



TOWARDS AN EU TOOLBOX FOR MIGRANT WORKERS

LABOUR MOBILITY AND REGULARISATION
IN GERMANY, ITALY, AND SPAIN IN 2020

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Cover photo: Two women speak at a job fair for refugees and migrants on January 25, 2017, in Berlin, Germany. © Steffi Loos/AFP/Getty

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CONTENTS

2	INTRODUCTION
3	GERMANY: NEW TOOLS ON LABOUR MOBILITY AND A TREND TOWARDS MORE REGULARISATIONS?
3	Brief overview of migration trends and data in Germany
4	New migration policies and legislation
5	Concluding remarks
7	ITALY: LESSONS LEARNED ON SECTORAL MIGRANT REGULARISATIONS
7	Brief overview of migration trends and data in Italy
9	New migration policies and legislation
10	Concluding remarks
11	SPAIN: CAN PANDEMIC-INDUCED MIGRATION MANAGEMENT TRANSLATE INTO STRUCTURAL CHANGE?
11	Brief overview of migration trends and data in Spain
14	New migration policies and legislation
16	Concluding remarks
17	CONCLUSIONS
20	RECOMMENDATIONS FOR EU POLICYMAKERS
21	Endnotes

INTRODUCTION

In its September 2020 Communication on an EU Migration and Asylum Pact¹, which largely focused on reforming asylum, border and return procedures, the European Commission also pledged to present proposals on labour migration in 2021. This section of the Pact signals a rekindled interest on the part of the Commission in upscaling EU-level action to develop and improve routes for migrant workers to reach Europe. Despite attempts by the Commission services to develop limited schemes like the legal migration pilot projects in 2016-2019, the higher echelons had for years been bogged down in the political fight over irregular arrivals and the Dublin asylum Regulation. This amounted, *de facto*, to an implicit endorsement of national governments' view that legal migration for the purposes of employment is an exclusive member state competence². Treading carefully after being scalded in the early 2000s—when member states shot down proposals from the Commission and European Parliament for comprehensive, cross-sectorial EU legal migration legislation which would have included a job seeker permit³—**the Pact suggests the EU could do more to enable better, faster access to visas and work permits, and increase the intra-EU mobility of foreign workers.** As NGOs, unions and, indeed, employers have been recommending for years, the Commission proposals will be developed involving **social partners and all relevant branches of government**, rather than primarily, or solely, home affairs ministries. Crucially, the new measures also set out to foster **labour mobility from third countries at all skills levels**, in recognition of the fact that Europe is not only competing for talent on the global stage to support its high-tech industries, but that an ageing continent also needs new workers in most other sectors.

In parallel, over the course of 2019 and 2020, **several EU member states** have taken action to either

1) create and implement **national frameworks on labour migration**; 2) **regularise part of the undocumented population** via one-off amnesties or 3) **expand access to ongoing regularisation mechanisms** as well as **increasing protections for some categories of migrants with a precarious legal status.** Some of these developments, like the time-bound regularisation schemes, have been presented as emergency measures due to the pandemic, whilst others were developed over a period of years and predate the impact of COVID-19. **Germany** has pioneered the first line of action via its new legal migration law (although one could argue that other recent pieces of legislation, like those granting a more secure status to certain groups of 'non-returnables', also fall into the second category). **Italy** has carried out a regularisation campaign for agricultural and domestic care workers, with mixed results. And **Spain** has implemented apparently minor changes to legislation with the stated aim of moving towards a more sustainable system than those based on irregular entry followed by periodic general regularisations.

How effective have these different approaches been—or how effective could they potentially be—in expanding access to rights, stabilising residence and work statuses, reducing the size of the undocumented migrant population and matching demand for migrant labour? And are there lessons to be learned at the EU level from a comparative look at these countries' efforts?

This report features concise, yet in-depth analysis of the measures taken respectively in Germany, Italy, and Spain over the course of 2019 and 2020, and seeks to pinpoint some conclusions which may be relevant for EU policymakers.

GERMANY: NEW TOOLS ON LABOUR MOBILITY AND A TREND TOWARDS MORE REGULARISATIONS?

This text solely reflects the author's personal opinions.

BRIEF OVERVIEW OF MIGRATION TRENDS AND DATA IN GERMANY

Germany's contemporary image in terms of migration has been, and continues to be, shaped by its role in the 2015-2016 'migration crisis' in Europe, during which it admitted several hundred thousand asylum seekers, many of whom remained in the country as beneficiaries of international or national protection.

Yet apart from occasional peaks in refugee intake (such as around 1980 and 1990), most migrants to Germany in the post-World War II period were foreign manual workers. Several million entered the country until the early 1970s, following which family reunification became the main component of migrant arrivals alongside significant numbers of ethnic Germans, mainly from the former Soviet republics. For much of the past two decades, intra-EU labour mobility took centre stage and made up the largest part of Germany's net migration (aside from significant numbers of international students and skilled workers from third countries) particularly following major reforms in 2005, which regulated migration in a comprehensive manner for the first time.

At the beginning of 2020, the number of foreigners in Germany amounted to more than 11 million (about 12 percent of the total population), 5 million

of whom were citizens of other EU member states entitled to freedom of movement.⁴ Another 5 million were third country nationals with a regular residence permit, about half of whom were in possession of a document allowing for permanent settlement (with the perspective of naturalisation), while the other half had fixed-term residence permits (subject to renewal). Of the 2.6 million on temporary permits, over 1.1 million benefited from a form of protection, while over 840,000 were in the country following family reunification, 259,000 for work and 232,000 for educational reasons. The status of over 560,000 foreigners was pending, while 203,000 were slated to leave, but granted a *Duldung*⁵ ('temporary tolerated stay').

