



Advancing Alternative Migration Governance



State-of -the-art on temporary labour migration schemes in Europe

D3.1

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Abbreviations

ACVZ	- Advies commissie voor vreemdelingenzaken [Advisory Committee on Migration Affairs]
ADMIGOV	- Advancing Alternative Migration Governance
BA	- Bundesagentur für Arbeit [Federal Employment Agency]
BAMF	- Bundesamt für Migration und Flüchtlinge [Federal Office for Migration and Refugees]
CBS	- Centraal Bureau voor de Statistiek [Statistics Netherlands]
CEE	- Central and Eastern European
EC	- European Commission
EMN	- European Migration Network
EU	- European Union
GCM	- Global Compact on Migration
GCR	- Global Compact on Refugees
HIT	- Stichting Herstel In de Toekomst [HIT Foundation]
ICT	- Information and Communication Technology
MLS	- Migrant Labour Supply
NID	- New Immigrant Destination
NYD	- New York Declaration for Refugees and Migrants
OECD	- Organisation for Economic Cooperation and Development
SEO	- Stichting voor Economisch Onderzoek [Foundation for Economic Research]
UGE-CE	- Unidad de Grandes Empresas y Colectivos Estratégicos [Large Companies Unit]
UK	- United Kingdom
Vw	- Vreemdelingenwet [Aliens Act]
Wav	- Wet Arbeid Vreemdelingen [Aliens Labour Act]
WBR	- Western Balkan Regulation

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1. Introduction

This paper provides a 'state-of-the-art' on European labour migration policies. It is part of Work Package 3 of the Advancing Alternative Migration Governance [ADMIGOV] program, which aims to promote migration governance models which take seriously the principles laid out in the New York Declaration for Refugees and Migrants [NYD] and the 2030 Agenda on Sustainable Development to study how alternative approaches to migration governance can be better designed and put into practice. What we aim to do in this work package is to identify whether temporary and circular labour migration schemes could help disentangle so called mixed migration flows into Europe: i.e. making it attractive for migrants who claim asylum to apply for a work permit instead and thus offering more opportunities to deliver international protection to refugees.

After the Second World War, various European countries introduced recruitment schemes for temporary labour migrants to accelerate the reconstruction of their countries (Castles 1986: 761). Bilsborrow et al. (1997) define temporary migrant workers or temporary labour migrants as “persons admitted by a country other than their own to work for a limited period in a particular occupation or a specific job” (Bilsborrow et al. 1997: 38). With this ambition in mind, in the 1960s, Germany and the Netherlands started to recruit workers from outside their territory. Initially, labourers were recruited from Southern European countries (Doomernik 2012: 26; for more examples of guest worker programmes see Castles 1986; or Castles, de Haas and Miller 2020). However, when labourers became scarce in Southern European countries, the focus shifted towards Moroccan and Turkish workers (Doomernik 2012: 26). In the 1970s, the structure of the Dutch and German economies changed and was profoundly affected by the oil crisis. Ultimately, the need for guest workers elapsed. The intended temporary stay, however, became permanent as the economic prospects in Morocco and Turkey were often too limited for return migration whereas in Europe they tended to have been employed long enough to be able to stay (Doomernik 2012: 27). Moreover, migrants established families in their new country by bringing over their spouses and children (Castles 2006: 4). This was an unforeseen outcome of so called “guest worker” policies. In the following decades, those experiences have made many European governments cautious in admitting new labour migrants. One question, however, has never been satisfactorily answered: were “guest worker” programmes really better suited to satisfy the needs of immigration countries than spontaneous migration (Castles 1986: 762).

Besides the question whether immigration countries benefitted, the guest worker programmes exposed the dilemmas of controlling migration (Hollifield, Martin and Orrenius 2014: 3). The post-Second World War period featured an acceleration of liberalised entry and post-entry rights for most migrants (De Haas, Natter and Vezzoli 2016: 29). The increased rights for labour migrants in combination with the demand for labour in open economic societies, explains the difficulty with controlling labour migration (Ibid.: 8). Hollifield (1992) calls this the outcomes of the ‘liberal paradox’. Liberal democracies want to establish an open society for economic reasons, but accompany this with increased control of their borders for political, legal and security concerns (Hollifield, Martin and Orrenius 2014: 9). The latter, however, "may require a rollback of civil and human rights for noncitizens" (Ibid.: 9). In addition, Ruhs (2006: 14) suggests that there is an inherent tension between the needs of the economy in general and the demand for labour supply of individual employers. The latter has considerable interest in unlimited supply, hiring and firing in conjunction with the economic cycle, whereas the costs of possible unemployment benefits and welfare are collective, i.e. carried by

the state (Ibid.: 14). The increased reluctance towards labour migration is illustrated by the often-cited truth, among them Martin and Teitelbaum (2001: 131) “there is nothing more permanent than temporary workers”. One might add: even when these become redundant.

The experiences with the guest worker programmes, the dilemmas of controlling migration, and the economic crisis of the 1970s halted labour migration to Europe and caused a political “guest worker” trauma. Indeed, the last two decades of the twentieth century were characterised by a ‘policy inertia’ of labour migration (Pastore 2014: 389). However, other forms of migration, such as irregular migration and flows of asylum-seekers and refugees, gained relevance in the political arena (Ibid.: 389). Also academic interests moved its focus from the “nexus between migration and labour [...] to other ‘nexuses’, perceived as increasingly important, such as those between migration and security, development, or social cohesion” (Ibid.: 389). In addition, the significant reduction of labour migration is often equated with increased restrictiveness of migration policies for lower-skilled migrants (Messina 2007). However, De Haas, Natter and Vezzoli (2016) argue that although the number of restrictive migration policies has increased, the majority of them are still liberal migration policies (De Haas, Natter and Vezzoli 2016: 29). Be that as it may, as Beine et al. (2016) observe that, starting in the late 2000s, high-skilled migrant started to face less stringent labour migration policies than lower-skilled migrants (Beine et al. 2016: 845). Indeed, over time a global competition for the highly-skilled has evolved (Doomernik, Koslowski & Thränhardt 2009)

Notwithstanding the increased restrictiveness of labour migration policies, McLoughlin and Münz (2011) argued that although the guest-worker programmes ended in the 1970s, regulated temporary migration of third-country nationals continued in a less systemic way during the 1980s and 1990s (2011: 23). Pastore observes that throughout these two decades “the linkages between population movements and labour dynamics [remained] strong, although in less evident forms than in the era of [guest worker programmes]” (Pastore 2014: 389). When the demand for labour increased again in the early 2000s, many European Union [EU] member states introduced temporary labour migration programmes. The re-emergence of these temporary labour migration programmes was quite controversial as they showed similarities to the former guest worker programmes, which had failed to meet the policy objectives and as mentioned generated a considerable number of unforeseen consequences (Ruhs 2006: 7). However, Castles (2006) does find a critical difference between the former guest worker programmes and the new temporary labour migration programmes. He considers that the guest worker programmes of the 1960s were designed to attract lower-skilled labour migrants, while the current policies only target the highly-skilled migrants (Castles 2006: 28). Lower-skilled migrants are admitted in limited numbers and only “through temporary and seasonal labour programs” (Castles 2006: 28).

The proliferation of selective labour migration policies across the Western world, targeting only the highly-skilled, is often referred to as the ‘battle for the brains’ (Doomernik, Koslowski and Thränhardt 2009: 3). As part of this battle special visas and programs were introduced, such as the Dutch ‘Kennismigrantenregeling’, to entice “scientists, highly-skilled engineers, medical professionals, computer programmers, and information technology professionals from developing countries such as India and China” as well as the European “Blue Card” (Ibid: 3). Such searching for the brightest minds in less developed countries stimulated a debate in development literature whether this leads to a ‘brain drain’ or a ‘brain gain’ for the country of emigration (Lien and Wang 2005: 153). Docquier (2006) discusses the brain drain in relation to the loss of human capital in developing countries. However, De

Haas (2010) argues that the impact of a brain drain is only critical in a few impoverished countries (De Haas 2010: 250). Contrary to a brain drain, Mayr and Peri (2008) notices opportunities for a brain gain. They argue that return migration of highly-skilled workers might foster a brain gain (Mayr and Peri 2008: 2). McLoughlin and Münz (2011) suggest that the increased international human mobility in the form of return migration would stimulate 'brain circulation' and helps mitigating the effect of a 'brain drain' (2011: 24).

