modules", one of which is devoted to introductory and language courses.

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<sup>35</sup> Council Decision 2007/435/EC of 25 June 2007 establishing the European Fund for the Integration of third-country nationals for the period 2007 to 2013 as part of the General programme "Solidarity and Management of Migration Flows, OJ L 168/18, 28.06.2007.

Alongside political orientations, an impressive number of tools have been set in motion at EU level in order to enhance exchange of information between stakeholders.

## **B. The exchange of information between stakeholders**

The field of migrants' integration has seen the creation of an impressive network of bodies and tools aimed at enhancing exchange of information to serve a wide spectrum of stakeholders. Exchange of information may take two different routes: a formal one where stakeholders meet and discuss integration issues (1); and an informative one where good practices could be brought to the attention of anybody interested in, or who is dealing with the issue (2).

### ***1. Exchange of information based on formal meetings***

The EU has developed two types of formal "arenas" where relevant stakeholders meet to exchange knowledge about integration rules and practices.

#### ***a. National contact points on integration***

Regular meetings are organised between national officials, also called "national contact points on integration". The network of national contact points on integration was set up by the Commission as a follow-up to the Justice and Home Affairs Council conclusions of October 2002.

The main objective of the network is to create a forum for the exchange of information and good practice between Member States at EU level, with the purpose of finding successful solutions for integration of immigrants in all Member States and to ensure policy co-ordination and coherence at national level and with EU initiatives.

#### ***b. The Integration Forum***

The European Integration Forum is a platform for dialogue involving all stakeholders active in the field of integration. The objective of the European Integration Forum is to provide a voice for representatives of civil society on integration issues, in particular relating to the EU agenda on integration, and for the Commission to take a pro-active role in such discussions. More precisely, the integration forum provides an opportunity for civil society organisations to express their views on migrant integration issues and to discuss the challenges and priorities with the European institutions.

The development of the European Integration Forum is undertaken in co-operation with the European Economic and Social Committee and financed by the European Fund for the Integration of Third Country Nationals. The Common Basic Principles on Integration, agreed by the Council in 2004, serve as a reference for the activities of the Forum.

Eight forum sessions have been organised so far. While the three first meetings addressed different issues, the following ones have focused on one specific topic. Issues discussed within the eight meetings were the following:

- Integration – an EU approach: What consequences can the economic crisis have on the integration of immigrants? & What could be the European Integration Forum's

working methods and how can civil society organisations and migrants' associations be better involved at EU level? (April 2009)

- Taking stock and looking ahead: working together for Integration, Common EU priorities for a cross-cutting integration policy & The European Integration Fund: progress to date and future developments (November 2009)
- The Civil Society Input to the Second European Agenda for Integration & The Relation between Migrants and the Media (June 2010)
- Active participation of migrants and strong commitment by the host society: The two-way process beyond words (December 2010)
- Integration through local action (May 2011)
- The involvement of countries of origin in the integration process (November 2011)
- Public hearing on the right to family reunification of Third Country nationals living in the EU (May/June 2012)
- The contribution of migrants to economic growth in the EU (October 2012)

The integration forum should help the EU institutions engage in discussions with a broad spectrum of civil society representatives deeply involved in integration-related issues. It allows the European Commission to get feedback from “the ground” and assess whether the policy choices meet the needs of the integration process.

## ***2. Exchange of information on the basis of various tools***

Last but not least, the exchange of information, which forms the basis of policy coordination, is ensured through the publication of integration handbooks, the creation of a specific website and the development of integration indicators.

### ***a. Integration handbooks***

Integration handbooks are primarily a source of information for policy-makers and practitioners. The main objective of the handbooks is to act as a driver for the exchange of information and good practice between integration stakeholders in all Member States. So far three handbooks on integration have been published.

The first edition of the handbook, published in 2004, covers introductory courses for newly arrived immigrants and recognised refugees, civic participation and integration indicators. The second edition, released in 2007, focuses on integration mainstreaming and governance, housing and economic participation. The third edition, published in 2010, covers the following topics: the role of mass media in integration, the importance of awareness-raising and migrant empowerment, dialogue platforms, acquisition of nationality and practice of active citizenship, immigrant youth, education and the labour market.

### *b. The Integration website*

The European Web Site on Integration<sup>36</sup> was created with the view to becoming a unique EU-wide platform for networking on integration through exchange about policy and practice. It aims especially at integration practitioners and policy-makers in both governmental and non-governmental spheres and offers a series of inputs:

- A vast document library containing reports, policy papers, legislation, impact assessment and evaluations
- A collection of good practices, presented in a clear and comparable way for easy extraction and import
- Country information sheets, with the latest information concerning national legislation and policy programmes
- A repository of links to external websites
- Community tools such as the “find-a-project-partner-tool”, which supports networking between stakeholders and the development of common projects
- Information on financial opportunities through grants and public tenders
- Regularly updated news and events

By acting as a bridge between integration practitioners and policy-makers, the Web Site should help to overcome the vertical fragmentation that exists between actors at different levels. It aims to provide high-quality content from across Europe that responds to actors' needs and builds a community of integration practitioners.

### *c. Integration indicators*

The Stockholm Programme adopted by the Heads of State and Government in 2009 emphasised the need to establish core indicators to help monitor the results of integration policies and also increase the comparability of national practices. Such indicators, established in a limited number of relevant policy areas such as employment, education and social inclusion would also strengthen the coordination process taking place at EU level.

Following these orientations, the Swedish presidency organised an experts' meeting at the end of 2009 where the results of a process identifying European core indicators were presented. In April 2010, EU ministers responsible for integration issues adopted the Zaragoza declaration which was further approved at the Justice and Home Affairs Council in June 2010<sup>37</sup>.

More precisely, ministers agreed “to promote the launching of a pilot project with a view to the evaluation of integration policies, including examining the indicators and analysing the significance of the defined indicators taking into account the national contexts, the

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<sup>36</sup> <http://ec.europa.eu/ewsi/en/index.cfm>.

<sup>37</sup> Conclusions of the Council and the Representatives of the Governments of the Member States on Integration as a Driver for Development and Social Cohesion, doc. 9248/10, 4 May 2010.



background of diverse migrant populations and different migration and integration policies of the Member States, and reporting on the availability and quality of the data from agreed harmonised sources necessary for the calculation of these indicators”.

The aim of the proposed common indicators of migrant integration is to support the monitoring of the situation of immigrants and the outcome of integration policies. Policy areas identified are: employment, education, social inclusion, and active citizenship.

On the basis of the initiative, Eurostat prepared a first pilot study on “Indicators of Immigrant Integration” in 2011<sup>38</sup>. The report consists of methodological notes, a synthetic description of the results and a tabular section with calculations of indicators. To maximise the added value of the indicators, information for different target populations has been provided for broad groups of country of birth and citizenship, different age groups and gender.

The development of integration indicators between member states is a key tool for enhancing the coordination of national policies. This will enable Member States to learn from each other, allows for the evaluation of those policies, and consequently, promotes the development of useful measures.

The extraordinary development of tools and places promoting exchange of information and practices between Member States’ experts and other relevant stakeholders plays an important role in establishing a framework for further coordination in the field of integration. This enables national and European actors to develop benchmarking strategies in order to define where convergences between national policies are possible and needed.

EU rules and soft law instruments form the pieces of an outstandingly intricate puzzle relating to integration policy at EU level. However this intricate picture does not prevent the identification of some of the strong trends that accompany the development of integration issues at EU and national level.

### III. CONCLUSIONS

This overview of EU integration policy illustrates how the EU and its Member States have overcome legal limitations deriving from a lack of competence, which were confirmed by the Lisbon Treaty.

On the one hand, some EU rules do have a direct or indirect effect on Member States’ integration policies as they impose the harmonisation of national rules. In other words, EU Directives have been adopted with the effect of imposing upon Member States the requirement to adapt, and sometimes modify, their national rules in fields which are directly or indirectly linked with the integration of third country nationals.

On the other hand, an impressive set of soft law instruments has been developed in order to facilitate the coordination of national policies. This coordination is based, firstly, on common orientations adopted by the Member States and put into effect by the European Commission and, secondly, on an extensive network of tools and bodies enabling the ex-

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<sup>38</sup> [http://epp.eurostat.ec.europa.eu/cache/ITY\\_OFFPUB/KS-RA-11-009/EN/KS-RA-11-009-EN.PDF](http://epp.eurostat.ec.europa.eu/cache/ITY_OFFPUB/KS-RA-11-009/EN/KS-RA-11-009-EN.PDF)

change of knowledge and practices which facilitate coordination strategies among Member States.

These phenomena frame the emergence of an “EU” integration policy taking place alongside the EU immigration and asylum policy. Initial commitments regarding integration looked quite balanced as they underlined the role of every key actor in the process, i.e., migrants, authorities and citizens, as well as the importance of granting rights to migrants and their family members in order to assist social integration. However, some trends have taken place in certain Member States and at EU level showing an increasing tendency to put the burden of integration on migrants rather than authorities<sup>39</sup>.

Some examples demonstrate how the two-way process, which formed the basis of this policy, has progressively shifted towards a policy where migrants have been asked to carry the biggest part of the burden of integration requirements. One of the most topical examples is the emphasis put on language and civic requirements since 2005. The obligation for migrants to prove language and civic skills has become widespread throughout the migration process. From requesting family members to take the language test in the country of origin in order to benefit from family reunification to the increasing number of language requirements attached to citizenship procedures, these requirements have become one of the cornerstones of national and European policies<sup>40</sup>.

This movement triggers a set of questions and concerns. First, it has overturned the logic governing integration. Indeed, and for a long period of time, equal treatment, secure residence, family reunification and access to employment and education were considered as elements helping migrants’ integration. Now, integration skills, such as language and civic ones, are required to allow migrants to have access to the territory or a secured legal status, i.e., when language requirements condition the renewal of a residence permit<sup>41</sup>. The linkage between integration and the loss or the preservation of the legal status of migrants makes the migrant’s status far more fragile and aims at creating the conditions for facilitated exclusion of migrants from the national community<sup>42</sup>. Here, the rules have a radically different purpose.

Put differently: “it is at this point that the nexus between the two policy fields of migration and integration becomes clear. Previous assumptions about restrictive immigration being a necessary precondition for success of integration policies have been joined by new ways of

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<sup>39</sup> K. Groenendijk “Integration of Immigrants in the EU: The Old and the New Way?”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>40</sup> R. Van Oers, E. Ersbøll & D. Kostakopoulou, “A Re-Definition of Belonging? Language and Integration Tests in Europe”, Martinus Nijhoff Publishers, Leiden – Boston, 2010; Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012; S. Bonjour, A. Rea & D. Jacobs (eds), *The Others in Europe*, Editions de l’Université de Bruxelles, Bruxelles, 2011.

<sup>41</sup> Groenendijk K., “Pre-Departure Integration Strategies in the European Union: Integration or Immigration Policy?”, *European Journal of Migration and Law*, 2011.

<sup>42</sup> Y. Pascouau, “Mandatory Integration Schemes in the EU Member States: Overview and Trends”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

thinking: integration policy measures are used to select those immigrants that are able and willing to integrate and deter those who are not. Making first admission dependent on tests in the country of origin, extension of residence permits on success in integration courses, and naturalisation on ever more elaborate requirements of integration are examples of measures that fit this inversion<sup>43</sup>.

Second, these rules are mainly directed towards a specific category of migrants, i.e., low skilled migrants coming from countries with different cultures. This clearly derives from certain national rules where some specific “western” citizens are exempted from taking language or civic test<sup>44</sup>. On the other hand, the growing emphasis on Member States and/or European values, among which equality between men and women is often underlined, demonstrates that these rules are applicable to migrants coming from countries where the overall culture is different from the European one. Muslims fall within the category of migrants to whom such schemes are implemented for.

Finally, the development of schemes where integration duties are borne by migrants has the effect of portraying a negative picture of Europe. In other words, EU countries do not appear as welcoming countries – in fact the opposite is true. It is not sure whether this option is suitable in the medium and long term. Indeed, the EU and its Member States will need, in the short run, to have recourse to an external workforce due to shrinking demographic trends<sup>45</sup> and growing labour and skills shortages in some specific sectors. In a context where the EU is showing a reluctance to openly welcome migrants, will the latter prefer to avoid the European labour market? In the end this could run counter to the EU’s interest in social, economic and political terms.

In the end, questions related to integration policies are really difficult ones from a technical point of view and a political one. While the EU has apparently limited powers in the field, Member States have demonstrated a growing willingness to use integration schemes to make immigration more difficult. Such a phenomenon is now being echoed at EU level due to the increasing importance of migration issues and the development of instruments and bodies where integration is discussed. This trend is also fuelled by the development of anti-immigrants discourses and policies in some Member States<sup>46</sup>.

The possibility of addressing integration issues at EU level could have been an opportunity to move ahead and to provide for greater inclusion of migrants into European societies. The content of the emerging EU integration politics looks rather different. The growing link-

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<sup>43</sup> R. Penninx, D. Spencer & N. Van Hear “Migration and Integration in Europe: the State of research”, COMPAS, 2008.

<sup>44</sup> E. Bribosia “Les Politiques d’Intégration de l’Union européenne et des Etats membres à l’Epreuve du Principe de Non-Discrimination”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

<sup>45</sup> J. O. Karlsson & L. Pelling (eds), “Moving beyond Demographics. Perspectives for a Common European Migration Policy”, Global Utmaning, 2011.

<sup>46</sup> N. Trimikliniotis, “The Instrumentalisation of EU Integration Policy: Reflecting on the Dignified, Efficient and Undeclared Policy Aspects”, in Y. Pascouau & T. Strik (eds), *Which Integration Policies for Migrants? Interaction between the EU and its Member States*, Wolf Legal Publishers, Nijmegen, 2012.

age between immigration and integration plays into the favour of a selective policy where integration requirements weigh on migrants' shoulders. Such a movement may run counter to integration expectations and help to create the conditions for social exclusions. Is this really what an integration policy should look like?



# Moving Towards a Welcome-Orientated Migration Management in Germany?

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## 1. WORLDWIDE MIGRATION – A KEY CHALLENGE OF THE 21ST CENTURY

Demographic change has become one of the crucial challenges in the past decades<sup>1</sup> and will continue to be one as the population is still in the middle of a severe change process. While two hundred years ago only one billion people inhabited the world, the number had increased to two billion by 1950. By the end of the 21st century the population is estimated to grow up to 10 billion people.<sup>2</sup> At the same time a number of states with a high level of industrialization are facing a decreasing population.

This dichotomist development requires different and context-specific strategic planning as well as measures in the demographic field. The population growth of some countries demands more achievable and sufficient capabilities for all, while other countries are concerned by their demographic losses and have to tackle the challenge of recruiting adequate human capital supply for the labour market and social welfare depositor for the aging society.

The nations in Asia are at different stages of demographic development. As in Europe – and particularly in Germany – some Asian states see the need for establishing a demographic management strategy to tackle the challenge of aging societies and a growing lack of labour force potential. This paper focuses on the measures introduced to cope with this development and its direct impacts on the social and welfare-state.

It is acknowledged that a high quantity of labour force is needed to cover the social and welfare costs for the whole society. Furthermore, it is a fact that the success of an enterprise depends on its ability to attract and the availability of the necessary human capital. In times of a globalized economy and transnational relations, success in economy, science and administration depends also on the possibility to recruit employees with international and intercultural competences (multilingual, flexible, ethnic open).

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<sup>1</sup> UNCSD Secretariat (2012).

<sup>2</sup> United Nations (2013).

## 2. THE IMPACT OF IMMIGRATION AND WELFARE ON AN INDUSTRIALISED RECEIVING SOCIETY

From the German government's, corporates' and industrial associations' perspective, the current and future need for skilled workers, especially in the health, crafts and IT sectors, cannot be met entirely through additional training and requalification measures for people living in Germany. Due to expected demographic developments, immigration of qualified workers from the EU and other countries is also required (Fortschrittsbericht 2012, 48 ff.).

It has been recognised that the attractiveness of the German labour market and the successful integration of immigrants depend to a considerable degree on an effective welcoming culture.

The OECD study published in February 2013, "Recruiting Immigrant Workers: Germany 2013", concludes that, although the Federal Republic of Germany is now among the OECD countries with the least restrictions on labour migration for highly-skilled professionals, immigration so far has been low compared with other countries and in relation to the size of the German labour market.<sup>3</sup>

One of the key reasons for this comparatively low level of labour migration is that German companies, especially small and medium-sized enterprises (SMEs), have put little effort into recruiting foreign workers. According to the OECD, another barrier for migrants is poor or non-existent German language skills.

The results show that the required increase in immigration cannot be achieved by improving only legal and administrative conditions, but will also require welcome-based immigration management by companies and civil society, in cooperation with the state authorities.

Recent studies prove that migrants do not compete with locals for jobs. In fact, they create new jobs.<sup>4</sup> In addition, it can be seen that increasing immigration has a positive effect on the "well-being" of a region.<sup>5</sup> Thus, migrants are "enhancing the demographic balance and improving the gross domestic product".<sup>6</sup> This indicates that the impact of immigration should not be evaluated only by its influence on the labour market. Policies and administrative measures should take into account to appreciate the welfare effects of immigration.

## 3. CONTEXT OF IMMIGRATION AND INTEGRATION IN GERMANY

The nature of *migration varies* greatly between countries. While countries such as Canada, Australia and New Zealand have been widely recognized for their migration policies and system, other countries are just beginning to think of a process to open its doors.

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<sup>3</sup> OECD (2013).

<sup>4</sup> Guilietti, Corrado (2009).

<sup>5</sup> Akay, Alpaslan/Constant, Amelie F./Guilietti, Corrado (2012).

<sup>6</sup> Zimmermann, Klaus F./Kahanec, Martin/Guilietti, Corrado/Guzi, Martin/Barrett, Alan/Maitre, Bertrand (2012).

In order to tackle the issue of migration successfully in the future, we need to know the historical background of this topic in Germany to understand its starting conditions.

### 3.1. Historical Overview of Migration Movements in Germany

For many centuries, Germany was a destination country for people fleeing their home countries. In the 17th century, Huguenots fled France and moved to Prussia, which offered them asylum. In the second half of the 17th century, one third of the population in Berlin belonged to the Huguenots. In the 19th century, Jews from Eastern Europe escaped to Germany and established a new powerful ethnic minority, also centred in Berlin. However, at the same time (16th-20th century), millions of mostly young Germans emigrated to America or Australia to escape the consequences of long war *époques*, mostly between France and Germany.

Under the rule of Adolf Hitler from 1933-1945, millions of people emigrated due to politics, religious, ethnic and cultural reasons. More than 80 nations offered asylum to the 280,000 Jews who escaped from Germany. The year 1945 saw the peak of migration movement: 12 million Germans had to leave their homes, which were now under the control of other countries as Poland or Russia, along with two million Poles and Ukrainians who had to search for new homes.

Thus Germany faces a more-than-hundreds-of-years-old tradition of migration movements. From the early centuries until the 1950s the direction of migration in Germany and the countries previously existing on its territory happened in two directions: in the beginning, the region was an immigration destination. Since the 16th century, this structure changed and the German states confronted a period of high emigration due to poverty and political reasons. However, special groups like Huguenots or Jews could find still a new home mostly in the city of Berlin.<sup>7</sup>

### 3.2. Migration Movements since the 1950s

In the aftermath of the Second World War, refugees and displaced persons were high on the international agenda and this resulted in the passing of the International Convention for the Protection of Refugees, in 1951. The first German laws tackling the displacement of people in the context of the Third Reich came into force in 1953. The Federal Office for Migration and Refugees (BAMF) was founded in 1952 and started to work on these topics with 40 employees.