Although the German government has consistently opposed blanket amnesties as it believes they act as so-called pull factors for more irregular migration, there is a history of both group and case-by-case regularisation.⁶ The main requirements are generally that foreigners are officially registered, usually with a tolerated status, do not have a criminal record and are gainfully employed. Those who are truly undocumented cannot benefit from these measures. The Residence Act, which came into force in 2005, included a discretionary clause to grant a temporary residence permit to foreigners who are subject to a return decision, but whose departure is impossible for reasons beyond the foreigner's control, and for whom the obstacle to deportation is

not likely to be removed in the foreseeable future⁷. The Act also introduced several legal provisions for the federal states to grant residence to foreigners from designated countries or to certain groups of foreigners on humanitarian or other grounds. In 2011, a general right to abode without any cut-off date was introduced for youth with long-term tolerated stay, and in 2015 for adults, with individual merits such as educational achievements, gainful employment and language competencies, all of which would indicate 'sustainable integration'.⁸

As the public mood soured over migration from 2016 onwards, the government took largely restrictive legislative steps with regard to asylum seekers, particularly for those from safe countries of origin, and enforced deportations for those issued with return decisions.⁹ Conversely, those with positive prospects of staying in Germany received easier access to integration measures.

NEW MIGRATION POLICIES AND LEGISLATION

Employers, however, had invested in recruiting workers among the new migrants and were generally not supportive of the restrictive measures. They have instead been consistently demanding measures to facilitate recruitment abroad or to ensure skilled workers with a *Duldung* status could stay. The projected labour demand stands at 260,000 migrants per year until 2060, less than half of whom are likely to be recruited from within the EU.¹⁰ This already takes into account the largely successful labour market integration of the newcomers who have arrived as refugees since 2013, almost half of whom were employed five years after their arrival.¹¹

The new grand coalition government therefore began working on a major reform of migration law in 2018 coupled with other legislative proposals on returns, asylum policies and integration.¹²

Below is an overview of three pieces of legislation which can provide evidence of Germany's mostly balanced and pragmatic approach to broadening

routes for attracting fresh talent and labour from abroad while fostering integration and tapping into the potential in labour market terms of those who, despite a negative asylum decision, are here to stay.

Skilled Immigration Act¹³

Contrary to widespread views in political and media circles¹⁴, the Skilled Immigration Act does not herald an entirely new approach. It is however a landmark step in further developing labour migration law. Overall, these changes did not affect the highly qualified as Germany was already in a leading position among EU member states in attracting foreign talent.¹⁵

The Act allows for the arrival of skilled migrants below the level of university/college education into all sectors of the economy without a full labour market test, provided the applicant has received a valid job offer¹⁶. Before, this was possible only for shortage occupations designated in a whitelist.¹⁷ Crucially, foreign professional and vocational training diplomas also needed to be recognised as equivalent to a German qualification, a cumbersome process as foreign professional certificates are rarely considered fully equivalent to German standards.

In order to overcome this obstacle, the new law features measures regarding alternatives for the recognition of foreign professional qualifications¹⁸, most significantly through on the job training for up to two years for individual candidates, during which skills and qualifications are tested and enhanced.¹⁹ Based on the new provisions, the federal employment agency is negotiating bilateral agreements with a number of third countries²⁰ for particular sectors where the needs are greatest (currently health and care work).

Finally, the Skilled Immigration Act also introduces the possibility to grant a job search visa to skilled labourers with non-tertiary qualifications, as well as to young candidates for vocational education. Before, these six-month visas were limited to skilled workers with a university degree and to applicants at German universities. However, these new options are time bound and only valid until March 1, 2025²¹.

Act on tolerated stay for vocational education and employment²²

Just like the Skilled Immigration Act, the Act on tolerated stay for vocational education and employment primarily introduced changes to the Residence Act. Most significantly, this Act created options for what had previously been considered taboo, i.e. a so-called track change from an unsuccessful asylum track to an employment or training track. A new clause allows for the temporary suspension of deportation for those taking part in vocational training (*Ausbildungsduldung*)²³. As a concession to employers investing in the training of young talents among young asylum seekers or tolerated foreigners, the so-called ‘3+2 rule’ foresees a three-year training period followed by a two-year residence permit for employment linked to the new vocational qualification²⁴. After this period, the regular procedures for extending residence permits and accessing unlimited settlement apply.

A similar clause was introduced for foreigners required to leave Germany whose deportation has been suspended for at least 12 months and who have been in employment with full social security coverage for at least 18 months, if certain prerequisites are fulfilled. Those benefiting from a temporary suspension of deportation for the purpose of employment (*Beschäftigungsduldung*) have access to a permit for 30 months, again with the possibility of then prolonging their stay. However, unlike the toleration-for-training clause, this option is only available to those who arrived in the country before August 1st, 2018, although it also covers partners²⁵.

Both clauses, as well as being based on strict conditions, are unavailable for nationals of designated safe countries. With these measures, the government has sought to provide some legal reassurance for businesses and migrants—without establishing what could be seen as an easy route towards regularisation for those whose asylum applications have been rejected.²⁶

Extension of the Western Balkans Regulation²⁷

Introduced in 2015 to offset the designation of Albania, Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia, and Serbia as safe countries of origin, the so-called Western Balkans Regulation sought to reroute irregular migration and unfounded asylum applications into a regular channel based on an employment contract. In an unprecedented move, no proof of the equivalence of qualifications nor any formal professional certificates or language skills were requested.