The mitigating effect on a 'brain drain' in developing countries due to the return migration of highly-skilled migrants stimulated discussions about circular migration as a potential solution of contemporary migration dilemmas (Vertovec 2007: 2). While former temporary labour migration programmes often resulted in permanent labour migration, the notion of circular migration as a means by which to avoid negative effects of such policies and to stimulate positive outcomes for all concerned gained traction among policy makers (Doomernik 2012). Since then circular migration is a heavily discussed subject, possibly not the least because there is no agreed upon definition. Wickramasekra (2011) notices that official institutions, such as the ILO and the UN, have no standard definition of circular migration (2011: 9). Castles and Ozkul (2014) concur and observe that different actors use different definitions (2014: 28). Triandafyllidou identifies circular migration as "migrants who engage in economic activity in either country but have their basis in the country of origin" (Triandafyllidou 2013: 213). While, Wickramasekra describes circular migration as "the phenomenon [...] of repeated migration experiences involving more than one emigration and permanent return" (2011: 9). In addition, the EU defines circular migration as "a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries" (EC 2007: 8). As this form of temporary labour migration allows migrants to go back and forth, it is argued to be a 'triple win' solution (Wickramasekra 2011: 1). Conceptualized as such, circular migration benefits the destination countries as the labour migrants fill the demand for labour; it benefits the country of origin as the migrant is likely to come back with increased 'human' and financial capital; and it benefits the migrant as they are allowed to go back and forth (Wickramasekra 2011: 1). For these reasons the EC perceives circular migration as a tool to help mitigate the 'brain drain' in emigration countries (EC 2007: 7). However, Vertovec (2007) finds that the 'triple win' outcome of circular migration is contested in academia (2007: 6) and Doomernik (2012) suggest such outcomes can only result if the needs of all stakeholders are served. Furthermore, Vertovec (2007: 6) assumes that circular migrants "remain stuck in low levels of employment" when part of regulated circular migration systems, which would make the "brain gain" part unlikely.

In a recent communication, the European Commission [EC] announced that labour immigration would help to address current and future demographic challenges in the EU (EC 2020). In this stance, the EC follows the NYD, which acknowledges that "migrants can make positive and profound contributions to economic and social development in their host societies" (UN NYD 2016). However, this is harder to achieve when migration policies fail to offer more pathways for the regular migration of lower-skilled migrants (Castles 2006: 28). Wickramasekra (2011: 87) notes that stimulating forms of circular migration is just one manner of achieving more pathways for labour migrants. A more comprehensive approach would address short- and long-term labour shortages and include regular labour admission programmes and seasonal worker programmes that give migrant workers the full panoply of rights (Ibid.: 87). Hence, "the foundation of any such programmes is respect, promotion and realisation of human and labour rights of migrant workers in line with international instruments" (Ibid: 87). This view is in line with the contents of the Global Compact on Migration [GCM], which recommends the

development of more channels for regular migration that reflect current demographic and labour market realities (Martin and Ruhs 2019: 80).

Furthermore, the GCM includes proposals towards the implementation of temporary, seasonal and circular labour mobility schemes and the introduction of special programmes for areas with labour shortages (Martin and Ruhs 2019: 80). Moreover, the Global Compact on Refugees [GCR] recommends "complementary pathways for admission to third countries" with more "labour mobility opportunities for refugees, including through the identification of refugees with skills that are needed in third countries" (Ibid.: 80). In spite of these forward-looking UN based initiatives Martin and Ruhs (2019: 81) find that the recommendations made in these Compacts "are unlikely to make significant impacts". This presumed lack of impact is partly due to the trade-offs in liberal democracies between the openness of its labour market towards migrants and the protection of migrant rights as discussed above. Moreover, Boswell argues that for a liberal government to retain legitimacy and capacity to govern it needs to provide its subjects international and internal security (Boswell 2007: 89); the liberal government needs to provide an environment that stimulates the accumulation of wealth (Ibid.: 89); its "political and social structures and government policies [need] to promote a just pattern of distribution" (Ibid.: 90); and finally it needs to preserve institutional legitimacy (Ibid.: 91). According to Boswell, migration policies undermine these four conditions of legitimacy and this explains why migration policies are often contested (Ibid.: 91). In fact, liberal governments pursue seemingly contradictory migration policies that leads to "a gap between proclaimed, restrictive migration policy, and the de facto toleration or covert implementation of more liberal measures" (Ibid.: 93). One might suggest the popularity of the "circular migration" concept and its unclear meaning fit into the need for liberal government to balance these four political necessities by introducing or copying new labels for contentious policies. Boswells observations furthermore add explanatory power to the policy gap hypotheses formulated by Hollifield, Martin and Orrenius (2014).

Returning to Pastore, he suggests that not only labour migration policies in the strict sense play a role in labour migration governance (2014: 387). Pastore calls 'indirect' forms of labour migration policies: 'functional equivalents', which contain "all policies giving access to domestic labour markets to immigrants admitted for reasons other than work" (Ibid.: 401). This includes immigrants admitted via family reunification, humanitarian migrants such as asylum-seekers, international students, and immigrants with dual citizenship (Ibid.: 401 – 402). Although these types of immigrants are not admitted to the labour market based on labour migration policies, they often receive (limited) access to the labour market. The awareness that these groups of immigrants could play a role on the domestic labour markets has been stimulated by the EU since the early 2000s (Ibid.: 402). In addition, Pastore argues that a last set of policies, mainly concerning employment and education, affect migration governance (Ibid: 387). These policies are called 'functional alternatives' and "are explicitly meant to reduce the dependency on immigrant labour by increasing the presence of native workers in given employment sectors" (Ibid.: 387). In brief, Pastore stresses that migration governance ought to address complementary flows and includes diverse policy domains and, in other words, it is unproductive to view labour migration as an unconnected policy issue. The implementation of often-contradictory policies occur because European states organized these sets of policies individually (Ibid.: 387). This adds to Boswell's argument that liberal governments "may be claiming to be pursuing protectionist policies, in practice they allow for continued immigration through low-profile regulations" (Boswell 2007: 93). This is, for example, clearly visible in Germany where the Syrian refugees of the past few years have a major impact on the labour market, although they were neither recruited nor necessarily

the (most) likely candidates for certain vacancies. Moreover, rejected asylum seekers may find access to the German labour market. The Dutch government explicitly excludes the latter to be part of the national migrant labour supply [MLS] while it pursues different political priorities aimed at making it unattractive to claim asylum in the country in general and the immigration of unskilled 3rd country nationals undesirable.

Considering the ‘liberal paradox’; the notion that labour migration policies are contested because they let states fail to comply with the four conditions of legitimacy; and the notion that labour migration governance contains much more than just labour migration policies, it is interesting to see how circular migration could improve migration governance. Circular migration could comply with all four conditions Bosswell (2007) identifies (security, fairness, accumulation of wealth and institutional legitimacy) making it a suitable migration policy tool. Although we concur with Pastore (2014) that a holistic view of MLS and demand takes into account labour migration policies as such, functional equivalents and functional alternatives (as well as intra EU mobility), for the purpose of this study we focus on the former two (labour migration policy and its functional equivalents). This means we study circular migration programmes and we look at its functional equivalents.