As a result of the demographic changes through the war and the emigration as well as deportation during the Third Reich, the growing German economy lacked substantial labour forces for industrial production. This was the beginning of the decade of recruitment agreements for foreign workers (*Gastarbeiterabkommen*), in order to attract low skilled people from countries like Italy (1955), Greece (1960), Spain (1960), and later Turkey (1961) to support the new industrial production, mostly in the car sector.

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<sup>7</sup> Bundeszentral für Politische Bildung (2007).



Germany signed special agreements also with Morocco in 1963, South Korea in 1963, Portugal in 1964, Tunisia in 1965, and the former Yugoslavia in 1968.<sup>8</sup> In total, Germany recruited 280,000 employees from Greece, Spain, Italy and Turkey in the sixties. Rules to facilitate the longer stay of the employees and their families were introduced in 1971, but at the same time the so-called recruitment ban agreement (Anwerbestoppabkommen in 1973) to stop recruiting came into force. It was later replaced by the ordinance on exemptions from the recruitment ban (Anwerbestoppausnahmereverordnung), taking into account the need of migrant workers who resided in Germany with their whole family. It was in this context that in 1978 Mr. Heinz Kühn was appointed as the first Federal Commissioner for Foreigners' Affairs (Beauftragte der Bundesregierung zur Förderung der Integration der ausländischen Arbeitnehmer und ihrer Familienangehörigen). He also launched the "Kühn Memorandum" in 1979, where Germany was called a "Country of Immigration" for the first time.

Since the 1990s, the influence of European rules have become more and more important; mostly the establishment of the Schengen agreement, but also the rules for foreign affairs. The contract of Maastricht in 1993, the Dublin agreement in 1997, and the contract of Amsterdam in 1999 and Stockholm have designed the collectivization of rules for asylum and visa affairs.<sup>9, 10</sup>

The German Green Card, established in 2000 to attract engineers from abroad, led to the official end of the recruitment ban. Due to the demographic change and lack of skilled labour force in the same period, the independent Commission "Immigration" began to draft recommendations for a reform of the German immigration act. This shift came at a time when the UHNCR counted 15 million refugees worldwide and 20-25 million internationally displaced people. Thus, there was an interest for new regulations in this field and Germany, the EU and other countries were ready to shift towards a more liberal and welcoming immigration regulation.

These measures were abolished after the 09/11 terrorist attack in the United States which resulted in tighter control measures and the concentration on security policies with regard to migration control.

Recent challenges following this development can be seen in the United States and Europe. Despite surveys in the US showing the benefits of immigrants, President Obama has yet to realize his legislation act for 11 million immigrants in order for them to be recognized as citizens to become an official part of US society.<sup>11</sup>

Frontex is the European Union's agency for external border security; it became operational in 2005 with a budget of 8.5 million Euros. Its budget has now grown to 9.0 million Euros in 2013 as it takes on more responsibilities.<sup>12</sup> The implementing of "smart borders" in the European Union as a blueprint of the United States' system and the enhancement of

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<sup>8</sup> IBID 2007 and Bundeszentral für Politische Bildung (2005).

<sup>9</sup> European Council (2010).

<sup>10</sup> Angenendt, Steffen/Parkes, Roderick (2009).

<sup>11</sup> Plumer, Brad (2013).

<sup>12</sup> Frontex' Programme at Work (2013), p. 34.

“mobility partnerships”, which are in fact focused on defence against immigration to the EU, are effective in border management.

Thus, the German approach towards improving immigration of special groups due to demographic change with the goal of better integration and “living together” always has to be seen in this general context of a security-orientated, and not welcoming, approach. However, in the past few years, the German government has introduced a number of reforms and new integration measures.

The new German immigration law Residence Act (*Aufenthaltsgesetz*), planned for 2002, finally came into force in 2005. It regulates the entry of foreigners as well as their residence in Germany and laid the foundation for the introduction of new integration measures.<sup>13</sup> In 2006, the first German Integration Summit was held. This annual conference takes place in the German Chancellery and is attended by representatives from the political sector, media, civil society, migrants associations, employer associations, unions and sport associations. Through intense discussion the participants try to identify challenges with regard to integration of immigrants and suggest solutions.<sup>14</sup> Also in 2006, for the first time, refugees got the right to stay if they were able to find employment.

In addition to the Integration Summit, the German Islam Conference was introduced in 2006 to address challenges concerning the integration of Muslims. The aim is the establishment of a long-term dialogue to achieve better living together independent from religious backgrounds.<sup>15</sup>

In 2008, an official naturalisation test was introduced. This test consists of a number of questions on the legal and social systems of Germany and on living conditions in the country. Although the individual Federal States are responsible for naturalisation, the test was delegated to the BAMF. The BAMF is also responsible for integration courses as well as the development of nationwide integration programmes.<sup>16</sup>

In 2007, reforms of the Residence Act were implemented to strengthen, among others, the right of family integration and the implementation of eleven EU directives.<sup>17</sup> The first National Integration Plan was introduced in 2007.<sup>18</sup> This plan includes more than 400 measures and self-responsibilities of governmental and non-governmental stakeholders. Key aspects are education, language, sports, media, employment, academia, women and children as well as integration at the local level.<sup>19</sup>

In 2011, Lower Saxony was the first Federal State in Germany to appoint a Minister of Social and Integration Affairs with a migration background, Ms Aygül Özkan.

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<sup>13</sup> Federal Foreign Office (2012).

<sup>14</sup> Presse- und Informationsamt der Bundesregierung (2013c).

<sup>15</sup> Federal Ministry of the Interior (2013).

<sup>16</sup> Federal Office for Migration and Refugees (2011).

<sup>17</sup> Federal Foreign Office (2012).

<sup>18</sup> Presse- und Informationsamt der Bundesregierung (2007a).

<sup>19</sup> Presse- und Informationsamt der Bundesregierung (2007b) and IBID (2013a).

During the 5th Integration Summit in January 2012, a new National Action Plan on Integration was announced which will replace the National Integration Plan.<sup>20</sup>

In August 2012, another reform of the Residence Act, as demanded by an EU directive, has been implemented. This facilitated crucial changes in the policies for the immigration of highly qualified migrants (Blue Card Directive) as well as family reunions.<sup>21</sup> In recent times, new topics such as poverty migration from Eastern and Southern European countries and the need for the implementation of a “welcome structure” were discussed. The new rules for working conditions from July 2013 are the results of such discussions and are being tackled under the current German challenge of “good and fair migration”.

The organization of the Soccer World Cup in 2006 was very important from the sociological perspective. This event not only demonstrated the open-mindedness and tolerance for different religions and ethnic groups in Germany, but also portrayed Germans in a new emotionally friendly light. The crucial role of sports to promote better understanding was confirmed in 2010 when the new national soccer team had a clearly multicultural character. This resulted even in short films on television showing how, despite the different ethnic background of the players, they jointly fight for a common goal and how their families support the team together.

### **3.3. Thinking migration as a holistic affair: the new approach of ZAV and GIZ**

A really new approach to migration, combining “good migration and mobility” and “labour force recruiting”, is being implemented in the recent so-called “Triple Win pilot project” of the German International Placement Service (ZAV) of the Federal Employment Agency and the Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ). This project develops new and sustainable tools for international recruiting of qualified workers for the German labour market to balance the demographic shift in Germany.<sup>22</sup>

International human resources will be recruited for job vacancies in German companies. This form of job matching supports other forms of German government activities to address the increasing human capital needs with better qualified people, higher retirement age and enhancement of women labour. In this project, the main focus is on combining the interests of the German labour market, the country of origin and the migrants themselves to achieve a win-win situation.

The employees receive the chance to improve his or her employability skills through training. In a lot of cases, these new skills can still be applied after they go back to their countries of origin and help the migrants to establish new innovation structures in their home countries’ economy. Furthermore the recruitment process abroad can be helpful in cases of high unemployment rates in the nation of origin. Another benefit for the country of origin is the remittances sent home by the migrant workers. The recruitment process follows international

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<sup>20</sup> Presse- und Informationsamt der Bundesregierung (2013b) and The Federal Government (2012).

<sup>21</sup> Federal Foreign Office (2012).

<sup>22</sup> Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH (2013).

agreements such as the WHO-Codex for the international recruitment for qualified labour forces. However, while the project focuses on nurses, e.g., from the Philippines, the healthcare sector is not the only target field.

In the implementation of these mobility partnerships to recruit human capital abroad, the agencies always work in accordance with the agreements with the ministries and departments in the country of origin. It also helps to fight corruption, irregular migration, human trafficking, and salary dumping. The project tries to avoid too much emigration and brain drain which might even result in a lack of manpower in the country of origin. In addition, the process works towards the goal of good integration in the destination country.

The project has developed a holistic approach targeting the implementation of a fair, sustainable and for all sides beneficial mobility-structure which can tackle the new challenges of demographic and labour market changes in developed countries.

#### **4. THE MOBILITY PARTNERSHIP APPROACH IN THE CONTEXT OF THE EUROPEAN UNION**

The developed approach reflects a long period of thinking and drafting on how to combine the different challenges of demographic change and globalisation tendencies in a holistic and sustainable mobility and migration framework. It is thus a measure to tackle migration in Germany in accord with the European Union's approach and criteria. A survey of the European Reflection Group<sup>23</sup> pointed out that the "demographic, welfare and economic perspectives" in the European Union require a long-term implementation of tools to ensure sufficient labour supply and that reforms should be started independently from short-term situations and needs:

Moreover, despite the current economic crisis and unemployment rates, European countries are facing labour market shortages and vacancies that cannot be filled by the domestic workforce in specific sectors, e.g. in health, science and technology. Long-term population ageing in Europe is expected to halve the ratio between persons of working age (20-64) and persons aged 65 and above in the next fifty years. Migration is already of key importance in the EU, with net migration contributing 0.9 million people or 62 % of total population growth in 2010. All indicators show that some of the additional and specific skills needed in the future could be found only outside the EU.<sup>24</sup>

The holistic output of these consolidated findings has formed the Global Approach to Migration and Mobility of the EU:

The Global Approach should, therefore, reflect the strategic objectives of the Union better and translate them into concrete proposals for dialogue and cooperation, notably with the Southern and Eastern Neighbourhood, Africa, enlargement countries and with other strategic partners. In order to reap the benefits that well-managed migration can bring

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<sup>23</sup> Reflection Group on the Future to the EU (2010), p. 24.

<sup>24</sup> European Commission (2011).

and to respond to the challenges of changing migration trends, the EU will need to adapt its policy framework. This Communication puts forward a renewed Global Approach to Migration and Mobility (GAMM) designed to meet that objective.<sup>25</sup>

In order to achieve successful development, agreements between the supranational departments and the Member States as well as national policies are needed. This approach is also integrated in the Stockholm Program:

Migration and mobility in the context of the Europe 2020 Strategy aim to contribute to the vitality and competitiveness of the EU. Securing an adaptable workforce with the necessary skills which can cope successfully with the evolving demographic and economic changes is a strategic priority for Europe. There is also an urgent need to improve the effectiveness of policies aiming at integration of migrants into the labour market.<sup>26</sup>

In this context, the implementation of mobility partnerships has been identified as the most important tool to achieve a balanced exchange of interests between the sending and receiving countries and the interests of the individuals.<sup>27</sup>

This target is also reflected in the new rule tackling the so-called “blue card”. The blue card facilitates the immigration of highly-skilled employees. The law itself (in Germany §19a Residence Act) points out that the residence permit can be limited or prohibited in case of a lack of these professions in the country of origin. This is to ensure the sustainable impact of the migration process after the return.<sup>28</sup>

Another aspect is the structured dialogue with the economy and companies in order to ascertain their needs. In this context the question of saving welfare claims, particularly retirement benefits, is essential to facilitating mobility:

There must also be a dialogue with the private sector and employers to explore why some vacancies are difficult to fill and the potential for a more demand-driven legal immigration policy. Portability of social and pension rights could also be a facilitator for mobility and circular migration, as well as a disincentive for irregular work, and should therefore be improved. Closer cooperation between Member States on social security coordination with non-EU countries will promote progress in this area.<sup>29</sup>

The German-Brazilian social security agreement, which came into force in May 2013, can be seen as a best practice example.

Finally, the European approach tends towards a “migration-centred” orientation similar to the ones of Canada or New Zealand and regards the process of migration from a migrant’s perspective:

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<sup>25</sup> *ibid* (2011).

<sup>26</sup> See above Footnote 23.

<sup>27</sup> Angenendt, Parkes, 2009, 1, see 8.

<sup>28</sup> Bundesgesetzblatt (2012).

<sup>29</sup> See above Footnote 23.

The GAMM should also be migrant-centred: In essence, migration governance is not about “flows”, “stocks” and “routes”, it is about people. In order to be relevant, effective and sustainable, policies must be designed to respond to the aspirations and problems of the people concerned. Migrants should, therefore, be empowered by gaining access to all the information they need about their opportunities, rights and obligations. The Commission has set up the EU Immigration Portal to provide such information together with other measures.<sup>30</sup>

The recent resolution of the European Parliament on 14 March 2013, on the integration of migrants, its effects on the labour market and external dimension of social coordination<sup>31</sup>, underlines the need for qualified migration.

It points out that “the working-age population of Europe will decline from 2012 onwards and, in the absence of immigration, will fall by 14 million over the next 10 years”<sup>32</sup>. In a long-term context, this would have a negative impact on the balance of the retirement systems and will result in a lack of labour force. Furthermore, since 2000 about a quarter of the new job offers have been created by the productivity of migrants and their contributions. The Parliament proposes the implementation of a points system similar to the one in Australia, the establishment of service offices in the country of origin, language as well as skill trainings and the signing of social security agreements to enhance the attraction of immigrants to the EU, especially those with good skills.

The new holistic approach is also shown in the shaping of European rules regarding migration from abroad: The recent directive 2011/98/EU (13.12.2011) on the improvement of the rights of international employees<sup>33</sup>, directive 2011/51/EU (11.5.2011) on the enhancement of rights for people who have to be protected internationally<sup>34</sup>, directive 2011/95/EU (13.12.2011) on the recognition of migrants from abroad, particularly protection-needing people and refugees<sup>35</sup> are part of the GAMM.<sup>36</sup>

The obligation to adapt these directives into German law can influence the shaping of a welcoming culture for migrants towards a sustainable and holistic approach. Such an approach has to involve all groups of migrants: students, working migrants, family members and migrants due to emergency reasons (refugees). In particular, directive 343/1, EU 23.12.2011 (13.12.2011)<sup>37</sup> strengthens the right of equal treatment as EU members for human beings coming from abroad.

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<sup>30</sup> See above Footnote 23.

<sup>31</sup> European Parliament (2013a).

<sup>32</sup> European Parliament (2013b).

<sup>33</sup> Official Journal of the European Union L343/1 (2011).

<sup>34</sup> Official Journal of the European Union L132/1 (2011).

<sup>35</sup> Official Journal of the European Union L337/9 (2011).

<sup>36</sup> European Commission (2012), p. 17.

<sup>37</sup> Official Journal of the European Union L343/1 (2011).

This offers the chance to actively shape a knowledge-culture for immigration in Germany and can be seen as an important step towards tackling the intranational challenge of demographic change. The first measure taken in this context was the implementation of the website “Make it in Germany”<sup>38</sup> which contains job offers. This website also provides guidance and information on the opportunity for starting a new life in Germany. The website “Welcome to Germany” of the BAMF<sup>39</sup> and the new virtual guidance on the recognition of foreign qualifications, run by the Federal Institute for Vocational Education and Training (BIBB), are additional sources of information. All tools recognize the situation in the country of origin but are also accessible and useful for people who are planning to stay in Germany for a longer period. Thus, they are able to be involved in the whole process of migration – the pre-departure time, the arrival and the time of integration.

Against the background of a Europe-wide need for labour migration – despite the current crises in particular countries – the necessity for such a holistic and migration-appreciating approach has been confirmed by current figures. In 2013, the European Commission, DG Employment, Social Affairs and Inclusion published the European Vacancy Monitor. The results show an increasing need for qualified employees in administration, teaching, businesses and healthcare (European Vacancy Monitor, 2013, 1). These shortages are especially true for Germany.

## 5. RECOMMENDATIONS

The current situation in Germany requires effective measures for enhancing immigration. The need is not only concerning labour shortage, but also stabilizing the welfare and retirement system of Germany.

Despite a long tradition of migration, governance of migration and integration has started only in the last years. The first step was to recognize immigration as a possible benefit and to tackle migration affairs from a more holistic and migrant-centred approach. Second, the government started to concentrate on special groups of migrants. But until now there is no official commitment from the decision-makers that Germany is a multicultural and immigration nation. Such commitments can be found in the official policies and laws of other receiving countries like Canada, Australia or New Zealand. However, from a practical administrative perspective, the following recommendations can support the implementation of “good migration” structures and measures:

- **Implementing fair and sustainable mobility partnerships as a “good migration framework”**

A really new approach, involving the sustainable and human-orientated strategy of the European Union, is the “triple win” project of the ZAV and GIZ. This model could work as a prototype for other initiatives. The advantage of this approach is the migrant-centred orientation. Moreover, with this approach, side effects such as the

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<sup>38</sup> Das Willkommensportal für internationale Fachkräfte - Make it in Germany.

<sup>39</sup> Federal Office for Migration and Refugees (2013).



reduction of irregular migration, human trafficking and expensive defence action addressing “not-wanted-migration” could be avoided.

- **Establishing Information and Matching Centres abroad**

A centre on migration affairs needs to be established which will gather information on immigration and job opportunities in the country of origin as the first step of the migration process. A structured implementation of service offices run by countries or the European Union would be a helpful measure to create a positive influence on the decision about migration, and provide information on new chances available and how to prepare.

- **Involving practical requirements of “good migration”**

Furthermore, immigration affairs should be offered to immigrants in a holistic and individual way. The stakeholders of this approach are the political sector, the administration, and also the economy and society. The following description shows the main recommendations for these groups on how the process of “good migration” could be shaped in the future.

## **5.1. Starting points for welcome-based immigration management**

Welcome-based immigration management needs to start at the very first stage of the integration process, known as “pre-integration”, in the potential migrant’s home country. At that point, the first step is to make Germany more attractive to migrants by offering them a clear outlook after they migrate. It will be hard to raise the number of qualified foreign nationals actively looking to migrate to Germany without providing concrete knowledge of their options upon migrating and prospects of a job or training place. It is thus of central importance for German companies to carry out active recruitment work abroad.

At the next stage, initial integration, the immigrant enters the host society. One particular point where welcome-based immigration management can step in is by providing support with language acquisition and finding a home. Indeed, language acquisition regularly starts at the pre-integration stage. Integration into the host society in terms of both the social system and social inclusion is a crucial prerequisite both for migrants’ initial entry and their long-term integration (“acknowledged integration”). Welcome-based immigration management can play an important part in this through active “society matching”.<sup>40</sup>

## **5.2. The immigration process needs a facilitator**

Immigrants’ readiness to migrate, and their integration in the long term, depends crucially on the extent to which they are offered concrete prospects in Germany and are supported during the first two stages of integration. Many companies, especially small and medium-sized enterprises (SMEs), have little experience in recruiting skilled workers from abroad and helping them to integrate. They thus frequently lack the knowledge and means to promote and facilitate the immigration process. The resources available to the relevant state authorities and their legal remit generally only allow for limited advice and support to immigrants on

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<sup>40</sup> Steller/Kuhn (2013).



issues extending beyond aspects relating purely to residence and employment. In this respect, a kind of facilitator is needed to actively help immigrants, companies and civil society during the immigration and integration process in cooperation with the authorities.

In principle, larger companies with human resource departments could take on the tasks of the facilitator themselves. In the case of managers, this is already taking place to some extent with relocation services being hired. SMEs, however, will generally not be able to take on this task without support. With regard to recruiting initiatives abroad, some initial steps have been taken by the Chambers of Industry and Commerce, taking the role of a facilitator in that respect. Setting up a facilitator organised on a non-profit basis is one way of offering advice and coordination which is both efficient and cheap. Another conceivable way would be to set up a public-private partnership for this purpose, jointly operated by the state authorities and private companies.