The key prerequisite is a valid job offer from a German employer and subsequent approval by the federal employment agency, which performs a labour market test and verifies whether the principle of equality of working conditions is met. Application of the Regulation was initially limited to the end of 2020 (although it has recently been extended by another three years, with an annual cap of 25,000) and it is generally considered a success, although visa issuance has suffered from administrative bottlenecks and understaffed German consular offices.²⁸

Demands to extend the Regulation's scope to other countries or to establish it as a standard mechanism to meet labour demands in Germany have been rebuffed as it is seen as an instrument for migration control.²⁹

CONCLUDING REMARKS

Both reform strands of the Residence Act have been broadly welcomed by social partners, welfare organisations, and NGOs. However, refugee advocates remain critical of the restrictive measures in the associated Orderly Return Act.³⁰

The impact of all these measures so far is difficult to assess, given the restrictions on international mobility due to COVID-19. The surprisingly

successful measure of the past few years is the Western Balkans Regulation. Empirical evidence shows that the scheme has developed into a veritable recruitment option that has been perceived very positively by companies, even though its introduction was not based on any economic or even labour market policy considerations.³¹

More concretely, it seems that the Regulation has become an essential instrument to recruit low-skilled workers or helpers – a category of labour migrants which is generally considered to be in low demand on the German labour market, despite the fact that in 2016-2017 alone 51 percent of employment agencies' pre-approvals for foreign workers from the Western Balkans concerned manual jobs such as those in construction.³² More generally, the latest steps in German labour migration policy appear to signal a paradigm shift—moving away from the idea

that ready-made, skilled experts can be recruited in abundance on the global market. Instead, Germany has decided that workers with a basic level of skills from third countries can be trained to reach a fully equivalent level of qualifications following their arrival in Germany.

Other measures such as the *Ausbildungsduldung* open the door to the regularisation of young adults in training whose asylum applications have been rejected. Nevertheless, it is unlikely that the various new clauses in the Residence Act will effectively reduce the number of foreigners whose stay is only tolerated on a short-term basis. According to Eurostat, Germany regularly issues more than 50,000 return decisions per year (over 300,000 between 2015 and 2019).³³ Similar measures rolled out in the past, such as those introduced in 2011, also ended up only benefiting a few thousand people.

ITALY: LESSONS LEARNED ON SECTORAL MIGRANT REGULARISATIONS

BRIEF OVERVIEW OF MIGRATION TRENDS AND DATA IN ITALY

On January 1, 2020, the number of valid residence permits of non-EU citizens in Italy was 3,438,707—48.2 percent of which had been issued for family reasons, whereas 41 percent were work-related. The third category relates to people seeking asylum or other forms of protection.

Data³⁴ shows that the presence of regular non-EU nationals in Italy has decreased for the first time in years: in early 2020, there were about 3.6 million non-EU nationals holding a valid residence permit, 100,000 less than the previous year, when their number exceeded 3.7 million. Overall, on January 1, 2020 there were over 5.3 million registered foreign citizens (EU and non-EU)—8.8 percent of the entire Italian resident population.

Today, the number of irregular migrants in Italy is estimated to be between 600,000 and 650,000 people. There were 562,000 in late 2018. According to experts, the structural and long-term cause of this significant presence is the decades-long lack of legal routes for foreign workers. It is believed that the increase recorded in 2019, despite a drop in the number of arrivals by sea, was mainly due to the so-called Security Decrees (spearheaded by then interior minister Matteo Salvini).

The first Security Decree, in particular, provided for the abolition of the residence permit for humanitarian reasons, which was one of the most widely granted forms of protection for migrants arriving in Italy. This permit was replaced by a series of special and temporary ones (for medical treatment, labour exploitation, domestic violence, natural disaster and civil merit), none of which have been issued in significant numbers.

This led to an increase in rejections of asylum claims for migrants arriving in Italy who, in the absence of humanitarian protection, did not meet the criteria for the other two forms of international protection (subsidiary protection and asylum) or did not fit the definition of special cases. On top of this, those who had benefited from residence permits on humanitarian grounds in previous years could no longer renew their documents and therefore slipped into irregularity. An irregular status is often associated with precarious living conditions and the lack of social and health services, as well as with labour exploitation.

In the first year of the new legal provisions, the number of irregular immigrants rose by about 70,000 units, bringing the total figure to over 600,000 people in late 2019. This number could have surpassed 700,000 in 2020, if two legislative measures had not been implemented by the new

government—the regularisation of migrants in the agriculture and care work sectors, and the changes to some provisions of the Security Decrees, which were amended by a new Immigration Decree. A form of special protection, similar to the former humanitarian one and which can be converted into other types of permit, is one of the main elements of the Immigration Decree.

The steady increase in the number of irregular migrants due to recent regulatory provisions cannot be attributed exclusively to the former government's policies, which included restricting or preventing search and rescue activities at sea by NGO vessels. Since the late 1980s, in fact, migration policies in Italy have consistently focused on protecting borders rather than encouraging legal entry into the country.

The first piece of legislation dealing with this matter was Law No. 943 of 1986³⁵ that amended the Consolidated Act on Public Security dating back to 1931, after the 1981 ratification by Italy of the ILO Convention promoting equality of opportunity and treatment of migrant workers. However, a more comprehensive law on the subject, the Martelli law, only appeared a few years later, in 1990.

The new legislation stemmed from the outpouring of emotion following the murder at Villa Literno, in the region of Campania, of a farm worker from South Africa named Jerry Masslo³⁶. Masslo arrived in Rome in 1988 and immediately applied for asylum, but his application was rejected, since at the time refugee status was only granted to people from Eastern Europe. He had therefore moved to the countryside in the province of Caserta, near Naples, to work on the farms, harvesting tomatoes in particular. Here, together with other labourers, he grew aware of the serious exploitation seasonal workers were subjected to and sought protection from the unions.

Meanwhile, as intolerance towards foreign nationals grew in the small town, community patrols were carried out against Black people, who could not walk freely around the streets. On the night between August 23 and 24, 1989, Jerry Masslo was murdered during a robbery performed by a gang of criminals targeting farm workers. The murder was not only evidence of racism against migrant workers, but

it also showed the conditions of exploitation and precariousness in which seasonal workers were forced to live. For this reason, Masslo's death was followed by weeks of demonstrations and political and trade union initiatives, leading 150,000 people to march in the centre of Rome on October 7, 1989 and to a number of strikes. For the first time, farm workers claimed their right to decent working conditions. The government therefore realised that they could no longer ignore the situation, and in the autumn of 1989, a fact-finding survey on the situation of migrants in Italy was conducted. A few months later, the Martelli law was enacted.