Some governments, like Germany’s, already acknowledge the importance of new as well as innovative labour migration policies, while others, such as the Dutch, are reluctant to review their current principal focus on labour migration policies as such. However, due to increasing shortages of labour on the EU labour markets (Darvas and Goncalves Raposo 2018), especially in the agricultural sector (Schuh et al. 2019:90) the need for revised labour migration policies may manifest itself, notably in times of limited intra-EU mobility caused by the Covid-19 pandemic. This is also stressed by the increasing dependency on labour migrants in specific sectors. Currently, for example the Dutch horticultural sector relies on East European seasonal labour immigrants (SEO 2019).andThe Spanish the agricultural sector attracts seasonal workers from EU countries, e.g. Poland and Romania, as well as from outside the EU, e.g. Morocco (de Castro, Reigada and Gadea 2020: 244). The same applies for Poland (Fihel, Kaczmarczyk and Stefańska 2012). Seasonal workers, in contrast to other temporary workers, “are persons employed in a State other than their own for only part of a year because the work they perform depends on seasonal conditions” (Bilborrow et al. 1997: 37).

The increased dependency in the agricultural sector on labour migrants in various European states in combination with the sometimes seemingly contradictory labour migration policies and reluctance to receive asylum seekers and refugees make it interesting to see whether circular migration programmes could improve migration governance. Current policy aims regarding labour migration in the Netherlands, Poland and Spain focus on 1) the prevention of permanent labour migration, with the exception of some high-skilled immigrants, and 2) the stimulation of temporary labour migration for lower and medium skilled immigrants in specific sectors, such as the agricultural sector. Therefore, we posed the following question: *to what extent can circular migration policies contribute to improved or alternatives for governance of migration in Europe?*

In chapter 2 we discuss the methodology and definitions used in this research. This chapter includes the case selection, which is based on the geographical spread of the countries resulting in different features of migrant labour supply in the countries, and on the different needs on their labour markets. Furthermore, we discuss the impact of the current Covid-19 crisis that affected our fieldwork due to restricted and limited mobility to travel. Chapter 3 contains a brief overview of the historical context of labour migration in the selected countries and their current labour migration policies..

2. Methodology and definitions

As discussed in the introduction, this work package aims to establish if and how temporary and circular labour migration schemes could help disentangle mixed flows of migration. We understand mixed flows of migration as “a movement in which a number of people are travelling together, generally in an irregular manner, using the same routes and means of transport, but for different reasons” (IOM 2019: 141 – 142). Disentangling flows of mixed migrants could be vital for good migration governance as migrants are likely to look for easiest or only available ‘gate of entry’, and adopt a label which not particularly closely fits their real motives for moving (Doomernik, Penninx and Van Amersfoort 1997: 61). Hence, people travelling as part of mixed flows “have varying needs and profiles and may include asylum seekers, refugees, trafficked persons, unaccompanied/separated children, and migrants in an irregular situation” (IOM 2019: 141 – 142). The lack of regular ‘gates of entries’ for labour migration in the EU member states may force migrants to apply for asylum or remain undocumented. Obviously, these are not optimal outcomes from migration regulatory measures. Parallel to the trend of mixed flows of migration several studies observed increased labour shortages on EU labour markets (OECD 2019b; SEO 2019; ACVZ 2018). These shortages stimulate the demand for temporary low skilled labour migrants. According to the IOM, a labour migrant is a “person who is to be engaged, is engaged or has been engaged in a remunerated activity in a State of which he or she is not a national” (IOM 2019: 136). In addition, a temporary labour migrant is a person who migrates “for a specific motivation and purpose with the intention to return to the country of origin or habitual residence after a limited period of time or to undertake an onward movement” (IOM 2019: 213). We discussed in the introduction that Pastore (2014) emphasises that migration governance focuses on complementary flows and includes a variety of policy domains. In other words, it is unwise to consider labour migration as a detached policy issue. This also complies with ADMIGOV’s frame of migration governance, which according to Pasetti, targets migration governance as “the phenomenon of international migration as a whole” (Pasetti 2019: 11). In addition, it seems that circular migration pursues to comply with Boswell’s identified conditions and is able to connect labour migration with other migration policy issues. Returning to the aim of our work package, circular migration could be a convenient policy tool to make it attractive for migrants, who currently claim for asylum or work illegally, to apply for a work permit instead. And, thus offering more opportunities to deliver protection to refugees.

To focus our study on circular labour migration schemes we decided to select four cases. These cases are Germany, the Netherlands, Poland, and Spain. We selected these cases based on their geographical spread throughout the EU, their migratory experiences and labour market features. As discussed further down this is key to our comparison. Furthermore, all four deal with different groups and numbers of labour migrants. Germany and the Netherlands mainly deal with seasonal workers from Poland, Romania and Bulgaria. In addition, in Poland Ukrainian nationals are the predominant group of labour migrants. They usually migrate on a temporary basis, often with circular features (Górny 2017: 1). The prevalence of Ukrainian nationals “increased to such a high volume [...] that one can talk about ‘Ukrainisation’ of migration to Poland nowadays (Górny and Kaczmarczyk 2018: 180). Spain’s largest group of labour migrants are Moroccan females who work as seasonal labourers in its agricultural sector. Crucial distinction between the North Western European countries, Germany and the Netherlands, and the Eastern European country (Poland) and the Southern European country (Spain) is that the latter mainly deal with third country nationals, while the former mostly deal with intra-EU mobility. Second, the needs of the labour markets in Germany, the Netherlands, Poland, and

Spain differ. In all cases the policy focus was on attracting high-skilled workers, but the labour market realities did not match with this aim and fuelled the discussion on the need for lower and medium-skilled workers. Therefore, we observed that, e.g. Germany designed and implemented new labour migration policy that offers opportunities for regular migration for non-high skilled labour migrants. While the Netherlands, continues to target just high-skilled labour migrants and retains strong restrictions for lower and medium skilled labour migrants. Finally, the diversity of our cases also enhances the external validity of the research (Bryman 2012: 54).

An integral part of our qualitative research on circular and other temporary labour migration schemes in Germany, the Netherlands, Poland, and Spain is the interviewing of relevant stakeholders. We identified employers, employers' organisations, trade unions, and designated government authorities as relevant stakeholders in the field of migration governance. However, our research for Work Package 3 on labour migration was abruptly disrupted by the Covid-19 health crisis and affected the feasibility of fieldwork due to mobility restrictions between and within countries. Eventually, the Covid-19 crisis, affected the scope of our research. In the first months of restricted mobility we observed the impact on seasonal labour migration, mainly within the agricultural sector. We intend to have semi-structured interviews as this method of interviewing ensures "that respondents remain close to the topic, but often leaves enough space for the interviewee to open up the discussion and introduce connected topics" (Fedyuk and Zentai 2018: 173). Questions for stakeholders might include:

What is the impact of the Covid-19 health crisis in respect to migrant labour supply in the near future? Does circular migration have a role of significance in this future? Is that role different than before? Are other migrants able to fill any shortfalls such as asylum-seekers, refugees, and maybe others as well? What will this imply for sectors that depend migrant labour supply and agriculture in particular?

The consequences of the Covid-19 crisis are already observed in the seasonal labour migration in the agricultural sector throughout Europe. Due to border restrictions and lockdowns many seasonal workers were forced to stay at home and those already present went home fearing the crisis' consequences. This could not have been more unfortunate as these mobility restrictions occurred during peak food-harvesting. In Spain, for example, an unfulfilled need for 80,000 workers to harvest the crops arose (Ministerie van Landbouw, Natuur en Voedselkwaliteit 2020). Also the German, Dutch and Polish agricultural sectors heavily rely on seasonal labour migrants. Statistics Netherlands [CBS] argued that in Dutch agriculture normally 60 per cent of the work is done by seasonal workers (CBS 2020).