### 5.3. Active recruiting abroad and coordination of entry process

When it comes to looking for a job or a home in Germany, potential immigrants are still largely left to their own devices. Even companies which are interested in foreign skilled workers, especially SMEs without any foreign branches, often lack the knowledge and experience of how and in which countries they can recruit potential skilled workers to work in their companies.<sup>41</sup> Despite a noticeable lack of skilled workers, many companies have thus proven very reticent in their efforts to recruit staff abroad. The German government and the Federal Employment Agency have recognised the need to provide advice in this matter and have introduced some initial forms of assistance in the form of internet platforms set up as part of their drive to attract skilled workers in the summer of 2012.<sup>42</sup> These two internet platforms offer information on the application process and the labour market to EU citizens, higher education graduates from third countries and companies, plus serve as a job exchange for direct placement.

There is, however, a lack of comparable programmes for third-country nationals without an academic degree, who are, for example, in high demand in the health sector as nurses for the sick or elderly. So far, experiences with general advertising campaigns, for example in Spain or Portugal, have not proven very efficient. They do, however, show people's huge interest in the German labour market.

In future, information programmes and online job exchanges will channel this interest better. Furthermore, providing points of contact for interested skilled workers and for companies from Germany in situ, in the immigrants' country, can address employment offers in a country-specific manner, with target groups being approached more specifically via local multipliers. Some multipliers which might be involved in particular are foreign chambers of commerce, foreign partners linked to industrial and business associations, and educational establishments. Organising career fairs with representatives from interested companies and

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<sup>41</sup> OECD (2013) (footnote 4 above), p. 161 ff.

<sup>42</sup> For the Federal Government's programme regarding skilled workers see the most recent progress report of December 2012, available on the BMAS website at <http://www.bmas.de>.

carrying out the selection process in situ could also help make the prospect of working in Germany seem more concrete to potential immigrants.

In the case of skilled workers from non-EU states, especially those not falling under the Blue Card legislation for highly qualified academics pursuant to Section 19 of the German Residence Act (AufenthG), impediments and delays regarding entry and the granting of residence permits could be reduced if obligatory administrative procedures could be coordinated and prepared in advance, in cooperation with the authorities. The same applies to the process for recognising professional qualifications gained abroad.

In this case, immigration management is already linking up to the pre-integration stage. The facilitator can support the application and selection process by acting as a point of contact for applicants and companies, as well as supporting the residency application procedure by providing advice and coordination on consultation with the authorities. Immigrants' concrete experience of being supported and valued at this early stage will help them to integrate and give them a feeling of being welcomed from the very start.

#### **5.4. Specific need for job-related language acquisition**

Another obstacle apart from the lack of effort put into recruitment is candidates' inadequate German language skills. With few exceptions, most jobs and training places require a certain level of language skills, e.g., specific to the job. Very few immigrants from the EU or third countries are likely to have achieved this level upon application or entry. The integration courses offered under Section 43 of the Residence Act are aimed exclusively at foreign nationals already living in Germany and requiring authorisation for a permanent residence permit. They thus only apply to foreign skilled workers already living in Germany. Due to the recession, the Goethe Institute is currently registering increased demand for German courses in some EU countries, but when the economic situation improves in those countries this demand will probably fall again. Thus, migrants' willingness to learn and the chances of acquiring the level required depend crucially on the specific language courses on offer and their funding. Active immigration management ideally combines specific jobs or training places with a chance to take part in language lessons or integration courses. In principle, the language courses can take place either in learners' home countries or in Germany. The facilitator can encourage the integration process by providing advice and helping people find the perfect language course. Their motivation to learn the language rises the more concrete the prospects of a job become.

#### **5.5. Help finding a home**

In built-up areas in particular, with rising rents and a lack of living space, it is becoming especially important for immigrants' long-term integration to provide them with active help in finding a home. Their background and language barriers often mean that immigrants are considered low priority when homes are allocated, so they are particularly reliant on support. When large groups of trainees migrate for corporate training one option worth consideration can be renting or providing residential accommodation places. The facilitator can gain les-

sors' trust by accompanying and advising immigrants as they look for their first home, giving them a far better chance of finding appropriate accommodation.

## **5.6. The need for society matching**

For a warm welcome, helping people to settle in the long term and to feel at home in the host society, institutional help is still required in the form of society matching.

### ***5.6.1. Tandem and partner projects***

One way in which countries such as Canada support society matching is with tandem projects revolving around people's careers, neighbourhoods, schools or communities. They organise hosts who invite the newcomer at least once a month in the first six months after arrival to eat or do something together, to get to know their new surroundings or the cultural scene, or to show them typical leisure activities.

This tandem partnership can then continue, develop or stop, depending on the person's needs and whether a friendship evolves. This encounter can also benefit the people offering a tandem and their families. They visit a "foreign" world and take part in something like an Erasmus or Leonardo da Vinci exchange without actually having to travel themselves.

If newcomers (and their families) need further help, they can be provided with another partner. Private initiatives, associations and foundations are all possible organisations which can arrange or facilitate this. Society matching follows the principle of "civil society helping civil society". It relieves the pressure on the state, and at the same time motivates the host society to become open to intercultural dialogue, seeing this openness as a natural part of everyday life in civil society.

### ***5.6.2. Intercultural community centres***

In Canada, community centres for intercultural exchange have also been set up in residential areas. At these *Welcome Centres* language courses are run, information is provided about the typical structures and mentality of the country, community evenings are held and people of various different nationalities cook their home specialities together. Intercultural courses involve the local police and staff from schools, kindergartens and the authorities.<sup>43</sup>

If the exchange of ideas and meetings are organised in a targeted manner, this can reduce both sides' prejudices and fears and appreciative transcultural contacts can develop, enriching people's biographical experiences. This can add a more positive aspect to the range of experiences connected with immigration and in turn make the host society more open.

These kinds of approaches and arrangements in particular could also be the key to success in the case of immigrants with a difficult migration history and can become a source of motivation for integrating into their new home country. Thus, mentors could specifically be sought out to give them a good welcome from the start; they should show interest in the migrants' background and the culture they bring with them and eloquently introduce them to the local culture.

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<sup>43</sup> Welcome Centre Immigrant Services (2013).

### ***5.6.3. Acknowledgement in the form of community welcoming festivals***

Municipalities and district councils can support people's appreciation of diversity by holding "welcoming festivals" or "diversity days" – as offered by the cities of Stuttgart, Hamm or Frankfurt, for example – when city representatives ceremoniously pay tribute to the work done by volunteers and expressly welcome newcomers. Schools, youth clubs and sports clubs can also be involved.

Foundations and fundraising societies, the chambers of commerce and industry or companies with an interest in immigration could lend financial support to these initiatives and programmes. After all, this would be a way to invest in well-integrated skilled workers for the future.

### ***5.6.4. Promoting intercultural encounters from an early stage***

"Society matching" can begin even in childhood. One persuasive step in that direction, for example, is the Hamburg "switch" project run by Kulturbrücke Hamburg e.V., which involves children staying with a family from another cultural background during the holidays. In many large towns, the private initiative *Internations* runs regular events and networking activities for students and expats to foster intercultural encounters.

Setting aside needs based on demographic trends and the labour market, immigration can, in this way, increasingly become a socially accepted, even a desirable and thus supported, win-win reality both for the host society and for the immigrants. One point which inspires confidence is that young people, who anyway tend to move in intercultural circles more than older people, are already convinced that migration can provide added value.

### ***5.6.5. Welcoming programmes for all migrant groups***

The approaches described above, especially that of providing support with language acquisition, finding a home and society matching, could and should find increasing use with other groups of migrants, including refugees, in line with the new European approach to immigration. One example of an approach moving in this direction is the integration scheme currently run by the city of Hamburg<sup>44</sup>, which also offers integration courses to refugees.<sup>45</sup>

## **6. CONCLUSION**

Tackling "Good Migration" will be one of the most important targets worldwide in the 21st century. For many industrial nations, such as Germany, the demographic change requires a combination of measures to answer the demand for human capital and the implementation of sustainable immigration structures in a smart way. Surveys indicate the bigger context of the impact between immigration and positive influence on the welfare state and "well-being" of the receiving society. The history of Germany shows the long-term experience with

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<sup>44</sup> Behörde für Arbeit, Soziales, Familie und Integration (2013).

<sup>45</sup> Alto Comissariado para a Imigração e Diálogo Intercultural (2013).

migration affairs. Ever since the early centuries, immigration and emigration have always been present in the region. Particularly since the 1950s and 1960s, immigration management has attempted to match the demand for labour force. Nevertheless, until now the political handling of immigration is generally done in an uncertain and heterogeneous way. Recently, an attempt to promote “good migration” can be recognized in the field of administration through the establishment of more welcome-orientated and sustainable, fair measures. A good example is the current “triple win” project of the ZAV and GIZ, which aims to establish mobility partnerships with beneficial effects for all sides. The current European approach to migration and mobility shows a sustainable and migrant-centred orientation which offers a helpful vision for the implementation of guidelines in the national immigration management. Thus, the recommendations concerning the building of structures such as mobility partnerships, the provision of information as well as offices abroad and the introduction of a holistic migration chain for potential immigrants coming to Germany should be taken into serious consideration. In order to make this work, administration, economy and society have to cooperate and work together to achieve together the goal of “good migration”.

The success of the current programme “Welcome to Germany” will depend on how much is learned from that experience and how well the errors of the past are avoided. This new welcome-based immigration policy is designed for all kind of migration and focuses on people with their specific needs. In this context, companies and civil society can play a central role alongside politics and government in the form of active immigration management. Welcome-based immigration management should ideally accompany the entire integration process in a “door-to-door” capacity.

The first moves towards a successful and fair immigration management in Germany have been taken and the process receives positives influences through the directives of the EU. This shift in policies now has to be accompanied by administrative measures and visible changes in policy-making. However, the process has just started and time will tell whether Germany is able to achieve a sustainable exchange mobility.

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# Integration Policies in Italy: A Multi-Stakeholder Approach

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## ABSTRACT

The integration process of immigrants in Italy is extremely complex because of the structural features of the Italian labour market, which differ according to the local realities and immigrant groups. Moreover, the issue of integration was embedded in the conflicts of Italian politics. Over the last twelve years, the political context has largely influenced integration policies (and their absence): the Italian model of “reasonable integration” suggested in 2000 has not been implemented, while, in the meantime, migration policies have been characterised by a populist approach, which has been abandoned only recently. In 2011, the Monti government made a first attempt to reintroduce the issue of integration of migrants as part of a national policy, establishing a new Ministry for International Cooperation and Integration, headed by Andrea Riccardi. This decision was hailed as a major turning point, a signal that immigration was finally seen as a resource for Italy. The new Letta government has even appointed a Minister for Integration – Cécile Kyenge, an Italian citizen born in Congo. The appointment of Cécile Kyenge signifies that parts of the political elite have recognised that immigration is not an emergency or occasional phenomenon, but one of the structural characteristics of the Italian society.

At the moment, integration policies are still mainly the task of the local authorities and the civil society. An outdated citizenship legislation and racism are not the only problems the new Ministry of Integration has to face. An ineffective system matching labour supply and demand, lack of resources even for urgent integration policies, and costly policies of deportations will also have to be reconsidered.

The Italian case can be interesting for other countries with regard to the experiences accumulated by the private-social sector. The public sector cannot be expected to solve the integration problem without relying extensively on, and leveraging on the resources of, the *private and non-governmental sector*. These sectors – i.e., employers’ and workers’ groups, religious groups, civic, ethnic and immigrant organisations, private foundations, and the various community-based non-profit entities – have extensive experience with various aspects of newcomers’ integration and can serve as crucial resource for immigrants. They should not,

however, take over the responsibilities from the state concerning crucial tasks such as housing, employment, health or education. But positive cooperation between these two sectors should be developed.

## INTRODUCTION

Italy became an immigration country at the end of the 1970s, after one hundred years of emigration; it is estimated that, between 1870 and 1970, 26 millions Italians left, directed mainly towards the American continent and, after World War Two, towards Northern Europe. This shift took place because of major changes in the international division of labour and the passage from the “Fordist” era to “Post-fordism” in developed societies. In spite of controversial definitions, Fordism and post-Fordism represent different industrial models that can broadly describe the changes that took place in the Italian economy in the 1970s and 1980s: large-scale mass production, concentrated in the so-called industrial triangle (Turin, Milan, Genoa) were progressively replaced by a cluster of small firms and workshops scattered in the Central and Northeast regions of the country, producing a vast range of products suitable to new consumption models. Arriving in the middle of this economic change, migrants to Italy didn’t respond to the labour force needs of a declining heavy industrial sectors: migrants, reaching Italy under the pressure of “push factors” and of the restrictive migratory policies imposed by Northern European countries, filled manual and unqualified jobs, recently rejected by nationals, either in services to private persons (domestic work) or in small and very small enterprises, active in traditional productive activities, tourism, and agriculture (many of these jobs being part of the informal sector of the economy, which is especially relevant in the country, being estimated at between 25 and 30 per cent of the GDP)<sup>1</sup>.

This type of incorporation into the receiving country’s labour market characterizes what the sociologist Enrico Pugliese (2006) and the geographer Russell King (1999) defined as the “Mediterranean model” of migration. Other features of the model are: the importance of the female migratory component (fuelled by a strong demand in domestic service and especially elderly care); the high number of migrants’ nationalities, originating from different continents and expressing highly differentiated migratory trajectories; the absence of a clear legislation and, finally, poor management of migratory processes by national or local authorities, at least in a first phase. In the Italian case, this last aspect (inadequate legislation and policies – both in flow management and integration) has been particularly resilient (in comparison, e.g., with the Spanish case). A sign of this inadequacy has been the persistent “stock” of irregular migrants – difficult to estimate in quantity – that has forced the governments to implement regularisations or amnesties every four to five years (1986, 1990, 1996, 1998, 2003, 2006,

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<sup>1</sup> According to the Italian Institute of Statistics (ISTAT) and the Bank of Italy (*Banca d’Italia*), the informal economy accounted for 14-16% of the GNP in 1998-2000. Other sources have estimated it at between 27-29%, with the highest rate 29.4% in 2003 (Eurispes). Today it could reach around 30% of the national product, according to various estimates of scholars and international organisations. See The World Bank data: [http://rru.worldbank.org/Documents/PapersLinks/informal\\_economy.pdf](http://rru.worldbank.org/Documents/PapersLinks/informal_economy.pdf). See Gabriele Battaglia, tesi on line, available at: <http://www.tesionline.it/default/tesi.asp?idt=8003>, accessed on 15<sup>th</sup> September 2009.

2009 and 2012). In fact, many of the present-day legal immigrants gained their regular status by resorting to regularisation, at some point during their stay in Italy.

Migratory policies have been introduced slowly, and too late, to respond to a changing international context (namely the fall of the Berlin Wall and the shift of Eastern Europe to a market economy); have lacked a coherent approach (namely because of the different political majorities that have ruled the country and the exploitation of racism for electoral reasons by some political forces) and, last but not least, have failed to match labour force supply and demand. As for integration policies, they have only partly accompanied local processes, partly been spontaneous, and partly been due to a number of various agents (mostly from civil society). The recent appointment of a Minister of Integration – a lady, Cécile Kyenge, of Congolese origin and of Catholic religion – represents a shift in the political will to deal with the issue, but it does not reflect a clear vision for what concerns the role and the future of immigration in Italy nor a well-defined program for integration policies. As pointed out by Mr. Alessandrini – head of national coordination for Politics Social Integration of Foreigners at CNEL (National Council for Economy and Labour) – a “lack of a policy with a comprehensive approach that covers, at the same time, immigration, education and labour” can be recognised.<sup>2</sup>

This paper aims to offer a broad analysis of the integration policies and the integration processes in Italy, placing them in the complex economic and political context that has characterized the country in the last thirty years. Many dimensions have to be taken into account: structural factors (economy, regional differences, North-South dualism and institutional decentralisation); recent Italian political history, marked by a long populist season under the centre-right governments directed by Mr. Berlusconi and supported by the xenophobic party of Mr. Bossi, the Northern League; the role of the civil society (namely secular and Christian NGOs and trade unions) and of the Catholic Church.

## THE MIGRATORY FLOWS TOWARDS ITALY: A LANDSCAPE THAT CHANGED OVER THE YEARS

The shift of Italy from emigration to immigration country dates from the late 1970s; however, it was in the second half of the 1980s, after the fall of the Berlin Wall and the transformation of Eastern European societies and economies, that the immigrant population had a spectacular growth, from a few hundred thousand to the five million of today<sup>3</sup>. The changes in the international context have conditioned the origins and the typologies of the flows: during the 1990s, migrants coming from Africa and Asia – predominant during the 1970s and 1980s

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<sup>2</sup> Alessandrini spoke at the presentation of the IX° “Rapporto sugli indici di integrazione degli immigrati in Italia”, Report on the indicators of integration of immigrants in Italy, prepared by the CNEL (National Council for Economy and Work) in collaboration with the Ministry of Labour and Social Policies (General Direction of Immigration and Integration Policies), 22 July 2013. Sociali (Direzione Generale dell’Immigrazione e delle Politiche di Integrazione). As for the CNEL, see note 26. <http://voce.com.ve/2013/07/23/immigrazione-il-difficile-percorso-dellintegrazione/>

<sup>3</sup> Over the last twenty years, and before the crisis, Italy, with Spain, received the largest number of immigrants among all the European countries.

– were replaced by Eastern Europeans. After EU enlargement, flows from non-EU member states were replaced by those from EU member states – namely Romania and Bulgaria. Since a few years ago, Romanians – with around one million people (997,000 in 2011, according to the Caritas Dossier 2012) – represent the biggest immigrant group in Italy<sup>4</sup>. They are one fifth of the around 5,000,000 registered foreigners at the end of 2011 – about the same number as in 2010, when they were 4.919 million residents (Caritas Dossier, 2010). It is curious to note that variations in flows have provoked an interesting semantic change in the definition of the immigrants, who, until the end of the 1990s, were called “*extra-comunitari*” (non-communitarians). The term was used both as an official definition and in popular discourse, having even become an insulting remark in xenophobic speeches. Following the entry of Eastern European countries in EU – with the consequences that this had in relation to the typologies of migratory flows – the terminology was revised. Today, EU migrants represent an estimated number of 1,373,000, 87% of whom come from the 12 countries which became EU members after the enlargement process.

Europe is now the most represented source of origin among foreign residents in Italy: 51% with a breakdown between EU (27.4%) and non-EU (23.4%) citizens. Europe is followed by Africa (22.1%), Asia (18.8%) and America (8.3%)<sup>5</sup>, the last ones constantly dropping. Among the non-EU European residents (1,171,163), Albanians are the most numerous (491,495), followed by 223,782 Ukrainians; 147,519 Moldavians; 101,554 Serbs and Montenegrins; 82,209 Macedonians; 37,090 Russians, and between 20,000-30,000 Bosnians, Croats and Turks (each). With regard to the African continent, at the end of 2011, Moroccans turned out to be the largest immigrant community, with 506,369 residents (the most numerous one). The other large African communities come from Tunisia (122,595), Egypt (117,145), Senegal (87,311), Nigeria (57,011), Ghana (51,924), followed by Algeria (28,081) and Ivory Coast (24,235), with about 15,000 residents, and Burkina Faso, with 10,000 residents or less from Cameroon, Eritrea, Ethiopia, Mauritius and Somalia. In total, there are 1,105,826 African residents (Caritas Dossier, 2012).