Among the most important changes, there was the possibility to apply for asylum regardless of the country of origin as well as the introduction of new types of residence permits. In addition, an amnesty was enacted allowing for the regularisation of those who were already on Italian territory on December 31, 1989. The measure would lead to about 225,000 undocumented people receiving papers. In a previous amnesty in 1986, 116,000 migrants had already been regularised.

In terms of legislation, another important step was the introduction of the Citizenship Law³⁷, which was based on *jus sanguinis*³⁸ and had been designed to smooth access to citizenship for the direct descendants of Italian emigrants abroad rather than for migrants arriving in Italy. Then, in 1998, a new law on migration was enacted, the Turco-Napolitano law, aiming to control migrant arrivals, encourage integration processes and make it easier to carry out deportations to countries of origin.

The law introduced a form of sponsorship and self-sponsorship, through which foreign nationals could enter Italy in search of work if they could prove they or a third party could cover their subsistence prior to finding employment. It also rolled out an amnesty for those who were living in the country and could prove they had an occupation, a dwelling, and/or a family. Eventually, 217,000 people managed to benefit from the regularisation measure.

In 2002, Law No.189 of 2002, the Bossi-Fini law, came into force. It had been designed to follow up on the Turco-Napolitano Law, even though it modified

some of its elements, and is still in force. As of 2002, it is no longer possible to enter Italy through sponsorship, but only via a signed employment contract and in the time slots set by the annual ‘*Decreto Flussi*’, which establishes quotas for the different sectors.

In order for migrants to stay legally, they have to have a residence permit linked to their employment status and job contract, the termination of which also leads to losing legal resident status. In fact, in order to renew work permits, continuous employment has to be demonstrated, which is quite hard to do in a country with generally high unemployment and inactivity rates. As a consequence, the irregular stay of migrants also often entails labour exploitation and an increase in unreported employment, especially in sectors such as agriculture, where the seasonal nature of work contributes to an increase in undeclared work. When the Bossi-Fini law came into force, it provided for the largest single regularisation of migrants in Italy, enabling 634,000 people who were already present in the country to improve their conditions.

Overall, since 1982 there have been eight amnesties in Italy, accounting for a total of over 1.8 million people being regularised³⁹ (not including the 200,000 applications submitted under the 2020 scheme). The number of entries through the quota system since 1998 has been approximately the same, with 1.8 million arriving via the 23 quota decrees (not all of which have resulted in residence permits)⁴⁰.

In Italy, amnesties have been the main instrument for regularising migrants who are already in the country. In fact, rather than working out policies for legal entry, successive governments have favoured short-term measures with an immediate political impact, often designed for individual sectors and to address (real or perceived) emergencies, thereby remedying conditions of irregularity *a posteriori*. On top of this, since 2011, no real planning has gone into the ‘*Decreto Flussi*’ for entries related to work reasons, and the numbers have been so low that they have failed to match supply and demand. This has made it increasingly difficult for migrants to enter Italy legally.

NEW MIGRATION POLICIES AND LEGISLATION

In early 2020, the health emergency due to the pandemic highlighted the employment situation in the countryside and in the care sectors, where foreign labourers account for the majority. During the spring lockdown, it was impossible for seasonal workers to move from Eastern Europe and for skilled workers to come from other countries through the so-called green corridors, while internal restrictions on movements within the country prevented irregular migrants from reaching their workplaces since they could not show documents demonstrating that they were employed.

The Italian government therefore came under pressure to implement a new regularisation⁴¹. A twin-track approach was then provided for employers and workers. Under the first track, employers were allowed to hire foreign nationals who were present in the country or to regularise a pre-existing irregular employment relationship, be it with Italian citizens or foreign nationals. To benefit from the regularisation, migrants had to have entered the country before March 8, 2020, and had to have remained in Italy since that date.

Under the second track, foreign nationals with a residence permit which had expired before October 31, 2019, and who had been in Italy before March 8, 2020, were allowed to apply for a six-month temporary permit to search for a job, which could then be converted into a work-related permit. The regularisation had been foreseen only for the agriculture, breeding, animal husbandry, and fisheries sectors, and for personal care services (care or domestic work). Applications could be submitted for two and a half months only, from June 1 to August 15, 2020.

According to official data from the Ministry of the Interior, a total of 207,500 applications for previously unreported employment were submitted, 85 percent of which for domestic work and 15 percent for other types of work as an employee. 13,000 migrants applied for a temporary permit to seek employment. Only 29,500 of the applications submitted were for employment contracts in agriculture.

To date, it is not yet possible to establish how many of these applications will become real employment contracts. In general, however, the number reflects initial expectations (there was talk of about 200,000 eligible applicants) and notwithstanding the constraints on the sectors covered by the scheme, the number of applicants was high.

However, the data must be interpreted in a critical manner given that the measure had mainly been envisaged to respond to the labour shortage in the agricultural sector. Civil society organisations involved in the protection of migrants and refugees asked from the outset to include other work sectors such as catering, warehousing, and retail, where foreign workers are often employed. Had this been done, it would have led to an estimated increase of 180,000 in the number of potential beneficiaries.⁴²

The organisations also recommended simplifying administrative procedures, including those related to proving a presence in the country before March 8. Moreover, the partial failure of the regularisation can also be attributed to the fact that declaring previously undeclared work contracts was dependent on the will of employers. Many of them may have preferred to continue employing workers irregularly, a source of low-cost and unrestricted labour. This is particularly true in agriculture.

According to some analysts, in fact, during the pandemic the number of foreign nationals exploited in the countryside increased by about 15 to 20 percent (approximately 40,000 to 45,000 more people),⁴³ with a deterioration of working conditions, an increase in working hours and a lowering of wages. This is precisely why the regularisation scheme does not improve the conditions of most labourers forced to live in informal settlements in the countryside, with poor hygiene and sanitation—a situation worsened by the onset of the pandemic.