3. Existing labour immigration schemes in Germany, the Netherlands, Poland, and Spain

In the European Union overall nor in most of its member states is migration governance resulting from a comprehensive approach in which labour migration plays a central part. Oftentimes migration is framed as a problem and only rarely as a solution. The latter frame is reserved for the highly-skilled and the opening up more channels for low- and medium-skilled labour migrants is fraught with political risk, however economically beneficial it may be (Wickramasekera 2011; Martin and Ruhs 2019). The

lack of more pathways for skilled labour migrants is partially caused by "the absence of an international or European legal framework for the recognition of non-EU diplomas" (SEO 2019: 97). In addition, policy makers face difficulties explaining to their constituents that labour migration might be complementary to the existing labour force and not a competition (Doomernik 2012: 32). Hence, "the more strongly a government is supposed to be acting in a regulatory manner on the labour market, the harder it becomes to admit less-educated migrants" (Ibid.). It are economic pressures in advanced economies "that push for openness to migration while political, legal and security concerns argue for greater control" (Hollifield, Martin and Orrenius 2014: 3). Besides, even if the migrant workers are not illegal aliens "they are often unwanted as a permanent component of the population for non-economic reasons" (Hollifield, Martin and Orrenius 2014: 5). However, as research demonstrates there is a growing demand not only for unskilled but also for skilled labour in the EU member states which, given the ageing population, is likely to be challenging to fill with the EU's existing labour force (EMN 2015: 27; SEO 2019; ABU 2018). For example, the Organisation for Economic Cooperation and Development [OECD] (2019b) noted that Poland's manufacturing sector deals with increased labour shortages (2019b: 194) and Górný et al. (2016) found data that suggest that the agricultural sector is increasingly in need for seasonal foreign labour. Therefore, it is relevant to make an inventory of existing labour immigration schemes in the four selected EU member states.

The next sub-sections are structured as followed: each case is introduced by a short discussion of the historical country context and is followed by a brief overview of current labour migration schemes.

3.1 Germany

3.1.1 Country context

Shortly after the Second World War, Germany faced both internal immigration from the eastern part of the country to the western region and from ethnic Germans from abroad. These lived in Eastern European countries and fled as refugees (Liebig 2004: 158). Nevertheless, a decade later additional workers had to be found outside of Germany. Bilateral recruitment agreements were signed with Italy (1955), Greece and Spain (1960), Turkey (1961), Morocco (1963), Portugal (1964), Tunisia (1965) and the former Yugoslavia (1968) (Liebig 2004: 158; Werner 2001). These schemes aimed to attract temporary "guest workers". However, their expected return when the recession of 1973 occurred and the needs for their labour went down did not happen, or at least in large numbers. Instead, the economic downturn and halted labour migration created an incentive for family migration (Liebig 2004: 158). Another side-effect was that asylum migration gradually increased. Asylum became, for many foreigners, the only option to migrate regularly to Germany. Hence, this event resulted both in less legal pathways for regular migration to Germany and in the mixing of labour migrants with asylum-seekers. The only channel destined for regular labour migration to Germany was for EU-nationals "and some other countries from which massive immigration was not a concern" (Liebig 2004: 159), such as the United States.

The first decade of the new millennium revolved around the new Immigration Act. This act was designed from a security perspective and focused on better control of immigration (Schneider and Parusel 2011: 20). Also, the policy was supposed to adjust labour migration to the demands of the labour market and the German economy (Ibid.: 20). The policy focused, in particular, on the demand

for highly-skilled labour. Therefore, in the early 2000s, Germany implemented the Green Card program, which targeted high-skilled migrants in the information and communication technology [ICT] sector (Liebig 2004: 159). Germany's government observed that attracting these migrants was vital for the economy in the near future. The labour shortages in this sector halted the development already in 1999 due to the lack of labour (Ibid.: 159). Although the Green Card program was not entirely successful, it did create awareness in Germany that labour immigration could be desirable to fill labour shortages. Therefore, the Minister of the Interior established the Independent Commission on Migration to Germany, "its task was to develop a proposal for an integrated framework for all categories of migration to Germany" (Liebig 2004: 160). The German government became aware of the different needs of the labour market. However, its focus was still on highly-skilled migrants.

In 2006, the German Minister of the Interior, Wolfgang Schäuble, and his French colleague Nicolas Sarkozy presented their vision on migration and how temporary or circular labour immigration could play a role in sustainable migration management (Schneider and Parusel 2011: 17). Both Ministers of the Interior "emphasised the function of circular migration as a "migration and development policy instrument" for the "admission of working migrants for limited periods" or the "granting of temporary education visas to selected migrants" (Ibid.: 17). More recently, Germany contributed to Mobility Partnerships that are part of the wider EU Migration Partnership Framework [MPF]. Known as compacts, Germany, targeted "five priority countries – Niger, Nigeria, Senegal, Mali, and Ethiopia – to better manage migration, increase returns and combat irregular migration" (SVR 2019a: 3). Germany's contribution to these compacts, so far, only resulted "in projects [...] with Moldova, Georgia and Morocco" (SVR 2019a: 6). Although most circular migration programs focus on the care and nursing sectors, the "German-Moroccan Partnership for the Training and Recruitment of skilled workers provides vocational training to approximately 100 young Moroccans in hotels and restaurants in Germany" (SVR 2019b: 44). However, in terms of circular migration for low- and medium-skilled workers Germany launched its Western Balkan Regulation [WBR] in 2015 (SVR 2019b: 29) and the new Skilled Immigration Act in 2020 (Bundesregierung 2020). These last two labour immigration schemes are discussed and elaborated in the next subparagraph.

3.1.2 Labour immigration schemes in Germany

Germany is, nowadays, in need of specific labour that lacks in the domestic labour market. While Germany initially started to focus on highly skilled migrants, it gradually shifted its focus to lower and medium-skilled professions too. Hence, as a result of the growing interest, three major policy adjustments regarding labour migration were initiated. In the following sections, we briefly elaborate on the WBR, the *Duldung*, the so-called tolerated status, and the Skilled Immigration Act. These three policies restructured Germany's immigration policies in a way that it is intended to be more flexible and complies with the needs of the domestic labour market. In addition, these policies offer more legal pathways for regular migration, and is capable to untangle labour migrants from asylum-seekers.

Western Balkan Regulation (2015)

In 2015, the major influx of migrants seeking asylum in the EU and especially in Germany led to rising anti-immigrant sentiments and the feeling of lack of control. Since the guest worker programs and with

refugees fleeing to Germany from the Balkan, Germany has been a destination country for many from the Western Balkan (Bither and Ziebarth 2018: 10). In the early 2010s, the number of migrants from the Western Balkan spiked again to 120,882 in 2015 (Bither and Ziebarth 2018: 10). In this context, Germany launched the WBR. This regulation intends to reduce the incentives for migrants from the Western Balkan countries to seek asylum in Germany. At the same time, it created new opportunities to enter Germany as labour migrant (Brücker et al. 2020: 20; SVR 2019b: 30). Nationals from the six Western Balkan countries are offered employment opportunities in Germany. This scheme runs between January 2016 and December 2020 (Brücker et al. 2020: 20). Beneficiaries receive a temporary work and residence permit if they have a binding job offer, and obtain approval of the Federal Employment Agency [BA], regardless of their qualifications (Brücker et al. 2020: 20). Hence, this makes labour migration a serious alternative. In other words, the WBR created more pathways for regular migration, it is a system based on temporality and labour demands, and it intends to separate labour migrants and asylum-seekers in the flows of mixed migrants.

Nevertheless, the WBR and especially its waiver of qualification requirements is by no means uncontroversial (Brücker et al. 2020: 20). The WBR received immediate criticism by sceptical policymakers and civil servants working in the domestic policy and security policy fields (SVR 2019b: 29). They argued that with the WBR Germany opened up "a migration channel without skill requirements" (SVR 2019b:29). However, the WBR offered the possibility to separate labour migrants and asylum-seekers from the Western Balkan countries. Figures of the IAB demonstrate that, after the implementation of the WBR, the numbers of asylum applications dropped. Table 1 displays the trend of declining asylum applications from the Western Balkan region.

Moreover, sceptics of the WBR argued at the time that unrestricted access for non-qualified labourers would flood the German labour market. However, in the 2018 annual report on migration and the labour market, the Federal Office for Migration and Refugees [BAMF] concluded that "persons receiving a residence permit [...] to take up employment which does not require a vocational qualification accounted for the second-highest number of residence titles issued" (Graf 2019:18). Yet, the number of persons that received a temporary residence permit in 2018 based on the WBR decreased compared to the previous year (Graf 2019: 18). The numbers indicate a "decline in the use of the simplified legal labour migration channel for nationals of the Western Balkan countries directly on arrival in Germany" (Graf 2019: 18). Hence, while table 1 demonstrates that the WBR cause a decline in asylum applications from these countries, the statistics that the BAMF report also demonstrates that the appetite of non-qualified labourers from the Western Balkan to enter Germany gradually became less.