All these groups present very different demographic features with respect to male/women ratio and the presence of children. The balance between the presence of women and of men is completely uneven: at the two extremes, we find Ukrainian nationals (women are by far the majority: 25 and 26 males per 100 women) and Senegalese residents (369 males per 100 females in 2009; 329 in 2010). Other “feminized” national groups are Poles (42 and 41 males per 100 females), Moldovans (50 and 51 males per 100 females), followed by Peruvians, Ecuadorians and Filipinos (ISTAT data). The “feminization” (or the opposite “masculinization”) of national groups is linked to the type of incorporation into the Italian labour market. Domestic work has, in fact, attracted most of the female immigration since the late 1970s. This trend could eventually be reversed in the next few years, for two reasons: the family

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<sup>4</sup> For a couple of years, the Italian government has tried to reduce the free movements and to introduce special laws allowing deportations of EU citizens, without succeeding.

<sup>5</sup> A few thousand people from Oceania and stateless persons do not reach 0.1%.

reunification processes that follow the settlement of some groups; the economic crisis pushing Italian women to return to domestic work.

We do not have accurate statistics dividing migrant women coming for family reunification from those settling in Italy for reasons of work. However, other data offer a picture of the presence of families and of migrants alone. According to Caritas, in 2009, migrants who lived in families with a spouse were 44.4% and single parents with children were 4.6%. This means that only 50% of the migrants lived in families<sup>6</sup>. Of the other 50%, 19.7% lived alone, 12.6% cohabited with friends, while over 17% lived in co-residence with employers. The latter group mostly consisted of women in domestic works. This trend continues: just a little bit more than 50% of the immigrants live with their families. Migrants living alone are still a considerable number, partly because of the high percentage of immigrant women in domestic work, who leave their families in home country. However, in spite of the difficulties migrants face when leaving their families, the number of minors of foreign origin, born or socialized in Italy, is constantly growing<sup>7</sup>. Estimations include 933,000 minors of foreign origin, of which 570,000 were born in Italy. Pupils and students of foreign origin in Italian schools are 673,592 (Caritas Dossier 2012; Repubblica<sup>8</sup>; MIUR<sup>9</sup>, 2011). The MIUR data show the spectacular growth of children of immigrants in Italian schools during 1990s: they were only 30,000 in 1992-1993. They are around 670,000 nowadays, experiencing a growth of 25% per year.

Migrants are not equally distributed all over the national territory. Over 60% are currently living in the North, 25% in the Centre and less than 15% in the South. The regions with the highest immigrant presence are Lombardy and Lazio, due to the two big urban concentrations of Milan and Rome. The North-South dichotomy in national economic development affects immigrants' distribution on the Italian territory.

The employment rate is difficult to evaluate because of the weight of the shadow economy. However, it has been and still is higher for both immigrant men and women than for Italians of both genders. The labour market participation rate of immigrant women is about

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<sup>6</sup> From 1970s until early 1990s, immigration in Italy was predominantly composed of men and women in their active age, who came on their own and stayed alone, having extremely different national origins, from Sri Lanka to Morocco, from the Philippines to Senegal, from Tunisia to Poland, working in services and in the informal economy. A few groups represented an exception: Chinese in Tuscany and Tunisians in Sicily, who migrated in families, but both communities were quite separated from the Italian society. Nowadays, the number of immigrants living in families is growing.

<sup>7</sup> As far as the second generation is concerned, this presence is extremely diversified, including children born and grown in the receiving society, teenagers reunified after having completed their socialisation process in their country of origin, children of mixed couples, etc. No simple definition can include them all; for this reason, Italian scholars are very sceptical about the notion of "second generation". While most experts agree that this is made up of children of immigrants, either born in the receiving or sending country, but joining parents in early age and having an important part of their socialisation and schooling in the receiving country, scholars also insist on the need to distinguish among different typologies.

<sup>8</sup> See also: [www.repubblica.it/solidarieta/immigrazione/2012/01/27/news/la\\_cittadinanza\\_ai\\_figli\\_degli\\_immigrati\\_e\\_una\\_follia\\_e\\_un\\_assurdit\\_non\\_darla-28850095/](http://www.repubblica.it/solidarieta/immigrazione/2012/01/27/news/la_cittadinanza_ai_figli_degli_immigrati_e_una_follia_e_un_assurdit_non_darla-28850095/)

<sup>9</sup> Ministero dell'Istruzione, dell'Università e della Ricerca (Ministry of Education, University and Research).

53%. This is well below that of migrant men (82%), but is higher than that of native-born Italian women (46%). Data on labour participation of immigrant women<sup>10</sup> are higher in Italy than in most European countries. This situation may change quickly as the crisis is strongly affecting the Italian economy: very recent data (June 2013) show that unemployment is growing among foreigners, reaching the number of 318,000 persons in the second half of 2012 and 385,000 in the first half of 2013 out of 2.334 million active foreigners<sup>11</sup>. Moreover, this indicates that the percentage of unemployment is now higher among foreigners than among Italians. This is a recent trend as until 2010 the opposite was true. At the same time, the demand for domestic work force has been growing after a brief and limited decline in 2010 and 2011.

During the 1970s and 1980s, migrants have mainly been employed in tertiary (peddling, domestic work, small cleaning enterprises and catering) and primary sectors (fisheries and some agricultural activities), often in the black labour market (Travaglino-Reyneri, 1991; Ambrosini, 1999). Over the years, however, migration has progressively become a structural factor in the Italian economy and, more generally, in Italian society, where demographic turnover is only guaranteed by immigrants' presence. Due to the demographic changes that have been taking place since the 1990s (ageing population and low birth-rates in the North and the Centre), immigrant labour force is needed not only in the informal economy, but also in small and medium-sized factories (especially in the North-East and North-West) as well as in construction (both formal and informal). The entire Italian economy would be paralyzed nowadays if it weren't for immigrants: construction and agricultural industries, small industries in the North-West and North-East and care services (for children and, increasingly, the elderly) strongly need an immigrant labour force (Ambrosini, 1999). However, sectors where immigrants are employed mainly need low-qualified and low-paid workers. Sociologist Maurizio Ambrosini contends that immigrants' subordinated position is functional to the Italian economy and presents the concept of "subordinated integration" as a key to understanding the acceptance of immigrants in Italian society. In spite of growing unemployment among foreigners, the crisis has not radically changed the situation: unqualified jobs are still needed, while the informal economy, very present in the sectors where migrants are em-

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<sup>10</sup> With respect to women's employment, differences among groups are very important: women of some nationalities have only come for work and have a labour rate similar to that of men, while other national groups, who came through family reunification, remained out of the labour market.

<sup>11</sup> Rapporto semestrale sull'andamento del mercato del lavoro degli immigrati in Italia, Direzione Generale dell'Immigrazione e delle Politiche di Integrazione, Ministry of Labour. Based on Istat (National Institute of Statistics) these data – published in June – have been then incorporated in the publication of the Annual Report on the labour market of immigrants in Italy (see Note 2) that is scheduled in July.

ployed, is constantly growing as a consequence of the austerity policy imposed by the EU<sup>12</sup> that have perverse effects, such as the closing down of small and medium-sized enterprises through excessive taxation. For many companies and for many workers, the black labour market has become the only solution to surviving.<sup>13</sup> So far, the crisis has not pushed Italians to accept the existing jobs in domestic services: “The service sector continues to show a growing demand. In fact, the comparison between the third quarter of 2012 and the same period of the previous year shows that the number of foreigners employed in domestic services has grown by 75 thousand units while the employment of Italian nationals has decreased by 12 thousand units.”<sup>14</sup>

However, growing unemployment has had an impact on the indicators of integration. According to the CNEL<sup>15</sup>, “Compared with 2009, the reference year of the previous report, the geography of the Italian regions with the highest potential of integration has changed considerably, and not only because the grid of indicators has expanded and has been further refined, but mainly because two years later – during which time the economic and employment crisis has gradually worsened, with a more and more systemic character – in Italy the conditions of social integration and employment of immigrants (as, indeed, of the Italians) have experienced a general and widespread deterioration.” (CNEL. 2013)<sup>16</sup>

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<sup>12</sup> There is now a big debate in Italy about the negative impact of the austerity policies imposed by the European Commission; however, the voices that are critical against austerity policies represent the majority of the political forces. The action of the Monti government is seen more and more negatively both by economists and politicians. This analysis by Paul Krugman is now shared both by the Five Stars Movement of Beppe Grillo and by the mainstream parties such as Sel, sinistra, ecologia e libertà, Gauche, Ecologie and Freedom of Nichi Vendola: “For Mr. Monti was, in effect, the proconsul installed by Germany to enforce fiscal austerity on an already ailing economy; willingness to pursue austerity without limit is what defines respectability in European policy circles. This would be fine if austerity policies actually worked — but they don’t. And far from seeming either mature or realistic, the advocates of austerity are sounding increasingly petulant and delusional.” Paul Krugman, Op-Ed Columnist, Austerity, Italian Style by Paul Krugman, published: February 24, 2013. The Popolo della Libertà –Freedom’s People of Silvio Berlusconi, opposes as well austerity policies.

<sup>13</sup> <http://www.integrazionemigranti.gov.it/Attualita/News/Pagine/Ires-II-mercato-del-lavoro-immigrato.aspx>

<sup>14</sup> “In controtendenza il comparto dei servizi alla persona continua a manifestare una domanda nettamente in crescita. Sempre nel confronto tra il terzo trimestre 2012 e lo stesso periodo dell’anno precedente, infatti, gli occupati nei servizi domestici ed alle famiglie crescono di 75 mila unità considerando i lavoratori stranieri mentre diminuiscono di 12 mila unità considerando gli occupati di nazionalità italiana. [http://www.stranieriinitalia.it/statistiche-2\\_4\\_milioni\\_di\\_lavoratori\\_stranieri\\_sono\\_il\\_10\\_degli\\_occupati\\_16869.html](http://www.stranieriinitalia.it/statistiche-2_4_milioni_di_lavoratori_stranieri_sono_il_10_degli_occupati_16869.html)

<sup>15</sup> <http://www.integrazionemigranti.gov.it/archiviodocumenti/indici-di-integrazione/Pagine/IX-rapporto-indici-di-integrazione.aspx>

<sup>16</sup> “Rispetto al 2009, anno di riferimento del Rapporto precedente, la geografia dei territori italiani a più alto potenziale di integrazione è sensibilmente mutata; e non solo perché la griglia degli indicatori si è ampliata e ulteriormente perfezionata, ma soprattutto perché a due anni di distanza – durante i quali la crisi economico-occupazionale è andata progressivamente acuendosi, sempre più un carattere sistemico – in Italia le condizioni di inserimento sociale e lavorativo degli immigrati (come, del resto, degli italiani) hanno conosciuto un generale e diffuso peggioramento”. IX Rapporto del CNEL sugli Indici di integrazione degli immigrati in Italia, Realizzato dal Centro Studi e Ricerche IDOS su incarico dell’ONC-CNEL - Luglio 2013.



## THE IMPLEMENTATION OF A RESTRICTIVE MIGRATORY POLICY: THE QUOTA SYSTEM

All Italian governments which have been in power since 1980s have been unable to “manage” the migratory flows and to implement integration policies for immigrants in the country. The measures that were taken before 1998 mainly focused on regularisation of irregular migrants and border control: the word “integration” is mentioned here and there in two laws enacted from 1986 onwards, i.e., Law 943/1986<sup>17</sup> and Law 39/1990<sup>18</sup> (Campani, 1999). In 1998, the centre-left government of Prime Minister Romano Prodi attempted to define an effective national migratory policy to respond to the new challenges created by migration: the issuing of Law 40/98,<sup>19</sup> called Turco-Napolitano after its promoters, represented the promise for a new season. In the introductory report of the bill, the three goals of Law 40 are defined as follows: “counteracting illegal migration and the criminal exploitation of migratory flows; implementing precise policies concerning legal entries, which must be programmed and regulated; setting up realistic integration paths for new immigrants and foreign residents in Italy”<sup>20</sup>.

As far as management of the flows is concerned, Law 40 introduced the principle of an annual quota system, administered by the Ministry of Labour – for new immigrants, as well as an annual quota for temporary workers entering the country from 20 days to 6 months. This quota system should have corresponded to the needs of the labour market in a profitable meeting of supply and demand. An innovative aspect of the Law was the “sponsor system”, inspired by the Canadian model, which should have allowed the entry of a limited number of foreign citizens (a percentage foreseen in the quotas) for a six-month period for job-search purposes, provided that another individual (an Italian citizen or a foreign citizen regularly residing in Italy) – the “sponsor” figure – guaranteed accommodation and coverage of living/health costs throughout the foreign citizen’s stay. Another new feature introduced by the Law was the “Centre for Temporary Stay and Assistance” (CPT), a structure for the detainment of irregular migrants (i.e., undocumented/improperly documented migrants), in which they could be held for a maximum of 30 days before being expelled from Italy. The Law searched in fact for a balance between a relatively open approach towards new arrivals (via the sponsor) and the repression of irregular migration (through the CPT).

In 2001, the arrival into power of the centre-right government marked a shift towards a public discourse against migration and caused the abandonment of the “rational” policies attempting to match the supply and demand of labour force and combining repression of irregular migration and integration (Campani, 2001). “Populism” – that is, using high

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<sup>17</sup> Law no. 943 of 1986 “Norms related to the employment and treatment of foreign working immigrants and against illegal immigration” focused mostly on work matters and introduced, for the first time, procedures for the legal registration of workers (divided, from then on, into “regular” and “irregular” cases).

<sup>18</sup> Law no. 39 of 1990 “Urgent norms and regularization on the political asylum, entry and residence of foreigners”.

<sup>19</sup> Law no. 40 of 1998, which became the Unified Act on Migration, Law Decree n. 286/98, *Testo Unico sull’Immigrazione*.

<sup>20</sup> From the report to the D.D.L. n.?, introduced in the Chamber of Deputies on 19 February 1997. It subsequently became Law 40/98.

emotional topics to obtain consensus – is the notion that can better describe the features of the Italian centre-right government: finding an external enemy is a traditional instrument to build consensus. That is what Berlusconi did, indicating as enemies, communists, judges and immigrants. A member of the leading coalition at that time, the Northern League – a party born around the idea of defending the interests of Northern Italy and evoking “secession” (later transformed into “federalism”) – used and abused the anti-immigrant rhetoric to catch votes.

One of the first actions of the newly elected government was to change Law 40, introducing a restrictive interpretation of the quota system<sup>21</sup>. Law 189 of 2002, i.e., “Modifications to the regulation on asylum and immigration”, maintained the core policy of the quota system, but tightened the measures, making it extremely difficult to obtain a regular stay and work permit. On the basis of Law 189, which is still in force and is the main piece of legislation regulating the incoming flows, entry for employment reasons is limited to those cases in which an employer explicitly requires the worker. The possibility of legally residing in Italy (the “residence permit”) must be acquired in the country of origin and depends on the possession of a work contract and from the employer’s guarantee that the migrant has an accommodation in Italy and that his/her travel expenses for returning to his/her home country at the end of the work contract are already paid. The *Sportello Unico per l’Immigrazione*, (Single Immigration Desk, SUI), based in Police Headquarters, is the only service authorized to grant the permit. This can take several months, given the fact that the office has to ensure that no Italians all over the national territory are willing to take on that job. The maximum duration of the residence permit is two years in case of indefinite employment contracts. In case of renewal, the same time-span of two years must be respected<sup>22</sup>. Only after six years of un-interrupted residence in Italy, is it possible to apply for a longer stay permit<sup>23</sup>.

The number of new work permits that can be given every year is established through a quota system that defines the maximum number of entries of foreign workers in Italy on an annual basis. Labour shortages are identified by a specific system (the *Sistema Informativo Excelsior*), while additional input is given by employers’ associations. However, it is the

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<sup>21</sup> Other policies of the right-wing government concerned bilateral agreements both on labour-readmission with “partner” countries (e.g., Albania and Morocco) and border controls. The penalization of both illegal entry and direct or indirect facilitation of the entry of undocumented persons in Italy has been introduced in 2008.

<sup>22</sup> The renewal of the residence or stay permit (permesso di soggiorno) has also become more strict. Previously the renewal of the “between jobs” residence permit had no time limits and was left to the relevant police Offices. With the law 189, the renewal is possible only if the immigrant has an employment: “in an economic system characterised by a large quota of informal economy – such as the Italian one – the link between employment and renewal of the residence permit represents a continuous risk of relapse in the field of illegality. According to the data of the work inspectorate, 26.1 percent of migrants employed in the black economy would have a regular position as regards the residence permit” (Zincone, 2001, p. 28).

<sup>23</sup> There are in fact three kinds of stay permits: a) the short term residence permit (permesso di soggiorno) whose length depends on the duration of the job contract held by the migrant; b) the long-term residence permit (carta di soggiorno), which can be obtained after six years of regular residence in Italy; c) the family reunion permit for spouses and children. All three are renewable. Prior to 2002, immigrants could obtain the carta di soggiorno after five years of regular residence in Italy, instead of the six years that are now required.

government, namely the Ministry of Labour and the Presidency of the Council of Ministers, which annually sets the maximum number of workers that may enter the country in the following year and issues one or more official decrees establishing quotas and distributing them among working categories and geographic areas. Moreover, specific nationalities are privileged as a “reward” (through bilateral readmission agreements and cooperation projects) for being “partner” countries that assist Italy in the fight against irregular immigration. Priority is also given to foreigners with Italian origins and to foreigners who have participated in Italian-sponsored training courses in their home countries. It must be stressed that, during the years of the centre-right government, the quota numbers were always kept below the estimations of the Excelsior and employers’ requests.

This restrictive legislation was severely criticised by the manufacturers’ association when it was implemented. They asked the government for more flexible procedures to hire foreign workers in a period of strong decline of local available workforce<sup>24</sup>. However, their requests were not met. The rigid legislation continued: it didn’t allow a rational match between supply and demand in the Italian labour market, but it satisfied the xenophobic and populist approach of the Northern League who was in power at that time. Moreover, this rigid legislation did not discourage irregular migration, which continued and even increased. In fact, one of the consequences of what can be considered the general “mismanagement” of migratory flows through Law 189, has been the constant presence of a “stock” of irregular immigrants<sup>25</sup>. This has obliged the anti-immigrant centre-right government to grant two new amnesties in 2006 and 2009.

The contradiction between a strict entry system and periodic use of regularisations was explained by the centre-right coalition through blaming the widespread, undocumented presence of migrants on the mistakes of previous governments. “In fact, regularisation has always been a provision of Italian immigration policy reform. Each change in legislation since 1986 – at roughly four-year intervals – has been accompanied by mass regularisation, although in each case the government thunders that ‘this is the last regularisation’” (Chaloff, 2005, p. 4). In fact, governments usually deny that further regularisation is foreseen and dismiss rumours about further amnesties. It should be noted that regularisations are common in Italy in areas other than immigration. “There have been numerous tax amnesties, employment ‘emersion’ regularisations for undeclared workers, and even amnesties for illegally constructed buildings” (Chaloff 2005, p. 4). Aware of contradictions produced by this rigid legislation, the present government, which has a limited political mandate being a technical government, proposed a new amnesty in October 2012.

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<sup>24</sup> Severe criticism was expressed by the manufacturers of Veneto. “Our businesses do not only need workers, but specialised workers which could be introduced in our country easily and not through complicated and bureaucratic procedures as our country’s present ones” (Rossi Luciani: ecco perché la Bossi-Fini non ci piace. An interview with Mr. Luigi Rossi Luciani, President of the Manufacturers’ Association of Veneto, published in *Cittadini dappertutto*, October 2002).

<sup>25</sup> In the end, the difference between quotas and the labour market needs is solved by irregular migrants working in the shadow economy.