CONCLUDING REMARKS

The latest regularisation scheme, like its predecessors, is an emergency and markedly sectoral measure in line with what has happened over the last thirty years. As was the case in previous years, what is still missing is a vision for the governance of legal migration to Italy, which would also tackle irregular arrivals and aim to slow emigration, given that over the years there has been a steady increase in the number of Italian working-age nationals moving abroad.

For years, the main organisations for the protection of migrants and refugees have been calling for a review of migration legislation and of the Bossi-Fini law in particular. The main requests are contained in ‘*Ero Straniero*’, a legislative proposal stemming from a civil society campaign. The campaign’s main demands are the introduction of a temporary residence permit to search for employment as well as state intervention to connect Italian employers and non-EU foreign workers. The permit should be valid for one year rather than six months, as is the case under the 2020 regularisation, as one year is considered a more appropriate time given the difficult employment situation in Italy. The campaign also calls for the sponsorship system laid down in the Turco-Napolitano law, and abolished by the Bossi-Fini law, to be re-introduced.

To date, there are no real legal opportunities for entry into Italy, given the extremely limited number of quotas set forth in the annual decree (even if the 2020 decree has shown a slight increase to a total of 30,850 jobs, the numbers are still far below those required by employers⁴⁴). On the other hand, over the last ten years, more than 600,000 migrants have landed in Italy, have been channelled into the asylum-seeking system and are bound to increase the irregular, exploited workforce. Many of them undertook their journey via people smuggling networks. In the same period, about 20,000 people have lost their lives at sea to reach the shores of Italy.

SPAIN: CAN PANDEMIC-INDUCED MIGRATION MANAGEMENT TRANSLATE INTO STRUCTURAL CHANGE?

During the COVID-19 pandemic, the Spanish government has taken various legal measures in response to the situation of third country nationals living in Spain, addressing the need to ensure that their status as foreigners does not become an element of added vulnerability. It is worth mentioning that the autonomous communities and local authorities have played a key role in maintaining the network of protection for all residents in Spain due to their decentralised nature. However, the interest here is to analyse the changes in the regulatory framework on migration, which continues to be the responsibility of the state, and where the pandemic may lead to longer-term change. This note only focuses on how the Spanish government reacted at the beginning of the pandemic in relation to migration management

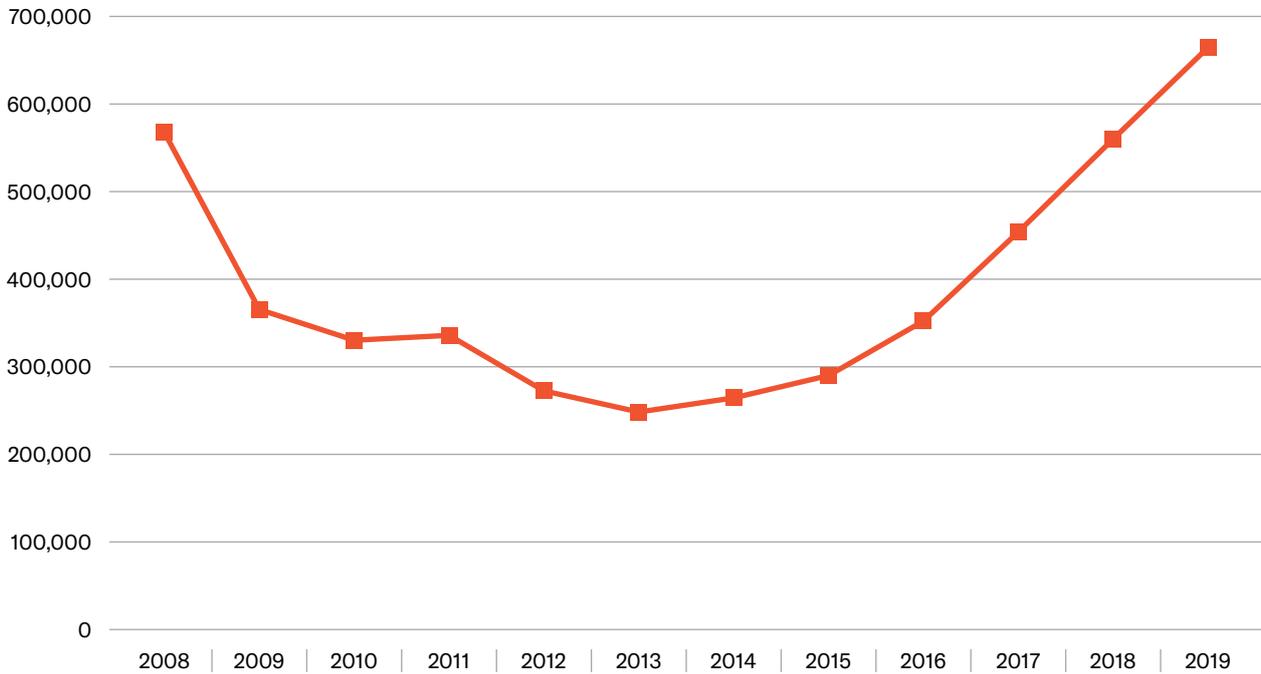
and does not analyse other issues pertaining to the Spanish migratory framework, including seasonal labour migration schemes.

BRIEF OVERVIEW OF MIGRATION TRENDS AND DATA IN SPAIN

Migratory movements to Spain have always been closely linked to the country's economic situation. It is therefore worth mentioning that before the pandemic, the entry rates of foreigners into Spain had been recovering, with figures similar to those in 2008. The situation of migratory arrivals had stabilised and resembled the one before the economic crisis.

FIGURE 1

Number of migrants to Spain in 2008-2019 (EU and non-EU nationals)



Source: Compiled based on INE data. Data show entries of non-nationals (EU and TCNs).