As much as the WBR has been a welcome adjustment for many German employers, it has been helpful too in "linking labour market access to restrictions in the asylum system" (SVR 2019b: 42). According to the SVR's Research unit, there are "two indicators [that] speak in favour of the Western Balkan Regulation" (SVR 2019b: 43). The first is that "the regulation has contributed to a considerable increase in labour migration of low- to medium-skilled workers" (SVR 2019b: 43). This increase could be seen as an advantage because (1) Germany requires lower and medium skilled-labourers; and (2) the entry of migrants for labour instead of asylum relieved at least a little pressure on the country's asylum system. The second advantage is that "traditional immigration avenues for nations of the six states [included] have remained stable even after the introduction of the regulation" (SVR 2019b: 43). The

last advantage suggests that the WBR is mainly used by those who earlier did not have access to legal immigration channels (SVR 2019b: 43).

Table 1: Asylum applications and applications for asylum by nationals of the Western Balkan countries

Year	Asylum applications		of which: asylum applications		Asylum applications as a percentage of all asylum applications
	Total	Monthly average	Total	Monthly average	
2014	61.998	5.167	43.600	3.633	70,3%
2015	140.950	11.746	118.247	9.854	83,9%
2016	42.799	3.567	31.528	2.628	73,3%
1/2017 9/2017	– 15.369	1.708	8.224	914	53,5%

(IAB 2017)

The experiences with the WBR fostered the development of new labour migration policies. Therefore, the German parliament adopted the Skilled Immigration Act that came into force in March 2020.

The Duldung

Next to the WBR, there is one other notable tool by which the German government achieves the unmixing of asylum applicants and workers: the so-called *Duldung* (tolerated status) concerning labour market integration. Failed asylum seekers who cannot be deported, under certain conditions, are allowed to take up employment or join a training scheme. The latter might qualify them for and entitle them to employment. Since the 1st of January 2020, the Act on Suspending Deportation for Persons in Vocational Training or Employment came into force (Bundesregierung 2019), which practically formalised the *Duldung* into federal legislation. Yet its implementation knows a considerable level of regional and local discretion, lying with the *Ausländerbehörde*. Whereas the adjudication of an asylum request comes under the responsibility of the BAMF what follows upon its ruling lies with these decentral agents (Ibid.).

Already before the conclusion of the asylum adjudication, asylum seekers can be employed. Next to other benefits, this may help them stay in case the asylum request is rejected but their departure cannot materialize. The *Duldung* foresees that "based on the [new] act, foreigners whose deportation has been temporarily suspended can [...] be given reliable residence status in the form of a long-term suspension of deportation if they are in vocational training or if they enter employment" (Bundesregierung 2019). Hence, following the suspension of deportation these rejected asylum-seekers "can obtain a temporary residence permit if they meet certain conditions" (Bundesregierung 2019). These conditions boil down to being sufficiently integrated, the measure of which again lies with the *Ausländerbehörde*. Mid-April 2020 203,540 migrants were beneficiaries of a *Duldung* (Statistisches Bundesamt 2020).

Skilled Immigration Act (2020)

The new Skilled Immigration Act is accessible for all skilled migrants that want to work in Germany. However, in contrast to the WBR, the new Skilled Immigration Act explicitly focuses on skilled migrants. Before this act "third-country nationals [could] access vocational training if approved by the Federal Employment Agency" (SVR 2019b: 26). Besides, they have to pass a labour market test to make sure that there are no local labourers available (SVR 2019b: 26). The former requirements posed significant obstacles both for employers to recruit and potential labour migrants to migrate (SVR 2019b: 26). With the new Skilled Immigration Act job- and skill specific requirements are vital to get access to the German labour market (SVR 2019b: 34). According to the federal government, the new law offers more possibilities for skilled migrants to work in Germany (Bundesregierung 2020). Besides, the new law states that there is no need for a labour market test (Ibid.). Hence, providing the German labour market with the skills it lacks, the Skilled Immigration Act creates more pathways for regular migration for all third-country nationals.

3.2 The Netherlands

3.2.1 Country context

Simultaneously with neighbouring countries, the Netherlands started to recruit labourers from abroad. First from Southern European countries, later from Morocco and Turkey (Penninx et al. 1994: 10). However, in contrast to the German guest worker program, the Netherlands did not retain large Italian or Spanish communities after the programmes ended (Van Meeteren et al. 2013: 116). Nonetheless, the Netherlands too had to cope with Turkish and Moroccan guest workers who were supposed to leave when the demand for labour decreased. Instead, the immigration of Turkish and Moroccan nationals continued after the guest worker programmes, either "individually (partly illegal) or through formal family reunification" (Van Metermen et al. 2013: 116). In contrast to the German case, the Netherlands also had to deal with immigrants coming from former colonies. In the late 1970s and early 1980s, after the independence of Surinam, the Netherlands witnessed, what is called the "third wave of massive immigration" (Van Meeteren et al. 2013: 116). Around 300,000 persons from Surinam migrated, in a period of a decade, to the Netherlands (Ibid.: 116). Also, in the 1980s, migrants from the overseas Dutch Antilles started to migrate as well (Van Metermen et al. 2013: 116). Although the Netherlands experienced four waves of mass immigration and "had a positive migration surplus since the early 1960s, successive governments denied officially that the Netherlands was a country of immigration" (Van Metermen et al. 2013: 114). Although the Labour of Foreign Workers Act, which was valid from 1979 to 1995 and was replaced by the Aliens Labour Act from 1995 onwards (Bruquetas-Callejo et al. 2007: 6), "it was not until 1998 that the Dutch government officially acknowledged that [...it...] became an immigration country (Van Meeteren et al. 2013: 114). Until then "immigration [was considered] as a temporary phenomenon" (Ibid.: 114).

The fear of migration policies being too encouraging is deeply rooted due to the unexpected outcomes of the guest worker programmes and the massive immigration from the former colonies (Castles 2014: 207). The guest workers prolonged presence made clear that the intended period of stay could change over time. It also became evident that temporary migration and less restricted access are difficult to

realise policy goals. Hence, in the late 1990s, when the Dutch government started to recognise that immigration was there to stay and heated debates about mass immigration and the multicultural society rose, it was decided that the Netherlands should become even more restrictive (Doomernik 2012: 26). The restrictive stance meant that the Dutch government sharpened its legislation to restrict access for lower skilled third country nationals, while attract highly skilled immigrants (Bruquetas-Callejo et al. 2007: 6). One way the Dutch government is trying to achieve this is by steering labour migration by concluding covenants with sectors that have a massive demand for labourers (De Lange et al. 2003: 187). This policy trend assumes that the Dutch labour market has a dire need for highly skilled immigrants but has no appetite for lower and medium-skilled immigrants in as far as they would come from 3rd countries.

3.2.2 Labour immigration schemes in The Netherlands

Since the late 1990s and early 2000s, the admission of labour migrants from third countries takes place based on the Aliens Labour Act [Wav] and Aliens Act [Vw] from 2000 (Hitzert and Van Wijk 2019: 35) in the context of the *Wet Modern Migratiebeleid* (2013). At the end of the 2000s, the Dutch government announced the introduction of a pilot project to test the feasibility of circular migration programmes (Doomernik 2012: 29). This pilot was carried out by a Dutch NGO, called the HIT Foundation, in cooperation with the government. However, the 'Blue Bird' programme, as the pilot was called, has not been pursued further, due to a lack of political will and flexibility of its stakeholders (Siegel and Van der Vorst 2012: 5). Instead, the Netherlands participates in most of the EU-led Mobility Partnerships between EU countries and non-EU countries (OECD 2016: 126). Concerning these Mobility Partnerships, the Netherlands signed agreements with Cape Verde, Georgia, Azerbaijan, Armenia and Morocco (OECD 2016: 126).