## INTEGRATION POLICIES: AN UNCERTAIN PATH

Before 1998, integration was not an issue for national policies: nevertheless, it could not be avoided by local administrations. Since 1970s, local institutions (regions, provinces and municipalities) had started to co-operate with networks of NGOs, both secular and religious (such as CARITAS), which were active in the reception of migrants (managing centres, soup kitchens, etc.), services for information and counselling, organisation of training courses and programs of intercultural education for Italian schools.

By issuing Law 40/98, the national government expressed the ambition to outline a national frame for integration and to centrally coordinate policies implemented by local institutions, on which, by the way, depends on the structural policy of integration (e.g., housing, and assistance) (Campani, 1999). The crucial role of local authorities and voluntary associations was not questioned: on the contrary, the Decree of the President of the Republic (DPR) of 5 August 1998, implementing Law 40, gave them an important role in the field of assistance for immigrants. The State, however, wanted to be a point of reference: the Ministry of Social Affairs was charged with establishing priorities for integration policies with the Regions. In this document, integration is defined as: “a process of non-discrimination and recognition of differences, that means a process of hybridisation and an experimental tool of new forms of relationships and behaviours in the continuous attempt to maintain universal principles and specificities, in the constant and everyday attempt of keeping together universal principles and specificities, of preventing situations of marginalisation and ghetto that threaten social equilibrium and cohesion, and affirms the universal principles as the value of human life, dignity of the individual, the recognition of women’s freedom, protection of childhood, to which there are no possible exceptions, even for the sake of differences” (CNEL<sup>26</sup>, 2001).

The DPR created a National Fund for Migration Policies Resources – the financial instrument for the implementation of integration policies, appointed an existing institution to monitor the integration policies and processes, and created a new institution for advising the government on integration policies. The already quoted CNEL, a Constitutional institution, composed of representatives of the civil society, was officially in charge of monitoring integration policies. The new institutions were the National Commission for Immigrants’ Integration Policy, composed of a group of well-known scholars, aimed at proposing a set of integration policies adapted to the Italian context and developing an “Italian integration model”. The Commission for Integration Policy made the attempt to develop a specific model of integration for Italy, taking into account the experiences of other countries and the specificities of the Italian context. The members of the Commission, called the Italian “model” of

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<sup>26</sup> The Consiglio Nazionale dell’Economia e del Lavoro -CNEL-(National Council of the Economy and the Work, CNEL) is foreseen by the Italian Constitution that defines it in article 99: “Organ for counselling to the Chambers and the Government in the subjects that are foreseen by the Law. It has the initiative of proposing laws and can contribute to the elaboration of social and economic laws according to the principles established by the Law.” It is composed of 121 counsellors: twelve experts, chosen among the representatives of the economic, social and juridical cultures; 44 representatives of the workers, the working class, 18 representatives of self-employed, 37 representatives of the enterprises and companies and 10 representatives of NGOs.

integration “reasonable integration”. The pillars of reasonable integration are two fundamental interconnected principles: recognition of individual integrity and a low conflict-potential integration<sup>27</sup> or the prosecution of positive interaction with local population (Zincone, 2000, 2001).

The general elections in 2001, bringing the centre-right coalition into power, marked the end of “reasonable integration”. Even if Law 40 was not suppressed, but just amended (most of the rights granted to regular migrants were not questioned<sup>28</sup>), the integration project, which the law aimed to implement, was *de facto* abandoned. The new government’s approach to migration was years away from reasonable integration: cultural pluralism was rejected in the name of assimilation. A sign of the scarce interest for integration policies by the new government was the severe reduction in the budget for integration measures in the National Fund for migration policies, whose scarce resources were all consecrated to counteract illegal migration flows, practically to finance deportations. The indiscriminate compulsory escorting of expelled migrants to the border meant an investment of huge financial resources and the massive employment of police forces.

Reduction of funding also concerned the sector of education for the integration of immigrants’ children. Law no. 189 of 2002 did not change the basic articles of Law 40 on education of foreign children, but the centre-right government cut the necessary funding to implement them and, through the Ministry of Education, put obstacles against schools and teachers who wanted to implement them. The articles of Law 40, still in force, represent however a good basis for the integration of foreign children in Italian schools. Article 36 explicitly refers to the right of education for foreign children and to preservation of languages and cultures of origin: “School community receives linguistic and cultural differences as a value to establish a basis for reciprocal respect, exchange among cultures and tolerance; in order to reach this goal, it promotes and encourages initiatives aimed at reception, protection of culture and language of origin and implementation of common intercultural activities” (art. 36, comma 3).

Art. 38 (paragraph 1, U.T.), according to which all foreign minors living in Italy, independently from the fact of being regular or not, are subject to mandatory education. The same legislation applies to the right of education for Italian students.

Art. 42 explicitly refers to language courses and the culture of origin organised by immigrants’ associations, which should be supported by local authorities (for example financing immigrants’ associations). The same article for the first time introduces and recognises the “cultural mediator” in order to simplify relations between administrations and foreigners belonging to different ethnic, national, linguistic and religious groups. Art. 45 states that

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<sup>27</sup> Committee for Migrants’ Integration Policies, *Second report on migration in Italy*, edited by G. Zincone, year?

<sup>28</sup> Migrants with a regular residence permit are entitled to enjoy civil rights (Art. 2) and some social rights as well. Migrants with a regular residence permit are granted equal access to the medical assistance of the National Health Service (Art. 32); equal pension conditions and the possibility to maintain social insurance contributions even in case of repatriation (Art. 40). However, social rights are still not really equal to the ones of the Italians: There are a series of institutional discriminations that do not allow equal access to the welfare, for example the unemployment treatment, maternity, disability and accident on work.

foreign minors in compulsory education must attend the classroom corresponding to their age<sup>29</sup>.

## INTEGRATION POLICIES: LOCAL VERSUS NATIONAL

The attempt of Law 40 to inaugurate a national Italian migratory policy failed. Because of the political change, the Law was not implemented – both in the part concerning a rational management of immigration flows as well as the part on integration policies. During the years of the centre-right government, national integration policies were virtually “frozen”. As a consequence of that, as before 1998, local authorities<sup>30</sup> became (and still are) the main agents for processing some forms of local integration through the *Assessorati alle Politiche Sociali* (Town Boards for Social Policies), or the *Assessorati al Lavoro* (Town Boards for Labour Policies) which have been given competence in immigration.

Local administrative actions towards immigrants may vary from one place to another, but they are centred on common issues and tend to give similar answers: the need for living quarters (hostels) for newcomers, attempts to help families on housing, support to associations and offer of meeting spaces, specific counselling on health problems (mainly for women on contraception, abortion and pregnancy), training of cultural mediators, and promotion of intercultural activities in cooperation with schools. One of the main tasks of local authorities consists of transferring limited resources coming from the State<sup>31</sup> or in giving financial help to NGOs active in assisting immigrants, like CARITAS, or immigrants’ associations. This has certainly encouraged the development of an associative life among immigrants. Several local authorities tried to frame a coherent policy, based on synergies between the public services and NGOs. With respect to the relationship with NGOs and associations, there are different approaches: one that considers migrants as vulnerable groups that have to be supported mainly by Italian NGOs, and another one that insists on active participation by immigrants’ associations. In the last years, many Regions have passed laws on immigration which are often in contrast with national policy. For example, Regions such as Emilia Romagna and

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<sup>29</sup> This article intends to fight against the practice, which unfortunately is quite common in Italian schools, to insert foreign children who don’t speak Italian, in the first class of the primary level, independently from their age. Article 45 of the Realisation Regulation (D.P.R. 349/99), named “School enrolment” (“*Iscrizione scolastica*”) establishes that the foreign student must be registered in the class corresponding to the personal age. This registration can happen at any time of the school year, as reaffirmed by the following M.M. 311/99 and 87/00. However, the same legislation gives the Teaching Body (*Collegio Docenti*) important evaluating and proposal powers in this issue. Among others, these include the possibility to register students in a class which doesn’t correspond to their age, with a previous evaluation of the academic curriculum of the minor in the country of origin, the degree obtained or his individual ability. Foreign minors who are irregular or lack personal documents are registered with reserve, without limiting their educational path to obtain a degree.

<sup>30</sup> For example, the municipality of Florence organized a full system for teaching Italian to foreign children. Some municipalities also organized elections to choose immigrants’ representatives in Municipal Council etc.

<sup>31</sup> Work integration is a domain in which the Regions are particularly called to act in line with the Ministry, because localities differ greatly regarding labour insertion and have specific needs. Each region receives funds for social policies and decides what to do/where to apply them.

Toscana – historically managed by left-wing administrations – have approved regional laws on social integration of foreign immigrants based on the principles of equality of rights and duties, acknowledgement of citizenship rights and the goal of “encouraging trajectories of democracy and of representation for immigrants”. These Regions are also pushing for the recognition of immigrants’ right to vote in administrative election.

An important debate exists in Italy on the importance of the local dimension of integration. In the absence of national policies, some scholars like Mr Giuseppe De Rita, Director of the Centro Studi Investimenti Sociali (Centre for Social Investment Studies, CENSIS<sup>32</sup>), wondered whether it would be possible to talk about a particular model of integration: would it not be easier to renounce it, given the variety of interactions between Italians and immigrants, as well as labour integration according to territorial differences? According to Mr Giuseppe De Rita, the absence of national integration policies is certainly a factor that has been put on the shoulders of the local authorities. However, the difficulty in defining an integration model also depends on the specific features of the Italian nation-state such as the importance of regional and cultural differences, the complex relationship to the idea of the nation after the experience of fascism, the inefficiency of the state apparatus and the bureaucracy.

Other scholars insist on the fact that local experiences vary according to immigrants’ communities. In Italy, there is a high number of immigrants’ nationalities, incorporating different forms of integration according to their positions in the labour market. The interaction between specific communities and local reality can be defined through various typologies: for example, as “non-conflicting integration” or “subordinated integration” (Ambrosini: 2003).

Not all scholars agree on the extreme fragmentation – territorial and communitarian – of the experience of immigrants’ integration in Italy; however, the local dimension is generally recognized in Italy. Some experts consider, in fact, that, even in spite of the absence of national integration policies, common processes of integration have taken place at national level through NGOs, associations and trade unions. In fact, the integration process in Italy would be the result of interaction between immigrant communities and civil society, represented by secular and religious NGOs, associations and trade unions. According to some scholars, namely Franco Pittau of the CARITAS, the Italian “model” of integration would be then characterized by the prevailing role of the civil society versus the public institutions, especially for what concerns the national state. It would indeed be possible to talk about processes of national integration, even if the state has not organised systematic integration policies, precisely because civil society has taken a role.

The Monti government made a first attempt to reintroduce the issue of integration of migrants as part of a national policy, establishing the new Ministry for International Cooperation and Integration, headed by Andrea Riccardi, founder of the Community of Sant

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<sup>32</sup> Censis, Centro Studi Investimenti Sociali, is a centre for socio-economic research, founded in 1964. Since 1973, it has become a Foundation, thanks to the participation of big institutions, both private and public. Since 30 years ago, it has developed studies, counselling, evaluation and proposals in the main sectors of social life, such as work, education welfare, environment, economy, local and urban development, public governance, communication and culture.



'Egidio, a Christian organization active in international cooperation projects. This decision was hailed as a major turning point, a signal that immigration was finally seen as a resource for Italy. However, while the Monti government introduced a new approach to immigration that was no longer representing immigration as a threat or as an emergency (which was the case during the years of the center-right governments), it failed to reach any concrete result in terms of integration. In the context of budget reduction and spending reviews, the Monti government was not able to make investments in integration programmes for immigrants.

The Monti government represented a shift with regard to the acceptance of the need for a reform of the Italian citizenship law towards recognition of the *jus soli* for immigrants' children. This was possible as consensus between the center-left and some members of the centre-right is growing on this issue. This is also the first matter on which the new Minister for Integration, appointed by the Letta government and nominated in May 2013, has engaged her Ministry.

The appointment of a Minister of foreign origin signifies the acknowledgement that immigration does not constitute an emergency or occasional phenomenon, but is instead one of the structural characteristics of the Italian communities. Together with changing the citizenship law, the new Minister wants to fight against racism.

However, on-going racist attacks and discrimination against foreigners, even the Minister herself, suggest that racism is a deep-rooted problem in parts of the society and abused by some political forces. Thus, it will take a long time to resolve this challenge to integration.

## **SECOND GENERATION, *JUS SANGUINIS* AND EDUCATION PROBLEMS**

The integration of the second generation in Italy is debated in connection with two main issues: citizenship legislation and school education. Acquisition of Italian citizenship is governed by a 20-year-old law (Law no. 91 of 1992), which is based on "*ius sanguinis*" (bloodline) and is one of the most restrictive in Europe. In order to be eligible to apply for citizenship, a foreigner must prove continuous residence in Italy for ten years, and to show an income of around €8,000 a year (€11,000 with a dependent spouse, plus €516 for each child), which is considered enough to ensure self-sufficiency. Citizens of the EU need only four years of residence, while five years are requested for stateless persons and refugees. According to the law, proceedings should not last more than two years. In practice, the number of years the applicant has to wait before receiving citizenship is at least four.

For immigrants' children who are born in Italy, the only possibility to get Italian citizenship is to wait for the age of the majority, when they can apply, hoping to get it after a short delay. The well-known soccer player Mario Balotelli is an example of this procedure: despite being born in Italy, having attended Italian schools and having played in the youth teams of his city, he was not allowed – as a foreigner – to play in the national soccer team until he was over 19 years of age. Frustration vis-à-vis obtaining Italian citizenship is one of the main problems second-generation immigrants face. With the present government, there are



hopes that the law will be changed because there is a certain agreement among the moderate political parties.

However, another problem is represented by the scarce capacity of Italian schools to deal with diversity: the consequences are the bad results of foreign children in comparison with natives – even in the case of communities such as the Chinese, who generally show brilliant school results in most immigration countries – both in Europe and North America.

Since 1989, when the number of foreign children in Italian schools was limited, the Ministry of Education has paid attention to language issues and intercultural approach, by enacting several memorandums stressing the linguistic needs of foreign students and fixing guidelines for intercultural education. For example, the memorandum “Intercultural dialogue and democratic living together: the projectual participation of the school” (*Dialogo interculturale e convivenza democratica: l’impegno progettuale della scuola*), Ministerial Memorandum 73 of 2 March 1994, starts from an idea of intercultural education as the best answer to a multicultural society, and it indicates all steps that a school must take in a diverse context. Effective strategies span from creation, inside the school, of a relational atmosphere that will favour integration among students and between them and teachers, to a new didactic organisation both in methodology and contents. Law 40/98 incorporated these suggestions, in different articles, making explicit reference to the right to education of foreign children and to preservation of languages and cultures of origin.

Since 2001, however, under the centre-right government, the Ministry of Education has stopped promoting intercultural education. Good practices survived at the local level, in some schools and thanks to individual teachers, who could count on networks such as the Intercultural Centres (*Centri Interculturali*), promoted by local authorities, associations and NGOs. There are three “historical” Intercultural Centres: *Cidiss* in Turin (*Centro Interculturale Città di Torino*), supported by the Municipality; the *CDLEI* in Bologna (*Centro Documentazione e Laboratorio per una Educazione Interculturale*), a cooperation between the University, the Municipality and the Provincial Governments; and the *COME* Centre in Milan, linked to *CARITAS*. These three centres “paved the way” for other intercultural centres, working to gather documentation, provide orientation, train teachers and promote networking on the territory. Intercultural centres have thus become a focus for documentation, training, intercultural mediation, networking and, at the same time, production of didactic materials providing fundamental support to educators dealing with immigrant children on a daily basis. Local authorities (Municipalities, Provinces and Regions) contribute to most of the funding guaranteeing the survival of these centres and allowing them to operate. Occasionally, centres manage to obtain funding from the European Union by participating in its programmes. During the last few years, teaching of Italian as a second langue and the production of the relevant didactic materials have absorbed much of the resources of Intercultural Centres.

Teaching of Italian as a foreign language also concerns adult immigrants, who can study in one of the 389 CTPs throughout Italy. These centres are part of a national policy of the Ministry of Education, but the quality of their work strongly varies at the local level, as it depends on the “vitality” of local context and on relationships established with local authorities.

CTPs are very flexible in their programs and can establish conventions and agreements with local agencies. Immigrants are important users of CTPs' services, though their presence varies regionally: in Northern Italy they represent up to 35% of users, while in Southern Italy the majority of users are local unemployed Italian citizens. The main requests by immigrant users concern the development of Italian language skills, compulsory education diploma and vocational training. Cécile Kyenge has often declared that she considers school as the fundamental starting point for integration.

## MIGRANTS AND LOCALS: TYPOLOGIES OF INTEGRATION

From the mid-1990s onwards, various studies analysed the settlement processes of different immigrant communities and their interaction with Italian society, investigating outcomes in terms of integration. These studies were both qualitative and quantitative and data became increasingly accurate. From 1991 onwards, CARITAS has produced an annual statistical dossier annually, by which existing data sets were presented and the main trends in the migratory process in Italy were interpreted.

According to national groups and the local Italian context, processes appear to be extremely differentiated, as Italy has received a very large number of nationalities. The same community may have different migratory trajectories and, consequently, diverging integration processes, on the basis of local labour market or attitudes of local population. Neither immigrants nor the receiving society are opposite, homogeneous blocs: paradoxically, every immigrant, in every reality has a different trajectory towards integration. Moreover, the integration process, in its totality, is influenced by co-presence, within the same community, of regular and irregular migrants. The status of being a legal resident or irregular migrant is extremely important for integration.

Empirical researches focussing on specific communities in local realities have shown multiple dimensions of integration, referring to different spheres of social life: work and culture seem often to be different dimensions in relationship with integration processes. In order to interpret the variety of interaction between local realities and immigrant groups, together with individual trajectories empirical research shows, a complex idea of integration should be used. Variety in meanings reflects, on the one side, the empirical analysis, showing the multiple trajectories in the processes of settlement and in the interaction with the receiving society, and, on the other, it corresponds to "models", which are the expression of political approaches, discourses and interests. Pushing analysis to its end, some Italian researchers wonder if the concept of integration may have a "core", being independent from the political discourse and the interplay between various actors. On the basis of a few empirical studies, Erika Cellini (2002) has tried to systematize a few typologies of integration (and interaction with the Italian society): "non-conflictual communitarian integration", "partially conflictual communitarian integration" and "subordinated integration". The first two concepts refer to two communities presenting a high level of communitarian cohesion, such as the Senegalese and the Chinese. The Senegalese community was studied by the Trade Unions' Research Institute (IRER) in Lombardy (Marchetti, 1994): it is characterised by the

preservation of cultural traditional elements and by the vitality of traditional social forms and economic organisation. A variety of researches have pointed out the importance of the Murid Brotherhood, an Islamic sect that has a high level of control of its members and also plays an economic role, helping the social promotion of its members. The research considers that co-presence of the tendency to reconstruct forms of organisation and sociability of the country of origin with some openness towards Italian society represents a feature of the Senegalese community, which cannot be found in other communities. The tendency to reconstruct forms of organisation and sociability of the country of origin can, in fact, produce conflicts with the Italian society. For this reason, the form of integration of the Senegalese is defined as “non-conflictual communitarian integration”.

The “partially conflictual communitarian integration” concerns, on the other hand, the Chinese community. The Chinese also tend to develop a process of integration on a communitarian basis, centred on the family enterprise. This strategy has not been especially favourable to interaction with Italian local communities as a variety of researches in the areas where Chinese are settled (Milan and Tuscany especially) have showed. Conflicts have been common, even if there has been, through time, a progressive adaptation (Campani, Carchedi and Tassinari, 1994). If, in Tuscany, conflicts have not developed, this has been due to intelligent policies developed by Tuscany Region and the Municipality of Prato. “Subordinated integration” refers to the Filipino community in Milan, which is mainly composed of women doing domestic work and who have developed very low autonomy.