While the number of foreign residents with an EU nationality has remained relatively stable over the years, the most interesting fluctuation—which seems to be more linked to economic or regulatory changes in Spain—is that of non-EU nationals.

Of the more than five million foreigners who live in Spain in 2020, slightly more than half are nationals of other EU countries. The other half are mainly nationals of Latin American and North African countries.

FIGURE 2**Foreigners with a valid residence permit (EU and non-EU nationals)**

30/06/2019



30/06/2020



■ Free Movement Regime of the EU
 ■ General Regime

Note: The general migration framework (or Regime) includes TCNs, while the EU framework includes mainly EU nationals, but also TCNs who are family members of EU nationals.

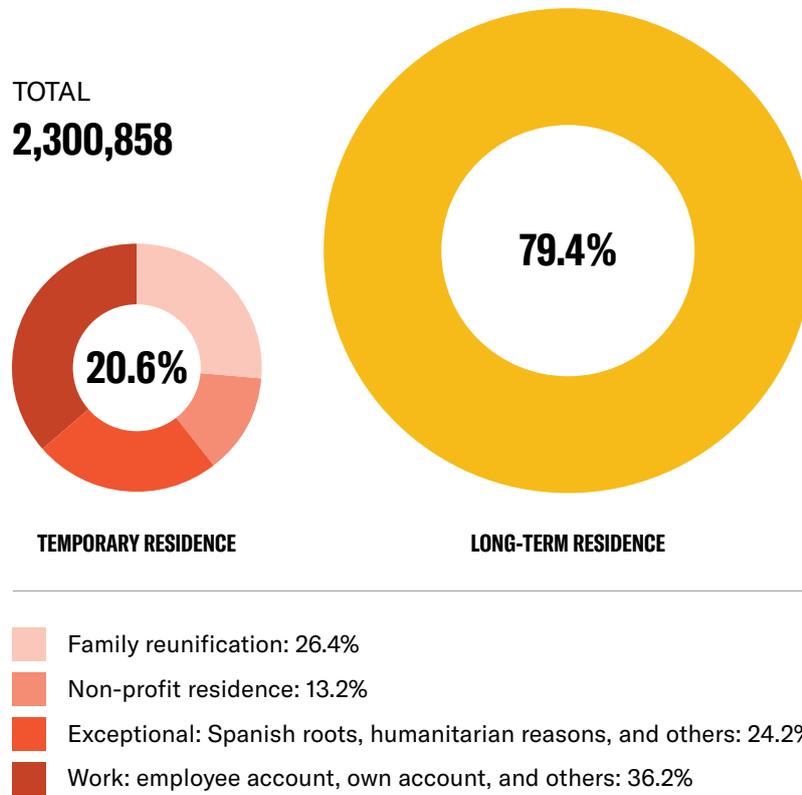
Source: State Secretariat for Migration

It is interesting to note that, in the case of persons under the Spanish *Régimen General* (the legal framework regulating conditions of entry and residence for non-EU nationals), most individuals have long-term residence permits, which means that the person has resided legally and continuously in Spain for at least five years. Long-term residents are around 79 percent of third country nationals in Spain, while 475,000 foreigners have temporary permits (20.6 percent of the total).

As regards the authorisations of a temporary nature, the majority are for reasons of work (36.2 percent), family reunification (26.4 percent), and non-profit-making residence (24.2 percent). It is worth noting that temporary authorisations for exceptional reasons have increased considerably in the period 2019-2020, due mainly to the granting of this type of permit to the Venezuelan population for reasons of international protection.

FIGURE 3

Legally-residing non-EU foreigners by type of residence permit (as of 30/06/20)



Source: State Secretariat for Migration

NEW MIGRATION POLICIES AND LEGISLATION

The arrival of coronavirus has exerted a considerable amount of stress on the Spanish economy and society. Despite progressive economic recovery from the last crisis, the country already had significantly high unemployment figures before the pandemic.

Due to COVID-19, many economic sectors have reached a veritable standstill, affecting individuals and families who have seen their situation worsen. Freedom of movement in Spain has been curbed, and administrative and procedural deadlines were suspended as a consequence of the declared state of emergency⁴⁵. Both measures have had a disproportionate impact on those with the

lowest incomes levels and on the most vulnerable population groups, many of whom are migrants.

For some migrants, the lack of extensive social networks may have been a handicap compared to their native counterparts. For others, the pandemic has put their residence permits at risk due to job loss, although the government has developed some administrative responses in an attempt to avoid this. For those who are in regular situations but working informally—such as many migrant women working in the care sector—the pandemic has meant losing their income without being able to compensate it with public aid or a significant worsening of their working conditions. For those who are in a situation of administrative irregularity⁴⁶, the pandemic has significantly increased their vulnerability.

The general measures taken by the government to help those affected by the pandemic are beyond the scope of this analysis, even though they are also accessible to the foreigners population with a residence permit, as long as they comply with the requirements. For example, the recently created Minimum Living Income is open to all those who can demonstrate more than one year's residence in Spain. Similarly, the municipal census (*padrón*) has been modified. The *padrón* is the administrative register in which all residents of a municipality are identified and represents proof of their residence (irrespective of their legal status). By registering, which is compulsory, all residents gain access to public services such as education and health services. Since May 2020, there has been a modification to the *padrón* to ensure that municipalities register their residents without carrying out *'any control of the legality or illegality of the residence in the Spanish territory of any of their residents.'*⁴⁷

The Spanish government has sought to prevent people residing regularly in Spain falling into irregularity⁴⁸, based on an awareness of the fact that achieving regular status in Spain is not easy, though losing it is. It has therefore undertaken various initiatives related to migration management that have sought to streamline bureaucratic procedures for foreigners during confinement as well as to prevent the pandemic from leaving anyone without access to basic services. The State Secretariat for Migration developed a series of measures (*instrucciones*)⁴⁹ which have sought to guarantee the continuity of permits and authorisations which had not been renewed (DGM 5/2020). Moreover, it has committed to facilitating online processing, an innovation which will be maintained from now on.