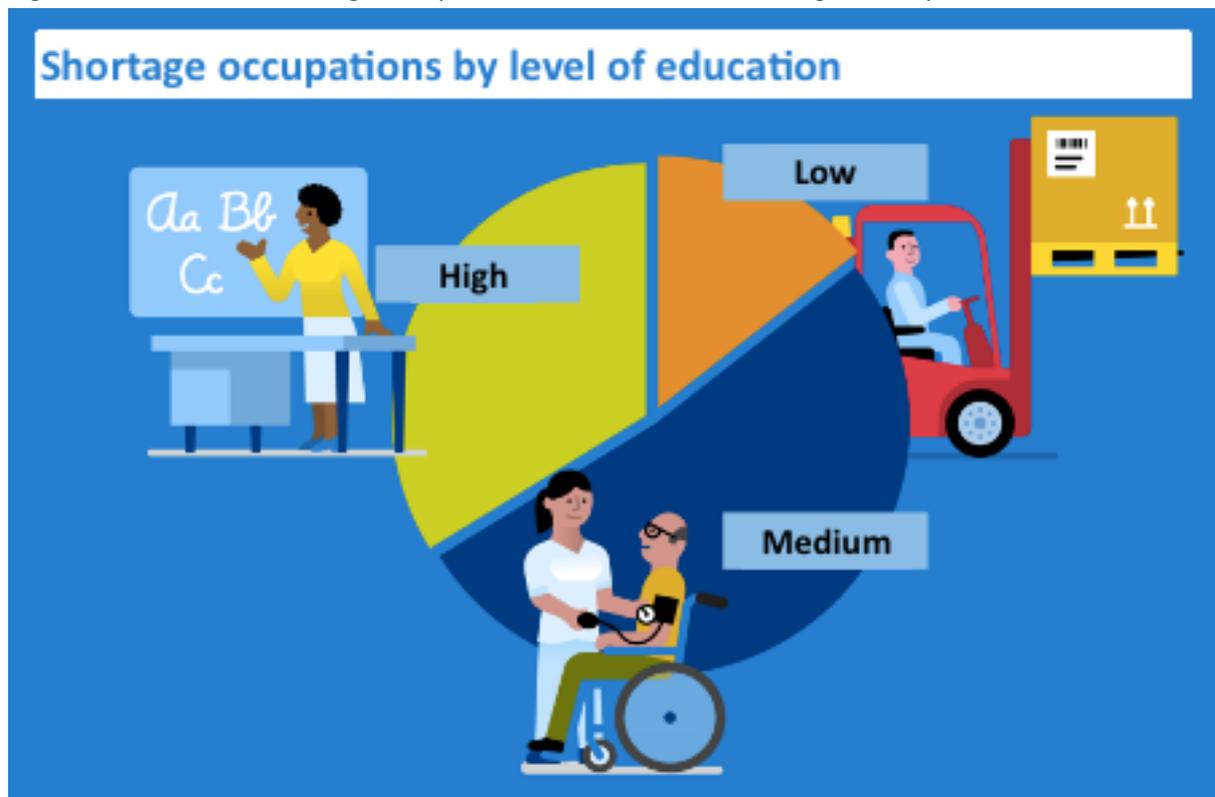
For labour migrants aspiring to work in the Netherlands, there are two legal ways. First, there is the Wav, which dictates who is eligible for a work and residence permit in the Netherlands. Second, there is an exemption from the Wav for high-skilled migrants. This '*Kennismigrantenregeling*', stipulates the criteria these highly-skilled migrants have to meet, either the income level or employment in very specific (academic) positions. Hence, most labour migration to the Netherlands from outside the EU comes through these two demand-driven programmes (OECD 2016: 114). In the following subsections, we will discuss on the labour policies for low- and medium-skilled migrants according to the Wav, and we will further expand on the labour policy for highly-skilled migrants.

Wav (2004) and the Modern Migration Policy Act [MoMi] (2013)

The Wav grants a third country national with a job offer access to the Dutch labour market, including less well-paid jobs (OECD 2016: 116). However, by means of a labour market test it has to be established that a suitable candidate from the EU is not available (OECD 2016: 116). This criterion is difficult for employers to meet as a result of which relatively few workers from 3rd countries are allowed onto the Dutch labour market. In 2012, the Dutch government felt the necessity to update and modernise its migration policies. The MoMi intends to be selective and restrictive. According to Lodder, the MoMi intends "to create a fast, effective and manageable migration system that is inviting for the migrants for whom there is a need in the Netherlands, and that is restrictive to other (regular) migrants" (Lodder 2019: foreword). In practice, this means that the current legislation is selective and in favour of highly-skilled migrants and restrictive for other labour migrants, even though there is a

demand for skilled, not necessarily high-skilled, labour. Figure 1 supports this demand for skilled labour and stresses the need for low and medium skilled labour based on the annual shortage occupations

Figure 1: Overview of shortage occupations in the Netherlands categorised by skill level



(UWV 2019: 1; own translation)

Figure 1 indicates that there could be a mismatch between the demands of the Dutch labour market and the current migration policies. Germany, in contrast, actively targets labour market shortages regardless of the educational attainment of the migrants. The German government envisions with this that migration policy should serve the German economic interest. It is therefore not surprising that the Dutch Advisory Committee on Migration Affairs [ACVZ] recommends the Dutch government to reconsider its migration policies to become more open for skilled labour, like Germany, regardless of educational attainment (ACVZ 2018: 5).

Besides, in recent research by the ACVZ and the Foundation for Economic Research [SEO] it is concluded that the current legislation fails to facilitate labour market demands (ACVZ 2019: 3; SEO 2019: 4). Both reports argue that the continued demand for skilled workers combined with few and very restrictive policies for regular migration stimulates flows of mixed migration. Thus, while these policies intend to be selective and restrictive, the unintended consequences might be that they stimulate migrants to file for asylum and enter the Dutch asylum procedure.

Moreover, the situation above also "includes applicants in highly demanded occupations or with scarce skills, as long as their salaries are not sufficiently high to give them access to the knowledge migrant scheme" (OECD 2016: 127). Although the designated government institution, the UWV, annually publishes a list with shortage occupations, the required high salary makes employment for low- and medium-skilled migrants very difficult. Current migration legislation requires 3rd country nationals, regardless of their qualifications, to file for a residence permit if they want to stay longer than 90 days

in the Netherlands (OECD 2019a: 112). However, as discussed earlier in this subsection, the Wav only allows a residence permit when a 3rd country national has a job offer, and the employer has met the requirements of the labour market test. As a consequence, short period temporary labour migration is, therefore, likely to remain the main pathway for low and medium skilled labour migrants to enter the Netherlands (OECD 2016: 124).

Highly skilled migrant scheme (2005)

In contrast to regular labour migration, attracting highly skilled immigrants is perceived as desired migration (Lodder 2019: 34). To keep the Dutch economy competitive and stimulate the knowledge economy (OECD 2016: 114), the Dutch government decided in 2004 that the Netherlands needed a particular labour immigration scheme to attract highly-skilled immigrants and immigrants with scarce skills. The Highly Skilled Migrants Scheme offers a quick and transparent procedure for obtaining a residence permit (Berkhout et al. 2015: 4). Due to the scheme's requirements of the highly-skilled migrants are granted a work and residence permit when they have a job offer that meets the minimum income threshold (Berkhout et al. 2015: 4-5). It aims at quality instead of the quantity of highly-skilled immigrants.

In short: both the Wav and the Highly skilled migrant scheme offer opportunities for temporary labour migration; however, in the case of the Wav that mainly stipulates the opportunities for low and medium-skilled migrants, the opportunities are limited. While in the case of the Highly skilled migrant scheme, temporary labour migration is possible if the employer complies with the salary threshold.