An interesting case showing how typologies of integration should be referred, both to specific groups and local realities, is represented by Tunisians, who, in the towns of Northern Italy, have a high presence of immigrants with deviant behaviours (mainly as drug-dealers). On the contrary, the Tunisian immigrant community in Mazara del Vallo, Sicily, where they are fishermen and live with their families, experience positive interactions with local people. The same national group may have heterogeneous or even completely different migratory trajectories and, consequently, integration processes on the basis of local labour market or attitudes by the local population.

## **CIVIL SOCIETY ORGANIZATIONS AND NGOS: THEIR ROLE IN INTEGRATING THE MIGRANTS**

The role of the organisations of the so-called “private social” sector has been crucial in the field of assistance and aid given to immigrants in Italy, not only before laws on migration had been passed, but also after a certain number of laws had been issued (respectively in 1986, 1990, 1998 and 2002). This has to do with the fact that, traditionally, the Italian State has delegated many welfare activities to the private social sector, linked to the Catholic Church and, less frequently, to other religious or secular associations. This tradition has been paradoxically reinforced by a reform of welfare in 1990s which aimed to be “modern”, applying the liberal idea of “light state”. The role of NGOs is quite crucial in legal assistance: NGOs have provided assistance during amnesties. They also assist with residence and work permit procedures, family reunification and access to all public and private services, even if legal

casework, including representation at court, is seldom offered. Only cases of migrant women forced to prostitute and minors waiting for rehabilitation are being taken up. Another sector where NGOs have played an important role is health. In theory, healthcare is guaranteed for all by law. Still, not all immigrants, especially irregulars, can deal with the bureaucratic Italian health system. There have been important efforts by hundreds of voluntary doctors and social workers, who set up special surgeries treating more patients than the public health system. They have also raised awareness among medical and nursing staff in public structures. As for housing, NGOs responses have been insufficient. While a few organisations (mostly Catholic) offer temporary accommodation facilities, no general action to help immigrants in one of the crucial problems has been taken. As for employment, NGOs make use of networks of relations and acquaintances to help immigrants who are looking for jobs. Catholic NGOs are the most active, taking on a role of selection and guarantee for the employers.

However, while it is true that NGOs and associations of religious or non-religious inspiration have played and continued to play a leading role in assisting immigrants in Italy, many immigrants have not benefited from any help. They have often relied upon their own resources or small groups which were formed through local networks or chains of support, mainly along ethnic or national lines (Ambrosini, 2001).

## CONCLUSIONS AND RECOMMENDATIONS

The integration process of immigrants in Italy is extremely complex because of the structural features of the Italian labour market, which differ according to the local realities and immigrant groups; moreover, the issue of integration was embedded in the conflicts of Italian politics. Over the last twelve years, the political context has largely influenced integration policies (and their absence): the Italian model of “reasonable integration” suggested in 2000 has not been implemented, while, in the meantime, migratory policies have been characterised by a populist approach.

The civil society, through NGOs and associations, in collaboration with the local authorities, has certainly played an important role in the integration of the migrants. However, the absence of a national framework had, and has, many negative effects: ineffective system matching labour supply and demand, which produces irregular migration; lack of resources even for urgent integration policies; costly policies of deportations; and outdated citizenship legislation. All these points will have to be reconsidered by a future government that will abandon the populist approach to migration. The whole system of quotas has to be reformed, going back to the original project of Law 40/98; sponsorship should be reintroduced; and the “reasonable integration” agenda should be re-started, after a lost decade. Citizenship legislation should be urgently changed; this is a priority, finally allowing children born and socialized in Italy to become Italian citizens.

The Italian case can be interesting for other countries with respect to the experience accumulated by the private social sector. The public sector cannot be expected to solve the integration puzzle without relying extensively on, and leveraging on the resources of, the *private and non-governmental sector*. These sectors – i.e., employers’ and workers’ groups, religious

groups, civic, ethnic and immigrant organisations, private foundations, and the various community-based non-profit entities – typically present extensive experiences with various aspects of newcomers' integration and can serve as crucial resource for immigrants (Papademetriou, 2003). They should not, however, take the place of State functions in respect to crucial tasks such as housing, employment, health, and education, but a positive articulation between these two sectors should be developed.

The recent choice of creating a Minister for Integration means that, beyond the great efforts made by local institutions, territorial and civil society, there is a need to start a discussion on national policies. The racist reactions against the minister show that disrespect for foreigners is now very present in Italy, legitimized by the political discourses and practices that have been implemented in the last twenty years.

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# The Netherlands: Putting the Dutch Integration Policy to a Test

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## ABSTRACT

In the Netherlands, a certain level of integration is required by immigrants at each of their applications for admission to the country, for a permanent or independent residence permit, and for Dutch citizenship.

A number of requirements have been introduced in the last decade. Their effects at the different stages show a clear relationship and relevant similarities. Migrants value the offer of language and integration education, but the link between passing the test and a certain residence right can become counter-productive.

The applicants who are relatively more often affected by requirements are: elderly and low-educated migrants, immigrants with an asylum-related background and migrants from least-developed or developing countries. While tests serve as a selection on age, education and nationality, these migrants are relatively more often in need of support for their integration.

The government could emphasize that integration is a reciprocal process by offering language and integration courses, while obliging migrants to participate. The shift from a shared responsibility to the sole responsibility of the migrant was already the case in the admission policy, but will now be extended in the integration policy in the Netherlands, due to the amendment of the “Act on Integration”.

By cutting public organisational and financial support of integration courses, the government risks fewer migrants strengthening their positions in the Dutch society. By not taking care of the most positive elements of the Integration Act, the government might fail the test on effective integration policies.



## INTRODUCTION<sup>1</sup>

In the Netherlands, a certain level of integration is required by immigrants at three stages: at their application for admission to the Netherlands, at their application for a permanent or independent residence permit and, finally, at their application for Dutch citizenship.<sup>2</sup> The required language level in the admission procedure is A1; in the other two procedures, the required level is A2. Furthermore, immigrants are obliged to pass the integration examination at level A2 within 3.5 years after their arrival. If they fail the test, a fine can be imposed or their social security can be cut. From 1 January 2013 onward this timeframe will be 3 years and withdrawal of the residence permit will be added to the possible sanctions for failing the test.

These requirements have all been introduced in the last decade, in order to promote integration of immigrants. This report tries to give an overview of the political development towards these requirements, their content and the way they are applied and, finally, the extent to which they promote integration.

## Policy development

In the Netherlands, the discussions regarding a more demanding integration test for naturalisation started in the early 1990s. Since 1985 the immigrant has had to fulfil the requirement of being “sufficiently integrated” to become a Dutch citizen. A “reasonable knowledge” of the Dutch language and a certain level of integration into Dutch society served as indications for this criterion.<sup>3</sup> A civil servant from the municipality of registration of the immigrant assessed the fulfilment of this requirement on the basis of a short conversation with the immigrant on “everyday issues”.<sup>4</sup> Proof of written skills was explicitly excluded. Proof of having social contacts with Dutch citizens also served as an indication of being integrated. The instructions for the civil servants rejected a uniform application and prescribed that, with regard to elderly, low-educated, illiterate and handicapped immigrants, insufficient knowledge of the Dutch language should not be a reason for the rejection of the naturalisation application. According to the instructions, the requirements for women could also be less severe.<sup>5</sup> The instructions were based on the basic principle that naturalisation fits into the process of

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<sup>1</sup> This paper is largely based on Strik, Luiten and Van Oers 2010. The INTEC Project: Country Report the Netherlands. Integration and Naturalisation tests: The new way to European Citizenship. This formed part of a comparative study in nine Member States on the national policies concerning integration and naturalisation tests and their effects on integration, financed by the European Integration Fund and published in December 2010. See for the synthesis report: Strik, Böcker, Luiten & Van Oers 2010.

<sup>2</sup> Since 1 April 2007 the tests for permanent residence and naturalisation have been similar. Hence, once someone has passed the integration examination, he/she can apply for either permanent residence or naturalisation. Those exempted from passing the integration examination within the framework of the Integration Act will, however, need to pass the examination when applying for naturalisation.

<sup>3</sup> Article 8 (1) sub d *Rijkswet op het Nederlandschap* 1985.

<sup>4</sup> Until 1990 each applicant had an interview with a public prosecutor and a police officer (Groenendijk, 2010).

<sup>5</sup> *Handleiding Rijkswet op het Nederlandschap*, A1, pp. 10-21.

increasing participation in Dutch society. This process, however, did not need to be accomplished at the moment of naturalisation.

This principle was part of the view laid down in the integration policy at that time, the so-called “Minorities’ policy”, that a strong legal position would further immigrant integration. Naturalisation was seen as a means of achieving integration, and as a step towards complete integration.<sup>6</sup> In 1995, the Christian Democrats (CDA) started to oppose this notion. They argued that the demands on future Dutch citizens should be increased, and therefore proposed to add the requirement of written language skills and knowledge of Dutch society. Instead of a means for integration, this party saw naturalisation as the “legal and emotional completion of integration”, thereby deviating from the position the government had so far held.<sup>7</sup> This idea was opposed by the other political parties (i.e., the Liberal Democratic D66, the Green Left and the Social Democratic PvdA).<sup>8</sup> Also, the Christian Democratic Minister of Justice was not in favour of adding the requirement of written language skills. He expressed the wish for Dutch nationality to remain open to “weaker” groups living in the Netherlands.

In 1998, the introduction of the Newcomers Integration Act (*Wet Inburgering Nieuwkomers*, hereafter WIN) emphasised the immigrant’s own responsibility to integrate. The new act obliged newcomers to attend a civic integration programme (*inburgeringsprogramma*), which included a test both at the beginning and the end, in order to measure the progress the participant had made. Although the tests were intended simply as a measurement of the level of Dutch language knowledge that had been attained, the first step in subjecting immigrants to formalised integration tests had been taken.

Following the 9/11 terrorist attacks, the rise of Pim Fortuyn’s right wing party (LPF) and his subsequent murder shortly before the 2002 elections, a centre-right government came into power. This government decided to reform the 1998 act, the results of which they referred to as disappointing (Groenendijk, 2010). A parliamentary commission was established to evaluate the results of the integration policies.<sup>9</sup> In its 2004 report, this commission concluded that the integration of many immigrants had been successful, but that it remained questionable to what extent this was due to pursued integration policy. The commission also concluded that only a small percentage of the participants in the integration courses had attained level A2, the level intended by the WIN. The commission, however, did not regard this failure as proof of the immigrants’ unwillingness to integrate, but pointed to failure factors such as the slow development of courses and the existence of long-waiting lists.<sup>10</sup> These balanced conclusions, however, led to the demand in parliament and government for a radical change in the integration regime by strengthening the responsibility and obligations of the migrant regarding his/her integration. The government announced that, in future, immigrants would be required to

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<sup>6</sup> *Rijkswet op het Nederlandschap* 1985, A1– Article 8, p. 19.

<sup>7</sup> *Handelingen TK*, 16 February 1995, no. 49, p. 3150.

<sup>8</sup> *Handelingen TK*, 21 February 1995, no. 50, p. 3200.

<sup>9</sup> “Building Bridges”, report of the temporary research commission integration policy, TK 2003-2004, 28 689, nos. 8-9.

<sup>10</sup> TK 2003-2004, 28 689, no. 9, p. 522.

first pass a basic examination in the country of origin, as a condition for family reunification. Furthermore, all immigrants who desired to stay in the Netherlands on a permanent basis would have to attend integration courses, for which they would have to pay themselves. Not passing the integration examination at the end of the course would entail financial sanctions and keep the residence right of the migrant on a temporary basis.

At the same time, the government installed a commission which was requested to define the concept of integration and to assess the most appropriate level of integration requirements.<sup>11</sup> In September 2005, a proposal for a new WI, which was meant to replace the WI of 1998, was introduced in parliament.<sup>12</sup> According to the centre-right government, a more obliging and result-oriented integration policy was required in order to combat the supposedly failed integration of “large groups” of immigrants.<sup>13</sup> In the explanatory memorandum to the bill, the government stated that, in order “for immigrants to catch up and to allow them to successfully participate in the social markets”, they would need to have knowledge of the Dutch language and to know and accept Dutch norms and values.<sup>14</sup> The new WI emphasised the responsibility of the migrant to meet these criteria. Hence, courses would no longer be organised and financed by the government or municipalities, but left to the market and the immigrants. The WI came into force on 1 January 2007, introducing the integration examination as a condition for permanent or independent residence.<sup>15</sup> Since the level of the integration examination was equal to the level of the naturalisation test, it was decided that the integration examination would replace the naturalisation test. Hence, since 1 April 2007, the Netherlands has required newcomers to meet the same standards as future citizens. This development again led to a call by the Christian Democrats, the Christian Union and the Conservative Liberals to raise the language level of the naturalisation test, in order to emphasise the difference between a permanent residence permit and citizenship. So far, this political desire has not been fulfilled.

The Civic Integration Abroad Act (*Wet Inburgering Buitenland*, hereafter WIB) entered into force on 15 March 2006.<sup>16</sup> The act sets an additional condition for obtaining a regular temporary residence permit, namely that people must first have a basic knowledge of the Dutch language (listening and speaking skills) and the Dutch society.<sup>17</sup> The WIB was meant to force migrants to start their integration from their country of origin in order to improve their position in the Netherlands. Furthermore, the government intended to make migrants more aware of their responsibilities and to select the motivated ones among them for admission. Since 1 April the integration requirement has been strengthened with the rise of the

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<sup>11</sup> *Advice regarding the level of the new integration examination by the Franssen Commission*, The Hague, June 2004. For the advice, see <http://www.degeschiedenisvaninburgering.nl/docs/advies-franssen>.

<sup>12</sup> TK 2005-2006, 30308, nos. 1-2.

<sup>13</sup> TK 2005-2006, 30308, no. 3, p. 13.

<sup>14</sup> TK 2005-2006, 30308, no. 3, p. 14.

<sup>15</sup> WI of 30 November 2006, *Staatsblad* 625.

<sup>16</sup> *Staatsblad*, 2006, no. 94.

<sup>17</sup> Article 16 (1) sub h *Vreemdelingenwet* jo. Article 3.71a *Vreemdelingenwet*.

required language level to A1 and the extension with a reading test. Candidates must achieve a higher score in order to pass the test. At the same time, the hardship clause for the integration requirement was extended in cases where a combination of individual circumstances makes it permanently impossible for the applicant to pass the test. In May 2011, the Dutch Ombudsman criticised the government for applying the hardship clause too rigidly: in the past five years, the government had only used this clause in five cases.

This outline of the developments regarding integration requirements in the last 15 years shows that the principal idea that a strong legal position of a migrant promotes his/her integration has been replaced by the conviction that this position serves as a reward for having reached a certain integration level. This shift in thinking illustrates the shift from an equally shared responsibility by the authorities and the migrant to the sole responsibility of the migrant regarding his/her integration.

The integration requirement was first introduced as a condition for citizenship, and secondly as an obligation for admitted migrants. The introduction of a test for migrants (although it did not include an obligation to pass) led to an increase in the required level for naturalisation. The evaluation of the integration courses and tests (and the political conclusion that the integration policy had failed) became the reason for the introduction of integration requirements for admission, as well as for independent and permanent residence rights. Although in 2003 the government warned that language tests should not serve as a selection criteria for new Dutch citizens, nowadays a general political acceptance has emerged that integration tests should function as a selection criteria for admission and for permanent and independent residence rights.

## 1 INTEGRATION TEST ABROAD

### 1.1 Description of the test

The Civic Integration Abroad Act (*Wet Inburgering Buitenland*, hereafter WIB) entered into force on 15 March 2006.<sup>18</sup> The act sets an additional condition for obtaining a regular temporary residence permit, namely that people must first have a basic knowledge of the Dutch language and the Dutch society.<sup>19</sup> This basic knowledge will be tested in the Basic Civic Integration Examination in the country of residence of the applicant. The proof of having passed this examination must be handed over during the application for admission.<sup>20</sup>

The level of knowledge that is tested in the examination has been laid down in the *Vreemdelingenbesluit*.<sup>21</sup> Listening, speaking and reading skills in the Dutch language and knowledge of the Dutch society will be tested in the integration examination abroad. The examination consists of two parts: knowledge of Dutch language and knowledge of Dutch

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<sup>18</sup> *Staatsblad*. 2006, no. 94.

<sup>19</sup> Article 16 (1) sub h *Vreemdelingenwet* juncto Article 3.71a *Vreemdelingenbesluit*.

<sup>20</sup> Article 3.102 (1) *Vreemdelingenbesluit*.

<sup>21</sup> Article 3.98a *Vreemdelingenbesluit*.

society. The knowledge of both parts is tested by an oral examination conducted over the phone from Dutch consulates and embassies abroad, using a voice recognition software, based in the US. This computer programme also decides whether the candidate has passed the examination.<sup>22</sup> If there is no Dutch consulate or embassy in the country of residence, the examination will be held at the nearest Dutch representation in a neighbouring country.

### ***Knowledge of the Dutch language***

The required basic level is A1 of the Common European Framework for Modern Languages. The language test consists of repeating sentences (the sentences presented become increasingly more difficult), answering short questions on basic information, responding to words by saying a word with an opposite meaning, retelling a short story and answering questions on a text that the applicant had to read. The topics dealt with are randomly selected from an item bank of 50 items, in order to present a different set of items to each candidate.

### ***Knowledge of Dutch society***

The required knowledge of Dutch society consists of “elementary practical knowledge” on the Netherlands, including geography, history, legislation and political science, housing, education, labour market, the system of health care and civic integration. Furthermore the required knowledge covers the rights and duties of migrants and citizens in the Netherlands and the accepted norms in everyday life and in society.<sup>23</sup> The knowledge is tested on a level not higher than A1 minus. This part of the examination includes 30 questions which correspond to images selected from the film “Coming to the Netherlands”. The questions vary between yes/no questions, open questions and closed questions with two options.

### ***Costs and preparation***

Applicants are charged €350 each time they take the examination.

Passing the examination is a condition for being granted an authorisation for temporary stay, which is, for certain nationalities, a necessary document for entering the Netherlands. This authorisation is known as “*Machtiging Voorlopig Verblijf*” (hereafter MVV).<sup>24</sup> The migrant must apply for a MVV within one year after having passed the examination.<sup>25</sup> After this period, the result of the examination becomes invalid and he/she must take a new test in order to be admitted.

The Dutch government does not provide either courses or learning material. It has however compiled a practice pack which can be purchased at €70.40 and which consists of the film “Coming to the Netherlands”, a picture booklet about Dutch society, an exhaustive list of questions that may arise during the society knowledge test, and a set of mock language tests.

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<sup>22</sup> Article 3.98c *Vreemdelingenbesluit*.

<sup>23</sup> Article 3.98 (6). *Vreemdelingenbesluit*.

<sup>24</sup> Article 16 (1) a juncto h and Article 16a *Vreemdelingenwet*.

<sup>25</sup> Article 3.71a (1) *Vreemdelingenbesluit*.