In addition, the requirements for family reunification procedures have been made more flexible (DGM 4/2020), placing the child's interests above other considerations and allowing children to be eligible for family reunification even if the minimum required income is not met at the time of application, or if the prospect of maintaining these means cannot be guaranteed, especially in the context of the pandemic.

The permanent ad hoc route towards obtaining a residence permit based on social integration (*arraigo social*) has also been made more flexible (DGM 6/2020)⁵⁰. People who had applied for this authorisation based on a one-year contract, for instance, are allowed to submit a job offer from another employer without it negatively affecting their application. Both the measure on family reunification and the one modifying the *arraigo social* are temporary measures in the framework of COVID-19, but they may become permanent if included in the regulatory reform foreseen by the government⁵¹.

The changes and adjustments to legislation that have been carried out in relation to young foreigners employed in the agricultural sector are of particular importance, because they may pave the way towards structural reform. Firstly, RD (Royal Decree) 13/2020 on urgent measures for agricultural employment sought to make access to this sector more flexible, as it is highly dependent on temporary foreign labour and had hence suffered the impact of mobility restrictions.

The RD, subsequently supplemented by RD 19/2020, allowed migrants employed in other sectors whose jobs had been affected by COVID-19 to seek employment in agriculture and ensured that young foreigners who had recently ceased being minors (between the ages of 18 and 21) were allowed access to these contracts. The RD also extended the possibility of entering the labour market to minors between 16 and 18 years of age who are under the guardianship of the autonomous administrations.

Under this labour reform, young people between 18 and 21 years of age can now work and have been guaranteed a residence and work permit for at least two years (DGM 9/2020). With a two-year residence permit, which can be extended for another two years, and the years of regular residence accumulated during their stay while underage, these young people who risked becoming undocumented will subsequently be able to access regular renewal procedures, in some cases accessing long-term residence directly, and will be able to seek employment in other sectors.

The RD also recognises the right to work of young foreigners whose regular status in the country did not previously include this authorisation, and has extended the possibility of entering the labour market to minors between 16 and 18 years of age who are under the guardianship of the autonomous administrations⁵².

Furthermore, during the state of emergency period, there has been an acceleration in the procedures to recognise the qualifications of foreign health professionals residing in Spain, including medical and nursing staff and other professions such as pharmacy or physiotherapy⁵³.

Finally, the government issued a set of measures⁵⁴ to safeguard asylum seekers who are in the reception system and who have pending administrative deadlines, ensuring they could remain in reception facilities, suspending returns that could not be carried out imminently and maintaining basic income support for those in training before the pandemic struck. Complementary subsidies have also been approved for entities that assist people in need of international protection or that offer support in the context of irregular arrivals⁵⁵.

The government's actions have not included a more general regularisation of the undocumented population, despite a campaign by civil society groups, *Regularización Ya*⁵⁶. In response to the campaign, ministers have pointed to the differences between Spain and other countries like Portugal and Italy, and have defended their policy of incremental changes to legislation.

In the domestic or care sector, on the other hand, no significant changes have been made, leaving a considerable number of those employed in this sector, mainly women, a difficult situation. Unfortunately, the pandemic has remained a lost opportunity to undertake necessary reforms in agriculture, care and domestic work, all sectors in which the migrant population is overrepresented. These sectors face problems which are widespread in the Spanish labour market more generally, such as informal work, sub-standard conditions, exploitation and a lack of monitoring and enforcement, but the impact of these challenges mainly affects migrant workers.

During the pandemic, although the public recognition of the crucial contribution of foreign workers in these key sectors has increased, nothing has changed and, in fact, conditions have deteriorated. Temporary workers have faced xenophobic attitudes during their movements from one area to another, and living conditions have worsened⁵⁷. Domestic and care workers⁵⁸, mainly women, have also seen their conditions deteriorate as during lockdown many were confined to their employers' homes and had to work every day, without free time and with no extra pay.

Fighting against racism and xenophobia, as well as tackling hate speech, should be another priority, as the pandemic has exacerbated these social ills⁵⁹.

CONCLUDING REMARKS

In Spain, the COVID-19 pandemic has had a clear impact on many migrants who have experienced a deterioration of their living conditions.

The response of the Spanish authorities to migration management in the context of the pandemic—aside from border control, which is not covered by this note—has been, as outlined above, to avoid the fall into irregularity of foreigners who were in a regular situation, paying special attention to the case of foreigners with temporary permits. This has generated criticism from organised civil society, which expected a general regularisation. The administration's response has been to open up sectoral reform processes linked to the demands of the labour market. Moreover, most of the changes that have been proposed are designed to be permanent structural reforms, so that if they are successful, the pandemic will not have been a completely lost opportunity in terms of migration.

Migration management in Spain, however, requires a more profound revision than these changes, even if they do turn out to be permanent. Despite the migration model being based mainly on the links to the labour market, existing instruments are so distant from the reality of labour that they are ineffective and outdated. COVID-19 has forced Spain to take steps forward which, once the pandemic is over, should not be wasted.

CONCLUSIONS

The **COVID-19 pandemic**—often touted as the ‘Great Revealer’, or accelerator, of pre-existing trends—**has affected all three countries, but the impact has varied significantly**. Spain and Italy were already grappling with high unemployment among both migrants and nationals, and a significant informal labour market where exploitation is rife. The response in terms of migration policy has been similar in both states—an attempt to mitigate the effects of the pandemic by offering some degree of social protection and job security to particularly marginalised groups. Where the two countries differ is in the attempt by Spain to take tentative steps towards more structural, longer-term change to the system. In Germany, COVID-19 has exposed some of the vulnerabilities of supply chains and has shed light on the sub-standard labour conditions in specific sectors such as the meatpacking industry, where a majority of workers are (mainly EU) migrants. Government policy on migration, however, has not shifted and legislation approved in 2019 is quietly being implemented to little fanfare despite its potential for systemic transformation.