3.3 Poland

3.3.1 Country context

Contrary to the German and Dutch case, Poland has been a country of emigration for most of the twentieth century. Only in recent decades the inflow of foreigners to Poland increased and gradually alters Poland to become a New Immigrant Destination [NID] (Duszczuk and Matuszczyk 2018: 53; Górny and Kaczmarczyk 2018). Although it is evident that Poland currently is a NID, the country is still a net-emigration country with a brief history of immigration (Górny and Kaczmarczyk 2018: 177). It is thus simultaneously a country of immigration and emigration (Kindler et al. 2016: 9).

However, this has not always been the case. For many years migration to Poland was practically non-existent, as the communist regime kept the borders closed (Klaus 2020: 75). Scarce immigration has lasted for almost the entire twentieth century (Fihel et al. 2008: 1). This trend began to shift during the "detente in international relations" (Fihel et al. 2008: 1). Characteristic features of the 1970s and 1980s in Poland was the gradually increased, but still limited, level of migration. These newly acquired freedoms used Polish nationals to travel internationally. Some of these Polish travellers, however, used the tourism channel to be involved in a specific kind of circular labour migration (Fihel et al. 2008: 1). The primary reasons for Poles to migrate were economic and political (Klaus 2020: 75). The critical factor that made people leave Poland were non-competitive salaries comparing to salaries in other (former) EU member states such as the United Kingdom [UK] and Germany (European Commission 2018: 306). Since 1989, economic and societal transformations changed the labour market in Poland.

The country witnessed a vast increase of trans-border mobility and emigration (Kindler et al. 2016: 9). The accession to the European Union further stimulated trans-border mobility (Kindler et al. 2016: 10). According to the World Migration report (2020), 4.4 million Polish nationals live in another European country (IOM 2020: 87). Kindler et al. (2016) noted that during the 2000s the emigration of Poles remained stable until 2009, this was mainly a reaction to the financial crisis and increased “unfavourable economic conditions Europe-wide” (Kindler et al. 2016: 10).

Since Poland’s accession into the EU, the Polish labour market became more attractive (Duszczyk and Matuszczyk 2017: 57). This has particularly been the case for Ukrainian nationals. The IOM (2020) observed that while immigration is perceived negatively in Poland, at the same time, Poland has been attracting Ukrainian nationals to address domestic labour shortages (2020: 93). Since 2013, when the political turmoil between Russia and Ukraine began and the Ukrainian economy plummeted, migration from Ukraine to Poland increased significantly (Górny and Kaczmarczyk 2018: 180). To illustrate the dominance of Ukrainian nationals in immigration numbers in Poland, out of the 660,000 residence permits granted to foreigners in 2017 more than 85 per cent was granted to Ukrainians (IOM 2020: 93). The main sector of employment for Ukrainian nationals in Poland are the agricultural, construction and domestic services sectors (Górny and Kaczmarczyk 2018: 180). To attract more labour migrants that could fill the growing labour shortages in the agricultural sector, Poland simplified the admission procedure for foreigners that want to work in the country. This simplified procedure ensures that labour migrants can obtain a visa with the right to work in Poland and spend a total of six months within one year in Poland (Górny and Kaczmarczyk 2018: 179). The simplified procedure proved to be the main pathway for labour migrants in agriculture (Górny and Kaczmarczyk 2018: 180). Hence, according to Górny and Kaczmarczyk (2018) current migration to Poland is characterized by the overrepresentation of labour migrants from former Soviet countries, Ukrainian nationals in particular, and the predominance of temporary mobility (Górny and Kaczmarczyk 2018: 179).

In the following subsection we briefly discuss the labour immigration schemes in Poland.

3.3.2 Labour immigration schemes in Poland

The principle laws that regulate labour immigration in Poland are the Act on Promotion of Employment and Labour Market Institutions, and the Act on Foreigners. According to Górny (2017) a distinct feature of immigration in the Central and Eastern European [CEE] region is the predominance of temporary mobility (Górny 2017: 1). In Poland, Ukrainians usually migrate on a temporary basis, often with circular features, that often develops in long-term migration patterns (Górny 2017: 1). As discussed, in the aforementioned sub-section, when Poland joined the EU and entered the EU’s internal free market migration increased. In addition, Polish legislation had to comply with EU regulations.

Act on promotion of employment and labour market institutions (2004) and the amendment (2018)

The Act on promotion of employment and labour market institutions from 2004 and amended in 2018 regulates employment on the Polish labour market. As Duszczyk and Matuszczyk (2017) and Fihel et al. (2012) observe, Poland’s labour market had to cope with shortages due to emigrating Poles, an ageing working-age population and low numbers of immigrants. For these reasons, the act was

amended and the procedure was simplified. The simplified procedure gave labour immigrants permission to work and stay in Poland for a total of six months within one year (Górny and Kaczmarczyk 2018: 179). This greatly facilitated foreigners' access to the Polish labour market. The amendment simplified and shortened the "procedure for issuing work permits" (Fihel et al. 2012:71) for foreigners. Besides, the amendment also substantially reduced the "fee for issuing a decision on granting a work permit [...] – to 50 PLN for work permits issued for a period up to three months, 100 PLN for work permits issued for a period exceeding three months, and 200 PLN for work permits concerning pursuing export services" (Ibid.: 71). Furthermore, the amendment eased the requirements for several nationalities that could benefit from "automatically granted work permits (i.e. without labour market test)" (Ibid.: 71).

Act on Foreigners (2013) and the amendment (2019)

The Act on foreigners of 2013 regulates specifically the residence and employment of foreigners in Poland. Although the Act on foreigners introduced more restrictions on illegal employment and liberalised the labour market for foreigners "it is not yet clear whether this has translated into a decrease in unofficial work" (Kindler et al. 2016: 10). The Act on foreigners shifted the "Polish migration policy [and became] more open to immigrants in recent years, especially immigrants needed by the Polish economy" (Fihel et al. 2012: 74). Koper (2019) argues that the Act on Foreigners, and especially the amendment of 2019 aimed at "the Eastern neighbours as a recipe for the country's demographic problems" (2019: 233). The increasing labour shortages, especially witnessed in the agricultural sector, stimulated the Polish government to pursue new migration policy (Koper 2019: 233). To address the labour shortages the amendment is "primarily tailored to the needs of the labour market" (Koper 2019: 233). In addition, it should also stimulate the prevention of further emigration from Poland and increase return migration (Koper 2019: 233). The amendment introduced temporary residence permits for intra-corporate transfers to comply with the latest EU Directive 2014/66/EU. In addition, the amended provision grants 3rd country nationals employed or aspiring to be employed in a shortage occupation or profession desired for the Polish economy with a special basis (Koper 2019: 224 – 225). Similarly, labour migrants that have a temporary residence permits for work in a shortage occupations or profession that is desired for the Polish economy "will be protected against its withdrawal in case of unemployment" (Koper 2019: 225).

3.4 Spain

3.4.1 Country context

In the 1950s Spain had to deal with many emigrants leaving. Leading destination countries were countries in South America. However, at the same time and similar to Poland the Spanish government attempted to regulate emigration (Garcés-Masareñas 2012: 116). The aim of this policy was to select emigrants and encouraged the exit of poorly qualified or unskilled workers (Ibid). The 1960s continued to feature as a decade of emigration. However, the destinations shifted to places closer to Spain. The majority of the migrants moved to Western Europe (Ibid.: 110). This trend continued in the 1970s until the government restricted legal emigration towards Western Europe (Pereira 2007: 4; Garcés-

Mascareñas 2012: 110). The trend of emigration changed in the mid-1980s when Spain became a net-importer of migrants (Garcés-Mascareñas 2012: 111). Around this time Spain introduced its first immigration law as they were on the eve of joining the EU and becoming the Union's external southern border (Hooper 2019: 10). The policy was, therefore, mainly focused on border controls and the criminalization of unauthorised presence in Spain, while it lacked the recognition of the right for family reunification (Hooper 2019: 10).