## 1.2 Who has to take the examination?

This entry condition applies to those persons aged between 18 and 65, who:

1. apply for admission to the Netherlands with a view to settling permanently,
2. need to have a MVV,<sup>26</sup>
3. and are obliged as newcomers, under the terms of the WI, to participate in a civic integration programme after arrival in the Netherlands.<sup>27</sup>

In practice, this obligation primarily concerns applicants for family formation or family reunification with a citizen of the Netherlands or with a migrant originating from a non-EU country.<sup>28</sup> Furthermore, the WIB applies to religious leaders coming to the Netherlands in order to enter the labour market.<sup>29</sup>

### *Exemptions*

As persons with certain nationalities are not required to apply for a MVV, they are exempted from taking the test. These are citizens from the Member States of the EU and EEA, Surinam, Australia, Canada, US, Switzerland, New Zealand, Iceland, Japan and North Korea.<sup>30</sup> Furthermore, migrants coming to the Netherlands for a temporary reason, such as study, au pair work, exchange or medical treatment, are exempted, as well as persons with a working permit, self-employed persons and highly educated migrants. In addition, migrants who were granted a status on the basis of the Long-term Residence Directive (2003/109/EC) in another Member State and who fulfilled an integration condition for this purpose, are exempted.<sup>31</sup> Finally, family members of a migrant with an asylum-related residence permit do not need to take the test, unless the marriage was concluded after the sponsor was granted a residence permit (family formation).<sup>32</sup>

### *Exemptions for medical reasons*

Migrants belonging to the category to which the act applies are exempted if they have demonstrated (to the satisfaction of the Ministry of Integration) that they are permanently unable to take the examination due to a mental or physical disability.<sup>33</sup> The legislation refers to the situations where the applicant is blind or deaf, or has difficulties in hearing, seeing or speaking,

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<sup>26</sup> Article 17 (1) *Vreemdelingenwet* mentions the exemptions for the requirement of a MVV.

<sup>27</sup> Detailed information on this act is to be found in paragraph 3.

<sup>28</sup> Family reunification means that the marriage was concluded before the applicant was admitted to the Netherlands; in other cases (including marriages to Dutch nationals) the definition “family formation” is used.

<sup>29</sup> Article 3.71 (3) *Vreemdelingenbesluit*.

<sup>30</sup> Article 17(1) a and b *Vreemdelingenwet*.

<sup>31</sup> Article 3.71a (2b) *Vreemdelingenbesluit*.

<sup>32</sup> Artikel 3.71a (2a) *Vreemdelingenbesluit*.

<sup>33</sup> Article 3.71a (2c).

and is not in possession of audio-visual aids.<sup>34</sup> Proof of this disability consists of a declaration by a doctor or an expert appointed by the head of the embassy or consulate. This medical assessment takes place at the expense of the applicant.<sup>35</sup>

Being functionally illiterate does not constitute a ground for exemption. During the legislative process, the Minister of Immigration Affairs and Integration pointed out that the test is taken orally, which should therefore be possible for illiterates to pass.<sup>36</sup> The administrative law section of the Council of State (*Afdeling Bestuursrechtspraak Raad van State*), the highest court in this regard, did not consider this assumption unreasonable, and therefore confirmed that being illiterate was no reason for exemption.<sup>37</sup>

### *Consequences of failing the test*

If the immigrant fails, he/she will not be granted a MVV, and will thus not be admitted to the Netherlands. There is no legal remedy for the outcome of the examination.<sup>38</sup> The applicant is allowed to take the test as many times as necessary, as long as he/she pays €350 for each examination.

## **1.3 Case law**

One year after the coming into force of the Integration Abroad Act, the District Court of Middelburg judged that the government was allowed to make the migrant fully responsible for the preparation of the examination. According to the judge, the legislator had deliberately chosen to make the migrant responsible for meeting the integration requirements, thereby taking the possible obstacles into account. In this case, the judgment implied that the Eritrean applicant first had to learn the English language, in order to be able to use the preparation package, as this was only developed in a limited number of languages. Also the claim by some applicants that the requirement is only applied to certain nationalities, which constitutes discrimination on the basis of nationality, was rejected by the courts.<sup>39</sup> At the end of 2008, the Legal Division of the Council of State judged that illiteracy is not a ground for exemption from the integration requirement, since, according to the government, the examination should be eligible for illiterates as well.<sup>40</sup> Although, since then, the integration requirement has been raised by the introduction of an additional reading test (1 April 2011), this judgment has not been questioned afterwards.

In the same month when the integration requirement was raised, the European Commission took the position that denying family reunification for the sole reason that the applicant had not passed the integration examination, is not in compliance with article 7

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<sup>34</sup> Article B1/4.7.2 *Vreemdelingen-circulaire*.

<sup>35</sup> Article 3.10 *Voorschrift Vreemdelingen*.

<sup>36</sup> TK, 2004-2005, 29700, no. 6, pp. 40-41.

<sup>37</sup> ABRS, 200806121/1, 9 February 2009, JV 2009/151.

<sup>38</sup> Article 3.98d *Vreemdelingenbesluit*.

<sup>39</sup> Rechtbank Den Haag, nevenzittingsplaats Rotterdam, 13 april 2008, AWB 07/35128.

<sup>40</sup> ABRvS, 2 December 2008, LJN: BG6209, JV 2009/29.



(2) of the Family Reunification Directive. The Commission took this position in the *Imran* case, in which the Dutch District Court of Zwolle requested the EU Court of Justice to give a preliminary ruling.<sup>41</sup> The underlying case of this request concerned an Afghan illiterate mother who took the test at the Embassy of Pakistan several times, but failed to pass it. Her husband and her eight children resided in the Netherlands. A week after the Commission had sent its position to the Dutch government, the mother was granted permission to reunite with her family. With this decision, the Dutch government succeeded in avoiding a judgment of the EU Court of Justice on the compatibility of the Dutch integration requirement with the Directive on the Right to Family Reunification. Interestingly, the Commission emphasized that its position applies to all applications for family reunification. Thus, factors like education level, small children or closed embassies are not relevant: in all cases, failure to pass an integration test cannot be the sole reason for denying family reunification. As a matter of principle, the Commission made clear that Article 7 (2) of the Directive and the effectiveness principle do not allow excluding people from family reunification on the sole ground that the test abroad has not been passed. Article 7 (2) aims to promote integration, but cannot be used to undermine the objective of the Directive, i.e., promoting family reunification.<sup>42</sup> In November 2012, the Dutch District Court of Den Bosch fully endorsed the position of the Commission taken in *Imran*, concluding that applying failing the test abroad as a refusal ground for family reunification is in violation of the Directive.<sup>43</sup> The Minister has appealed in this case at the Council of State. This appeal is still pending.

## 2 INTEGRATION TEST IN THE COUNTRY

### 2.1 Description of the test

The Civil Integration Act (*Wet Inburgering*, hereafter WI)<sup>44</sup> came into force on 1 January 2007. This act replaces the Civil Integration Newcomers Act (*Wet Inburgering Nieuwkomers*, hereafter WIN) and extends the obligation to integrate to migrants already living in the Netherlands for a long time (including holders of a permanent residence permit). On 1 April 2010, the integration examination, introduced by this Act, replaced the naturalisation test. This means that, since that date, passing the integration test has been a condition for naturalisation. Since 1 January 2010, passing the test has been a condition for permanent residence. The integration examination consists of two parts, a central part and a practice part. The examination has to be passed within a time frame of 3.5 years.<sup>45</sup>

The first contact point for information on migration courses in the Netherlands is the municipality. All migrants who are bound by a civic integration requirement under the WI

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<sup>41</sup> Rechtbank Den Haag, nevenzittingsplaats Zwolle, *Imran*, 31 March 2011 (Awb 10/9716).

<sup>42</sup> European Commission, “Schriftelijke opmerkingen aan het Hof van Justitie in de zaak C-155/11 PPU”.

<sup>43</sup> Rechtbank Den Haag, nevenzittingsplaats Den Bosch, 23 November 2012, AWB 12/9408, LJN:BY4171.

<sup>44</sup> *Staatsblad*. 2006, 625, entry into force *Staatsblad*. 2006, 645.

<sup>45</sup> See Article 7(1) WI.



receive a letter from the local authorities of their place of residence. This letter informs the migrant about this obligation and it also contains an invitation to make an appointment at the local government offices, the local civic integration units. If an appointment has been made, the officer at the local civic integration unit explains the procedure. Subsequently, an interview on admission is conducted and a screening is done. This results in a programme for the migrant, including a timetable for the course offered and the concluding test.

The test consists of two parts: a practice part, assessing the language skills, and a central part, assessing certain knowledge of the Dutch society. Below, both parts are described.

## 2.2 The practice part of the examination

In the practice part, candidates will have to use the Dutch language in a situation based on practice in daily life.<sup>46</sup> According to the Minister for Integration and Immigration Affairs Verdonk, this part of the examination would be “more suitable for testing lower educated persons than standardised tests, which generally appeal to someone’s general cognitive capacities rather than his skills to apply his knowledge”.<sup>47</sup> In the practice examinations, a distinction is made between those who will perform paid labour and those who will primarily focus on raising children. There are some domains which can be distinguished: “citizenship”, “work”, “education and healthcare”, “entrepreneurship” and “social participation”. Candidates can pass the practice part of the integration examination by submitting a portfolio, taking part in an assessment, or choosing a combination of both.

In the assessment route, candidates will have to re-enact four different situations which might occur in practice (initially six situations had to be re-enacted). Each assessment consists of a number of assignments in which attention is paid to reading, writing and speaking. The speaking exercises are carried out in a role-play.

A portfolio consists of 20 proofs (initially 30 proofs were required), collected by the candidate, of written and oral language skills obtained in practice.<sup>48</sup> Candidates can choose from four different portfolios: “work”, “education, healthcare and upbringing”, “entrepreneurship” and “social participation”. Model portfolios for each domain can be found on [www.inburgeren.nl](http://www.inburgeren.nl). The model portfolios contain lists of proofs that need to be gathered in order to confirm that the immigrants have spoken Dutch or written something down in Dutch. Proofs can be gathered only for situations mentioned in the model portfolios. To collect proofs of oral language skills, the conversation partner will need to complete and sign

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<sup>46</sup> See Article 3.7 and 3.8 *Integratie besluit* on the content of the practice part of the examination.

<sup>47</sup> TK 2005-2006, 30 308, no. 16, p. 51.

<sup>48</sup> It is not specified how many proofs of either written language skills or oral language skills a portfolio must contain. But a portfolio containing only proofs of written or oral language skills will be rejected (answers obtained from the *Servicecentrum Inburgering* [Service Centre Integration] of DUO [the Service Implementation Education] to author’s questions). For each portfolio, different proofs need to be gathered. But there are also similarities. Every portfolio requires 12 proofs regarding “citizenship” that need to be gathered. Furthermore, each portfolio requires proofs that the candidate knows how to look for work. The model portfolio “social participation” requires six proofs that the candidate knows how to look for voluntary work.

a form that can be found in the model portfolio, which also contains a letter of explanation.<sup>49</sup> Situations for which proofs can be gathered are: registering a child's birth at a municipality (citizenship), looking for vacancies (looking for work), talking to a client about work that needs to be conducted (having a job), talking to a parent of a school mate of one's child to make an appointment for the children to play together (education, healthcare, raising children), talking to other participants in an activity in the neighbourhood (social participation), completing an intake form for voluntary work (looking for voluntary work), and talking to an advisor from the Chamber of Commerce (entrepreneurship). Once the portfolio has been completed, it can be sent to the Service Implementation Education (DUO) or a designated private examination agency, where it will be judged. If a portfolio contains sufficient proofs which are of high enough quality, the candidate will need to take a final test consisting of a conversation with an examiner and a written language test.

Lastly, the candidate can pass the practice part of the examination by following a combination route of submitting a portfolio containing ten proofs and taking part in two assessments.

## 2.3 The central part of the examination

The central part can be taken in seven different locations.<sup>50</sup> It consists of three parts: an electronic practice examination, a spoken test in Dutch, and an examination on knowledge of the Dutch society.<sup>51</sup> The level of the examination is A2.<sup>52</sup> The exact content of the examination is not publicly available and there is no possibility of getting access to it.

The electronic practice examination operates as a check on the level of language skills, as assessed in the practice part of the examination. As in the practice part of the examination, a candidate needs to show he/she has sufficient language skills to cope with situations with which everyone in the Netherlands has to deal with (domain for "citizenship"), and in situations which are important for him/her (domain for "work" or "education and healthcare"). Examples of electronic practice examinations can be found on the Internet.<sup>53</sup>

In the spoken test in Dutch, a candidate's oral language skills are assessed. This examination is taken via a telephonic connection with a computer equipped with programmes for speech recognition and automatic result calculation.

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<sup>49</sup> On the form, the conversation partner has to fill out his/her name, telephone number, function (e.g. "neighbour", "employer", "municipal official" etc.), conversation date, conversation place, and answer the following questions: did the person who is integrating (*de inburgeraar*) speak Dutch? Yes/No; Did the person who is integrating understand what you were saying? Yes/No; Did you understand the person who is integrating? Yes/No. There is room for clarifications.

<sup>50</sup> Examination centres can be found in Amsterdam, Eindhoven, Nijmegen, Rotterdam, Rijswijk, Utrecht and Zwolle.

<sup>51</sup> See Article 3.9 *Integratie besluit* for the content of the central part of the examination.

<sup>52</sup> See Article 2.9 *Integratie besluit*. Settled migrants (so-called oldcomers, see footnote 122) have to pass speaking and listening at level A2 and writing and reading at level A1.

<sup>53</sup> [http://www.inburgeren.nl/inburgeraar/examen/oefenen\\_met\\_examens/voorbeeldexamen\\_elektronisch\\_praktijkexamen.asp](http://www.inburgeren.nl/inburgeraar/examen/oefenen_met_examens/voorbeeldexamen_elektronisch_praktijkexamen.asp), Site accessed 8 January 2010.

In the test “*Kennis van de Nederlandse Samenleving*” (“Knowledge of Dutch Society” examination, hereafter KNS examination), a candidate’s knowledge of the Dutch society is tested in about 43 questions.<sup>54</sup> This part of the examination is taken on a computer. In the test, three main subjects can be retrieved: factual knowledge, norms and values (how are citizens supposed to behave in the Netherlands) and functional knowledge (how not to “be off target” in contacts with Dutch citizens and the Dutch society).<sup>55</sup> In the curriculum for the examination (final achievement levels), mentioned in Article 2.10 of the *Vreemdelingenbesluit*, the following topics are listed: work and income; manners, norms and values; housing; health and healthcare; history and geography; authorities; polity and the constitutional state; and education and upbringing.<sup>56</sup> For each topic, so-called “crucial acts” have been determined.<sup>57</sup> Each crucial act concerns behaviour which the person who is integrating is required to be able to show. Subsequently, for each crucial act, crucial knowledge and norms indicating when the act can be considered to be successful, so-called indicators have been formulated. Not only is knowledge of social norms expected, test candidates are also required to indicate which behaviour deals with differences in norms, manners and values in a socially accepted way (Klaver & Odé 2009: 68). The KNS examination, hence, also aims at testing actual behaviour, rather than merely factual knowledge.

## 2.4 Who has to do the test?

All immigrants with a residence permit (hence, the Act is not applicable to asylum-seekers) from outside the EU and EER, between the ages of 18 to 65, who are here for a non-temporary purpose of stay (hence, most labour migrants fall outside the scope of the Act), have to pass an integration examination. The integration obligation applies to “newcomers”<sup>58</sup> as well as to “oldcomers”.<sup>59</sup> The integration obligation also applies to religious ministers.<sup>60</sup>

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<sup>54</sup> Each question starts with a short film in which a situation is addressed. After the film, question and answer possibilities, among which the candidate has to choose the correct answer, are shown. Depending on the length of the films, some examinations consist of less than 43 questions.

<sup>55</sup> TK 2005-2006, 30 308, no. 25, p. 2.

<sup>56</sup> See Article 2.10 *Integratie besluit*.

<sup>57</sup> For each topic, four crucial acts have been determined, except for the topic “health and healthcare”, for which nine crucial acts have been formulated.

<sup>58</sup> These are migrants who came to the Netherlands after 1 January 2007.

<sup>59</sup> Oldcomers are immigrants who already resided in the Netherlands before the entry into force of the Act, but not during the eight years of school age and who do not possess any diploma proving a sufficient knowledge of the Dutch language (Odé et al 2010: 21).

<sup>60</sup> See Article 3(1)(b) WI.

The possibility exists to pass the integration test voluntarily.<sup>61</sup> The municipality may offer an integration facility to the volunteer.<sup>62</sup> The possibility of voluntary integration came into existence after the Council of State<sup>63</sup> stated that an integration obligation for Dutch naturalised persons would violate the principle of equality. The target groups for voluntary integration were hence Dutch naturalised, EU citizens or EER nationals and persons from the Netherlands Antilles and Aruba (Odé et al 2010: 25).<sup>64</sup>

## 2.5 Immigrants who are exempted from taking the test

Migrants can be exempted from taking the test because they are incapable of taking it or because they have attained a sufficient level of integration.

Article 6 of the WI exempts immigrants who have an integration obligation from taking the examination if he/she has proved that he/she is mentally or physically disabled and hence is permanently unable to pass the integration examination.<sup>65</sup> Migrants can also apply for release from the obligation if they are not capable of passing the test. In order to ensure that they have made a serious effort to reach the required level, the application for exemption can be made no earlier than six months before the time frame for passing the examination has passed. A release can also be decided upon by the Minister without an application by the migrant (*ambtshalve*).<sup>66</sup> An “oldcomer” aged 60 years or older is also exempted from the WI.<sup>67</sup>

Immigrants who are already obviously integrated into the Dutch society – i.e., having sufficient Dutch language skills and knowledge of the Dutch society – and who can prove this with a diploma or a certificate are exempt.<sup>68</sup> Only diplomas at secondary school or higher educational level qualify for exemption. It is possible to be exempted from a part of the examination, either for the language test or for the KNS part.<sup>69</sup> Since 1 April 2007, immigrants with a Flemish or Surinamese diploma (high school or higher) have not had to pass an integration examination in order to become a Dutch national, if the education followed was in

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<sup>61</sup> A volunteer is a Dutch national or a migrant within the meaning of Article 5(2) who is: older than 15 years, has resided for less than eight years during his/her school age in the Netherlands; has no diploma, certificate or other document; has no education duty or qualification duty or follows an education which will eventually lead to a diploma, certificate or other document. See Article 1(q) WI.

<sup>62</sup> See paragraph 3 of chapter 5 of the WI. In the first half of 2010, 27 per cent of the facilities were given to volunteers.

<sup>63</sup> Advice of the State Council of 3 August 2006.

<sup>64</sup> Despite the fact that the integration will be voluntary, the municipalities will have the opportunity to use sanctions and instruments to obligate immigrants to follow a language course (Odé et al 2010: 26).

<sup>65</sup> Article 2.8(4) of the decree speaks of a period of five years after application for exemption.

<sup>66</sup> Article 5.5 *Integratie besluit*.

<sup>67</sup> According to Article 63 of the WI.

<sup>68</sup> See Articles 2.3 and 2.4 of the *Integratie besluit*. The two articles list the possible diplomas and certificates. For example, a diploma for the State Examination in the Dutch Language at Programme I or II.

<sup>69</sup> See Article 2.4 of the *Integratie besluit*. For example, a certificate within the meaning of Article 13(2) of the Integration Act Newcomers.

the Dutch language and the subject “Dutch language” was passed with a sufficient grade.<sup>70</sup> Persons from the Netherlands Antilles and Aruba are exempted from the integration obligation (Odé et al 2010: 21).<sup>71</sup>

According to recent case law, Turkish nationals are exempted from passing the integration examination. The court ruled on 12 August 2010<sup>72</sup> that putting an integration obligation on Turkish nationals is contrary to the non-discrimination provisions in Articles 9 and 10 of the Association Agreement EEC-Turkey because according to Article 5(2)(a) of the WI, citizens of the EU are exempted from the integration obligation. Furthermore, according to the judgment, the requirement to pass the integration examination is contrary to Article 13 of Decision 1/80 because it is dated after 1 December 1980 and restricts entry into the labour market.<sup>73</sup> Despite this judgment, the integration obligation is still applied on Turkish citizens: the government has lodged an appeal against this decision at the Council of State.