Furthermore, Garcés-Mascareñas (2012: 116) observed that Spanish immigration policies were vague since they did not have "the status of law" and they lacked relevance as a result of "the absence of major immigration flows" (Ibid.: 117). Nevertheless, the first immigration law, called the General Regime, established that employers could sponsor labour migrants if the potential employees passed the labour market test (Hooper 2019: 10). However, this labour market test "was interpreted very broadly, with the result that very few applications were approved and employers instead looked to the informal economy" (Hooper 2019: 10). Hence, an unforeseen result of the General Regime was the stimulation of illegal immigration into Spain. Therefore, in 1993, the Spanish government introduced an annual labour migration quota, for low skilled labour migrants (Garcés-Mascareñas 2012: 123). However, the quota did not end the influx of illegal immigrants in Spain. To end the irregular immigration the Spanish government began to attract labour migrants actively in their country of origin (Ibid.: 122). This was done by a series of bilateral agreements first signed with Morocco, Colombia, Ecuador, Romania, the Dominican Republic, Poland and Bulgaria (Ibid.: 122). Later the Spanish government signed new agreements "with countries such as Gambia, Guinea-Conakry, Cape Verde, Mali and Senegal (Ibid.: 122). These agreements intended to reopen other channels of entry and establish "legal channels for part of the inflow" (Ibid.: 122). Hooper demonstrated that Spain remained this policy focus throughout the 2000s as "Spain has been an active participant in EU efforts to cooperate with third countries, including the EU Mobility Partnerships with Cape Verde, Jordan, Morocco, and Tunisia" (Hooper 2019: 22).

Furthermore, Spain had a founding role in the Rabat Process; and it led several EU migration management initiatives (Hooper 2019: 22). Nevertheless, since the economic crisis, "Spain has not embarked on any new bilateral agreements, but it continues to be deeply involved in efforts to build closer ties with Europe's neighbourhood to manage migration flows, particularly with Morocco" (Ibid.: 22), and through the EU's Mobility Partnerships.

In the following subparagraph, we will elaborate on Spain's more recent labour immigration policies.

3.4.2 Labour immigration schemes in Spain

While Spain continued to participate in the EU's Mobility Partnerships and the signing of bilateral agreements with emigration countries, it also implemented new laws and amended already existing laws and regulations. Like in the other cases, the EU has taken the lead on migration issues in the member states, however, implementing immigration policies remain initially the task of national governments (Hooper 2019: 18). Due to Spain's focus on expanding legal migration opportunities they developed solid partnerships with crucial immigrant sending or transit countries, such as Morocco (Hooper 2020: 25). One strategy for expanding legal migration opportunities is to bolster the development benefits of seasonal worker programmes by facilitating circular migration and enabling

employers to hire labour migrants on a multi-seasonal basis (Hooper and Le Coz 2020: 9). An example of circular migration in Spain is found in the seasonal agricultural sector. Primarily Moroccan women are employed in this sector on seasonal basis (Triandafyllidou 2013: 213). These circular migrants “travel to Spain each year to work in the harvesting of strawberries or other cultivations, at greenhouses mostly in the region of Almeria” (Ibid).

[Organic Law on the Rights and Liberties of Foreigners in Spain and Their Social Integration, Law 4/2000; and Entrepreneurial Support and Internationalisation Act, Law 14/2013 \(2013\) and its reform, Law 25/2015 \(2015\)](#)

The Spanish government wanted to put an end to the flourishing of the informal economy by developing more legal channels for migration (Garcés-Mascareñas 2012: 122). For this reason, the government designed immigration laws that involve and offer more opportunities for regional governments, employers and trade unions (Hooper 2019: 18). These ensure that the immigration policies match the needs of the local economy and labour market. In the wake of this, the Tripartite Labour Commission of Immigration (*Comisión Laboral Tripartita de Inmigración*) was established and facilitated a continuous dialogue between representatives of the labour unions, multinationals and the ministry (Ministry of Labour, Migrations and Social Security: 2005; Finotelli and Echeverría 2017: 44). In 2007, this institutional mechanism was complemented by the establishment of the Large Companies Unit [UGE-CE], that cooperates closely with the Ministry of Labour, Migrations and Social Security (Ministry of Labour, Migrations and Social Security 2020).

The 2009 reform of the Organic Law 4/2000 increased the relevance of the national employment situation in the granting of work permits (Guerrero 2017: 12). These reforms included the initiation of a shortage occupations list (Guerrero 2017: 12). The entry quota of new immigrants was based on this newly formed list. However, the economic recession forced the government to limit the entry flows to zero in 2010 and 2011 (Finotelli and Echeverría 2017: 47). In addition, the number of professions on the shortage occupations list was reduced (Finotelli and Echeverría 2017: 47). Guerrero (2017) argued that these developments resulted in a reality in which regular migration became strongly restricted and only a minimal number of visas were granted (Guerrero 2017: 13). Since 2012, the government’s policy aimed at limiting the recruitment of labour migrants, with the exception of labour immigrants from countries that have a bilateral agreement with Spain and participate in the seasonal agricultural campaigns (Guerrero 2017: 13).

The entry quota system is part of the regular migration channel in Spain, which is characterised by restrictive access to the labour market for 3rd country nationals (Guerrero 2017:13). It targets mainly low- and medium-skilled immigrants and grants them access to the labour market on a temporary basis.

In addition to the regular migration channel, the Spanish government developed a selective migration channel that mainly targets highly-skilled immigrants. This selective migration channel is regulated by the Entrepreneurial Support and Internationalisation Act, Law 14/2013. This law regulates that a select group of immigrants are not affected by posed restrictions to enter the Spanish labour market (Guerrero 2017: 14). It determines that five groups can obtain access and residence in Spain based on economic interests (Guerrero 2017: 5). This group includes investors, entrepreneurs, highly-qualified workers, researchers, and intra-corporate transfers (Guerrero 2017: 5 – 8). Guerrero argued that both the law from 2013 and the reform from 2015 demonstrate Spain’s interest in promoting and

facilitating, so-called 'high-class economic immigration' (Guerrero 2017: 10). Spain's policy aim to favour this 'high-class economic immigration' caused for a divided immigration system, in which fast-track procedures were introduced for highly-skilled labour migrants and a regular restrictive procedure for other labour migrants (Guerrero 2017: 10). These labour immigration schemes, therefore, share many features with the schemes in place in The Netherlands and Poland.

4. Conclusion

What we aim to do in work package 3 is to identify whether temporary and circular labour migration schemes could help disentangle so called mixed migration flows into Europe: i.e. making it attractive for migrants who under the present conditions claim asylum to apply for a work permit instead. This ought to allow more opportunities to deliver international protection to refugees while simultaneously benefit the national economy. We argued it to be fruitful to do so by not focussing on labour migration policies in the strict sense as these are usually understood, in the literature as well as in the political debate. We concur with Pastore (2014) that we should rather study all sources of Migrant Labour Supply. Doing so, we can conceptualize other (formally different) types of immigration as having effects on the nature of the labour market. Circular and other forms of temporary labour migration we can thus understand in relationship to functional equivalent forms of migrant admission and study the interactions between formal types and their volumes. For the purpose of this project we do not include such categories like family-based migration or students because in the end this should first and foremost allow us to think past the formal distinctions between asylum and labour migration.

Our four cases offer interesting perspectives for they represent different perspectives on the nature of the borders between admission types. In The Netherlands the asylum channel is strictly separated from other admission types. By law, a rejected asylum seeker has no possibilities to enter the Dutch labour market whereas the German case shows a willingness and ability to be less strict and the government's understanding of the relationship between these admission grounds. Poland is a reluctant country of asylum but offers access to its labour market to large numbers of Ukrainian workers who flee civil war and economic despair. And Spain knows a long tradition of flexibly dealing with migrants who can find regularization through (informal) employment and who further North would probably have had no choice but to apply for asylum. And overall, we expect to gain important insights by studying the effects of the Covid-19 pandemic on the limits to accustomed mobilities: those internal to the EU's labour market and those including 3rd country nationals. This brief period of restricted mobility already demonstrated the significance of migrant labour supply in each of our cases. Moreover, all of this poses a question such as: What functional equivalents may be found in each of our four case studies?

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