### ***Short exemption test***

Immigrants who are “evidently” integrated, but who do not possess the required diploma or certificate necessary for an exemption, can prove their level of integration by passing the so-called “short exemption test”. Passing this test releases the immigrant from the obligation of taking the integration examination. The possibility of passing the short exemption test has been introduced along with the possibility of passing the State Examination in the Dutch language. The short exemption test consists of an electronic practical test and knowledge of Dutch society test. The level of the short exemption test is higher than that of the integration examination, B1 instead of A2, and can only be taken once. The Minister explicitly chose the possibility to exempt persons after they successfully passed a test, instead of giving the municipalities the possibility to exempt evidently integrated persons, with the argument that it would limit the administrative burden for the municipalities.<sup>74</sup>

In a judgment of 16 September 2009, the Central Council of Appeal (*Centrale Raad van Beroep*) declared Article 2.7 paragraph 1 of the Integration decree, which provides that the level of the short exemption test be higher than that of the integration examination, non-binding, for its incompatibility with the principle of equality.<sup>75</sup> The Council judged the short exemption test to be unreasonably onerous since it demanded language skills at level B1, instead of level A2, which is the level of the integration examination. The Council based its judgment *inter alia* on the explanatory memorandum of the WI, which stated that level B1

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<sup>70</sup> Article 2.3 paragraph 1 sub d and e *Integratie besluit*. Exemption is only provided if the subject “Dutch” was passed.

<sup>71</sup> See, for the discussion concerning this group, also paragraph 3.2.

<sup>72</sup> Court of First Instance, Rotterdam, 12 August 2010, AWB08/4934 LJN BN3934 and AWB 09/3814 LJN BN3935.

<sup>73</sup> The Court refers to case of 29 April 2010, C-92/07, European Commission v Kingdom of the Netherlands, ECR 2010, p. 0000.

<sup>74</sup> TK 2005-2006, 30 308, no. 73, p. 4.

<sup>75</sup> *Centrale Raad van Beroep* 16 September 2009, LJN BJ9330.

would form an unreasonable barrier for many immigrants with an obligation to integrate.<sup>76</sup> Until now, the government has not reacted to this judgment, nor has it changed the required level of the short exemption test.

## 2.6 Consequences of not participating in or failing the test

Failing the test has consequences for the residence rights of the immigrant. Since 1 January 2010, the *first* application for a permanent residence permit<sup>77</sup> and the application for an independent residence permit can be refused if the candidate has not passed the examination. This implies that immigrants remain in the Netherlands on a temporary basis, which is a less secure position relative to a permanent residence status, because the grounds for withdrawal are less restrictive. For holders of a residence permit on asylum grounds, it means that they can be expelled the moment the government declares their country of origin to be safe. If they have a permanent residence permit, the situation in their country is no longer a ground for withdrawal of their permit. The more insecure position of immigrants can have consequences for their attitude towards the Dutch society and the need to integrate. Also the practical consequences of a permit for temporary stay can hinder integration: most of the immigrants are not able to buy a house, as banks do not grant them a mortgage. Furthermore, the temporary character of their residence permit makes employers more hesitant to offer an employment contract.

There can also be financial sanctions for the immigrant for not passing the integration examination within the given timeframe. He/she will receive an administrative fine.<sup>78</sup> However, the WI contains a few exemptions: (1) the immigrant is not to blame for not passing the integration examination, (2) the immigrant can prove that he/she follows/followed a literacy course and therefore the given time frame was prolonged, and (3) the immigrant can prove that he/she is reasonably not capable of passing the examination. Together with the fine a new deadline for passing the examination is set, with a maximum time frame of two years.<sup>79</sup> This system of fines and new time frames can be repeated every two years.<sup>80</sup> Another possible sanction is a lowering of the level of social assistance.<sup>81</sup>

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<sup>76</sup> TK 2005-2006, 30 308, no. 3, p. 19.

<sup>77</sup> See Article 21(1)(k) *Vreemdelingenwet*.

<sup>78</sup> Article 31(1) WI. For most migrants with an integration obligation, the timeframe for passing the examination has not yet expired, so municipalities did not have much reason to impose a fine. The few fines imposed were given because a migrant did not show up at his/her interview for admission. Approximately 18 per cent of the municipalities have imposed fines. In most situations the local government official first tries to find out why the migrant did not show up or explains the reason for the call. See Evaluation report *Integration in the Netherlands*, Ministry of Housing, Spatial Planning and the Environment (VROM), June 2010, p. 31.

<sup>79</sup> Article 32 WI.

<sup>80</sup> Article 33 WI.

<sup>81</sup> Article 37 WI.

## 2.7 Costs

According to the principle of the WI, the migrant is responsible for financing the preparatory course and the examination. At the entry into force of the WI, the government only offered migrants a loan for a maximum period of three years.<sup>82</sup> The loan could be requested both for the preparatory course and the examination itself. This money would be paid directly to the examination institute or course institute where the immigrant follows the integration course or will do the examination.<sup>83</sup> If the migrant pass the integration examination within the given timeframe, the costs will be partly refunded.<sup>84</sup> This financial burden (the loan could amount to €6000), combined with the insecurity of reimbursement, appeared to be a hurdle for immigrants to subscribe for an integration course: the classes remained empty. Since 2007, the municipalities are funded to organise the integration courses. Migrants are offered a course and one examination. If they fail, they have to pay themselves for the retake.

## 2.8 Future

In September 2012, the Act on Integration has been amended, which implies that since 1 January 2013, migrants have to finance and organize their participation in a course themselves.<sup>85</sup> If they lack the sources to finance a course, they can contract a loan.<sup>86</sup> Refugees, however, still get an offer to follow a course for free. The education itself has been left to the initiative of the market. Under the new Act, the obligation to make a portfolio with practices about daily life situations is no longer part of the examination.

From 1 January 2013 onwards, the temporary residence permit of migrants who do not pass the integration examination within three years, can be withdrawn or not-renewed. However, in the parliamentary debate on this act, the Minister admitted that, for family members, this ground for withdrawal or non-renewal can hardly be applied because of the obligations of article 8 ECHR and the EU Family Reunification Directive.<sup>87</sup> Family members of highly skilled workers are exempted from the integration obligations.<sup>88</sup>

## 2.9 Case law

On 8 June 2011, the District Court 's-Gravenhage decided that the integration requirement for a permanent residence permit does not apply to Turkish nationals and their family

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<sup>82</sup> This option is not available for volunteers.

<sup>83</sup> See Article 16 WI and chapter 4, section 1 of the *Integratie besluit*.

<sup>84</sup> Article 18(1) WI and 4.17 Integration Decree (Integratie besluit). Every candidate who passes the examination will automatically receive a minimum of €650. Sometimes a higher amount will be reimbursed, depending on the costs the immigrant had to bear. This will be 70 per cent of the total costs of the course and the examination with a maximum of €3,000. For this extra compensation, the immigrant has to make an application.

<sup>85</sup> Staatsblad 2012, nr. 430.

<sup>86</sup> Staatsblad 2012, nr. 430.

<sup>87</sup> Handelingen Eerste Kamer 11 September 2012, 2012-2013, no. 38 item 7, p. 36.

<sup>88</sup> See van Oers and Minderhoud, Integration of High Skilled Third Country Nationals in Europe: A New Proposal for Circular Talent Management. The Dutch position in the "battle for brains" (not yet published).

members, because the costs for the exam would violate the Association Agreement between the European Union and Turkey.<sup>89</sup> According to the District Court, the obligation for Turkish nationals to pass the integration exam violates the discrimination clause of Article 9 of the Association Agreement and Article 10 (1) of the Decision 1/80, because Union citizens do not have to pass the integration exam either. The District Court also referred to the CJEU judgment of April 2010 mentioned above.<sup>90</sup>

In August 2011, the Dutch Central Appeals Tribunal (*Centrale Raad van Beroep*), referring to the “Sahin” case, judged that the integration requirement for admitted Turkish nationals and their family members negatively affects their legal position in the Netherlands, and is not in compliance with EU-Turkey association law.<sup>91</sup> As a result of this decision, the integration requirement for Turkish nationals has been abolished. This means that having passed the integration examination is no longer a condition for obtaining a permanent residence permit and those municipalities may no longer oblige Turkish nationals to participate in integration courses or impose penalties on those who do not participate. As the Integration Act Abroad is only applicable to migrants who are obliged to fulfil integration requirements after admission, the Minister for Integration announced, in September 2011, that Turkish nationals were also exempted from the integration requirement abroad.<sup>92</sup> This means that the integration test abroad cannot be applied anymore to one of the largest target groups of this Act.

### 3 EFFECTS<sup>93</sup>

#### 3.1 Integration test abroad

It is too early to draw conclusions on the effect of the WIB on the integration of migrants in the Netherlands. As Regioplan, which conducted the evaluation for the government, already pointed out, the success of their integration depends on many other factors as well. Nevertheless, it could be concluded that the efforts and stress involved in passing the test are not in proportion to the positive effect of the test. The interviews of the Intec research confirmed the outcome of two other studies, which showed that the integration test abroad (combined with the income requirement) negatively affects the social and economic health

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<sup>89</sup> Rb ‘s-Gravenhage, 8 June 2011, LJN: BQ7656.

<sup>90</sup> CJEU, 29 April 2010, C-92/07, *European Commission vs. The Netherlands*.

<sup>91</sup> CRvB, 16 August 2011, case nos. 10/5248, 10/5249, 10/6123, 10/6124 INBURG, JV 2011/416 nt K.M. de Vries [LJN: BR4959].

<sup>92</sup> Kamerstukken II, 2011-2012, 31 143, no. 89.

<sup>93</sup> In the framework of the Intec research in 2010, 56 interviews were conducted with migrants, language teachers, NGOs and officials, in order to find out the (perceived) effects of the tests.



of spouses.<sup>94</sup> It causes stress, but it also delays family reunification, which results in long-term separation. Some applicants for family reunification dropped out of higher education or accepted a job with fewer long-term prospects in order to earn sufficient income to bring over their family. Both consequences affect integration chances. Respondents from the Dutch Refugee Council pointed to the fact that family members living in (post) war countries face difficulties with the preparation of the test, as they lack the Internet and sometimes even electricity, and have to travel twice through unsafe areas (once for the test, once for the visa).

The respondents in the Intec research confirmed that learning the Dutch language abroad does not seem to substantially contribute to their knowledge of the language. The official evaluation of the WIB for the government showed that the Dutch language skills at the beginning of their integration course in the Netherlands were only marginally higher than for a control group of immigrants who were not required to take the test abroad. According to the researchers, the higher level of education of the former group may account for part of the difference. The impact of learning the Dutch language in the Netherlands is much greater and is, therefore, more effective. The proportionality of the test is particularly problematic with regard to the lower educated (including illiterate persons) and elderly persons, who face the most problems in meeting the requirements. The chance to pass diminishes each time the examination is repeated. However, there is no information on the situation of the person who, finally, does not succeed. The number of applications has declined by one-third. Taking into account that the population of the applicants has become younger and more highly educated, one can conclude that the elderly and lower educated migrants are over-represented in the group, which no longer applies for family reunification. The researchers used the term “self-selection” (Odé 2009: pp. 288-292). The restraining effect on family migration seems to have hit family reunification the hardest, although the measure targeted family formation. Some respondents pleaded for a general exemption for migrants aged 55 years or older.

On the basis of interviews conducted by the Centre for Migration Law, it can be concluded that migrants are positive on learning about the Dutch society as a preparation for their movement to the Netherlands. A number of respondents, however, stressed that they would also have prepared for Dutch society without a test. All respondents emphasised that preparation for the test would have been impossible, or at least much more difficult, without having attended a course. Participating in a course also offers the possibility of getting into contact with other future inhabitants of the Netherlands, and getting more realistic expectations of living there. Female candidates especially seem to benefit from this. These respondents were in the fortunate position of being able to attend a course. Immigrants lacking this opportunity also lack these advantages, and they will face more problems with passing the test. In general, elderly and low-educated migrants as well as migrants living in unstable regions have the most difficulty in meeting the criteria, and are thus confronted with a delay in their (re)

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<sup>94</sup> I. Kulu-Glasgow, A. Leerkes, H. Muermans and J. Liu, *Internationale gezinsvorming begrensd? Een evaluatie van de verhoging van de inkomenseis en leeftijdseis bij migratie van buitenlandse partners naar Nederland*, The Hague: WODC 2009; Ö. Hünkar Ilik, *Gescheiden gezinnen, Portretten van slachtoffers van het Nederlandse beleid inzake gezinshereniging*, Utrecht: Inspraak Orgaan Turken in Nederland, April 2010.

unification. Failing the test results in living separately, entering the Netherlands and residing there irregularly, or moving to another EU Member State, in order to benefit from the liberal EU family reunification rules. No research has been conducted so far on the choices spouses make when the test turns out to be a permanent obstacle to family reunification. What is evident is reduction in the number of applications, especially from lower educated and elderly migrants. The act serves as a selection based on education and age, instead of the intended selection based on motivation. One part of the decreasing number of applications for family formation can be ascribed to the drop in the number of marriages Turkish and Moroccan migrants conclude with someone residing in their country of origin. With regard to the other part, further research is needed on the causes and consequences of the decrease in the number of applications for family reunification.

Raising the level to A1 and introducing a reading test without offering further support to prepare for the test has increased the problems in meeting the requirement, and thus increased the risk of exclusion from family reunification. It should be closely monitored to what extent the more stringent requirements form an obstacle. The political choice to raise the level, unless this carries the risk of exclusion, reveals two intentions of the government: to reduce the number of family migrants and to make immigrants solely responsible for their integration into the Dutch society.

### **3.2 Integration tests in the country**

#### ***The courses***

It is too early to draw any conclusion on the effects of the integration tests in the country with regard to the integration of migrants. What has already become clear is that the Civic Integration Act (WI) has led to a substantial increase in the number of participants on the integration courses and, thus, to an improvement in the language level of migrants. A majority of the respondents are in favour of the obligation to participate in courses because of the improved language skills of migrants and because it helps to prevent an isolated situation in particular groups of migrants (women, oldcomers and migrants of Chinese origin). At the same time, oldcomers are the most difficult group to motivate. Some of them think it is unjust to oblige them to take a test after many years' residence in the Netherlands, during which they were not supported in their integration process. According to them, they were motivated to learn the language 20 years earlier. Participants in the courses offered on the basis of the WIN complained that the certificates they had achieved appeared not to be sufficient for an exemption within the framework of the (higher requirements of the) new act. This policy of changing requirements towards the same target group caused frustration among oldcomers.

There are three categories of migrants who would perhaps not participate in a course if they were not obliged to do so. Regarding two of these groups, there are practical reasons: mothers and migrants with a full-time job have difficulty combining their activities with attending a course, especially when flexibility in the course is absent. The third group involves women who are not supported by their husbands to integrate; they would probably have been kept at home had participation been voluntary.

Young migrants are, in general, more positive about the obligation to attend the course. Some respondents, however, think that the obligation is not necessary to motivate them to learn Dutch. A significant proportion of respondents think that participation is hard to combine with having a full-time job or taking care of children. More flexible organisation would help them to fulfil all their different tasks at the same time.

Most teachers, civil servants and migrants think that the requirements for exemption on the basis of sufficient language skills are too rigid. Migrants clearly demonstrating sufficient knowledge of the language are still forced to pass the short exemption test. Although most of the respondents were of the opinion that the level of the course was insufficient to increase the possibility of finding a job, they thought it helped migrants to live in the Dutch society and to improve their (number of) contacts with others.

Despite the notion of individual responsibility of the migrants, the courses are free of charge in most cases. The respondents consider this as a vital element which counterbalances the personal investments required from the migrant. It proves that the government recognises a shared responsibility for the integration of migrants.

### ***The tests***

A large number of respondents acknowledge that the level of the test is too low for creating access to the labour market, but too high for certain groups with learning difficulties (illiterates, oldcomers). They regret that passing the test does not seem to be of much value for migrants seeking a job. Therefore, some of them suggested organising a follow-up course in order to qualify migrants for the labour market or to award a certificate to the successful migrants, which would be recognised by employers. With regard to the groups for which the level of the test is too low, several civil servants, teachers and migrants pleaded for an exemption for elderly migrants, for instance those older than 55. They suggested offering them a proper course, based on their needs, but without obliging them to attend it.

The content of the test is not a subject for public or political debate, probably because it is secret. Yet, this secrecy constitutes a lot of (unnecessary) stress for the candidates. This seems to deter certain migrants from taking the test. The practical part of the test is judged very differently: some think it difficult and humiliating (especially because they have to ask for signatures), others are positive because it has helped to strengthen their self-confidence and make contacts. Many respondents, however, had aggravating experiences with the portfolios because it takes a lot of time and organisation. Some teachers and civil servants perceive the portfolios as quite bureaucratic.

Although the test for naturalisation and the test for permanent and independent residence are similar, the consequences for residence rights are more far-reaching if the test is taken for a permanent residence permit. A permanent residence permit offers security of residence, as some withdrawal grounds cannot be applied anymore. It can be expected that family members who know that their future lies in the Netherlands, make more personal investments in the Dutch society. Migrants who fail the test remain in an insecure legal position, which can hamper or slow down their integration process. In particular, refugees will be less receptive towards integration as long as they fear being expelled because of a change in circumstances

in their country of origin. The possession of a temporary permit also affects the daily life of the migrants, for instance, because they are not able to buy a house and because employers are more hesitant to employ them. Despite the women's liberation policy, women who are deprived of an independent status because they fail the test, remain dependent on their husbands. This could prevent them from participating in society in the way they wish.

These consequences lead to the paradoxical result that the test, which was introduced to promote integration, hampers the integration of the most vulnerable migrants (illiterates, the low-educated, elderly migrants, refugees, and women). The data on pass rates and the background of migrants who fail the test most often, show that these groups are actually affected the most by the integration requirement. Since the introduction of the integration requirement, the number of applications for a permanent residence permit has been halved. Since 1 January 2013 the temporary residence permit can be withdrawn if the migrants do not fulfil the integration requirement within three years. Although, in most cases, Article 8 ECHR and the EU Family Reunification Directive will prevent the government from doing so, this national policy will create more insecurity and stress, especially for migrants who face difficulties meeting the criteria. Applying this policy will therefore be counter-productive for the aims of the integration policy.

### 3.3 Conclusions

The effects of the integration requirements at the different stages show a clear relationship and relevant similarities. Migrants appreciate the offer of language and integration education, which they think is effective. However, the connection of passing the test with a certain residence right can turn out to be counter-productive for the integration aims. After all, migrants who fail the test will not acquire residence rights which could promote their integration. On the contrary: being unable to live with their family, or living permanently in the Netherlands on a temporary or dependent basis, are circumstances hampering their integration. Immigrants relatively more often affected by the integration requirements are elderly and low-educated migrants, immigrants with an asylum-related background and migrants from least-developed or developing countries. Therefore, tests serve as a selection on age, education and nationality. Yet, these migrants are relatively often more in need of support for their integration.

The government could emphasize that integration is a reciprocal process by offering language and integration courses on the one hand, and obliging migrants to participate in it, on the other hand. Migrants could be pressed to make an effort to integrate, which is different from forcing them to achieve certain results. The latter happens by connecting a certain knowledge level to residence rights. The shift from a shared responsibility to the sole responsibility of the migrant was already the case in the admission policy, but will now be extended in the integration policy in the country with the amendment of the "Act on Integration". By withdrawing the organisational and financial support of integration courses by authorities, the government risks fewer migrants managing to strengthen their position in the Dutch society. By not taking care of the most positive elements of the Integration Act, which are

closely related to the high quality of education, the government might fail the test on effective integration policies.

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# EU-ASIA DIALOGUE

*Shaping a Common Future for Europe and Asia –  
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The “EU-Asia Dialogue”-project is a joint project by the European Commission and the Konrad-Adenauer-Stiftung of Germany.

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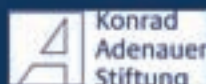




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