While it is hard to compare very different national contexts and responses from governments facing unique political, social and economic constraints, it is possible to draw a number of lessons from the analysis of migration measures rolled out in Germany, Italy, and Spain over the last year.

First, what is clear from these case studies is that **migration policy does not and cannot exist in a vacuum**. While EU policymakers and national leaders often talk about linking migration to development aid or to diplomatic relations with the countries migrants come from, in the hope of limiting the numbers reaching Europe, much less political capital is expended on linking up the different

components of the internal dimension of migration governance. It is significant in this respect that the European Commission’s recent EU Action Plan on integration and inclusion⁶⁰ does address labour market dynamics, for instance (although it does not mention exploitation), but fails to make the link with the migration and asylum Pact, as though **migration and labour policies** were not **closely intertwined** (and as though successful integration policies did not depend on successful migration ones). The lack of joined-up policymaking may finally be shifting, at least partially. Spain and Italy have tried to limit the social (and public health) consequences of the pandemic by rolling out temporary protections for some of the most vulnerable groups of migrants. These two countries are also, however, taking steps to tackle power imbalances in agri-food supply chains by introducing stronger provisions in their respective transposition of the Unfair Trading Practices Directive⁶¹, for instance, or—in Italy’s case—to address the long-standing challenge of gang master practices (*caporalato*) via a new national action plan and the application of the 2016 anti-*caporalato* law to tech giants such as Uber⁶².

Secondly, regularisation—despite its almost mythical taboo status on the Brussels stage—is **more widespread** than suggested by fiery Council Conclusions. A global pandemic and restrictions on travel, coupled with shady deals with Libyan militia groups, have led irregular migration to Italy to plummet—and granted the government the political space to carry out a limited, time bound, and sectoral amnesty without having to counter the equally mythical ‘pull factor’ that regularisation is supposed to engender. That political space was quietly carved out by the Spanish government, which expanded access to ongoing forms of ad hoc regularisation and extended legal and social protections to specific

categories of migrants—such as the many teenagers who turn 18 whilst in the country and risk becoming undocumented when they do—without explicitly mentioning the term ‘regularisation’ (and, indeed, fending off requests from civil society for a mass amnesty). In Germany, some of the migrants whose so-called tolerated status had made them a political hot potato are benefiting from what amounts to a form of conditional regularisation, but is presented as a pragmatic response to employers’ demands not to lose the investment they have made in terms of training and social inclusion for what turned out to be rejected asylum seekers. All three governments have also tacitly recognised what is another EU taboo, i.e. the fact that migrant returns—a staple of all Council Conclusions on migration and a central tenet of the new Pact—are hard to carry out for a variety of reasons, that significant numbers of people are simply non-returnable, and that there should be measures to expand their access to legal and social protection.

Thirdly, it matters how pathways to legal migration—be they providing a **legal status to people already in the country** or **allowing migrant workers to enter via an organised system**—are created if they are to be effective in both **meeting labour demand** and **safeguarding rights**. If migrant workers’ status is not secure—as in the case of Italy, where permits granted under the amnesty will only have a duration of 6–12 months—they will slip into irregularity and any regularisation scheme will have to be repeated down the line. These migrants will also be more vulnerable to exploitation and abuse both whilst they have residence permits (and can be blackmailed) and after they eventually lose them (when they can be reported for their irregular status). Allowing those who lose their jobs to seek another without immediately losing residence rights or to be employed via a series of short-term contracts instead of a single one whose duration is the same as the residence permit, as is the case under the new measures rolled out in Spain, also decreases the potential for blackmail on the part of employers. An in-country job seeker permit (explicitly defined as such or which *de facto* allows for the possibility), as both Spain and Italy appear to be experimenting

with, would also do away with potentially explosive political battles in Brussels over an EU-wide entry visa to seek employment.

What the examples of these three countries also show is that, **fourthly, a sectoral approach to legal migration and regularisation** often leads to **disappointing outcomes**. In Spain and Italy, the understandable focus—given the vital importance of securing food supply chains during the pandemic—on agriculture (and, in the case of Italy, domestic work) has led unions and human rights groups to point to the equally dire conditions in other sectors such as transport, warehousing, construction and the gig economy. While Germany’s new Skilled Immigration Act is yet to be tested due to the current restrictions on international mobility, what has been successful in quantitative terms and popular among employers has been the Western Balkans Regulation, which has allowed migrant workers from these countries to take up job offers in any sector.

Fifthly and crucially, the German Western Balkans Regulation also waived criteria based on **skills levels and the formal recognition of foreign qualifications**, cutting red tape and meeting demand from employers rapidly and effectively. Whilst this measure is time bound and was originally intended to provide an alternative to unfounded asylum applications from the Western Balkans states, it may have the potential to shift the EU debate—and ensuing policy action—away from a fixation on skills levels. The pandemic has highlighted how the common definitions of supposedly ‘unskilled’ jobs may be wildly inaccurate, for it is now hard to claim that braving death to care for our elderly relatives deserves to be labelled as such (or to be paid correspondingly), or that pruning olives or picking asparagus can be done by just about anyone (as the almost non-existent take-up of campaigns to encourage nationals to ‘return to the land’ showed). Germany’s Skilled Immigration Act may—despite its name—be a step in this direction, given that it focuses on facilitating access to the labour market for foreign workers at different skills levels, including by investing in future potential through on-the-job training, vocational education and skills

recognition, rather than simply be requesting foreign qualifications equivalent to a German standard. Other countries or regions may also be moving towards alternative systems to achieve better matching of labour supply and demand via foreign workers. Canada, for instance is discussing scrapping the points-based system both the EU and UK claim they want to emulate, replacing hard qualifications with other, softer skills such as adaptability and the ability to communicate effectively.

Finally, what the examples from the three countries also point to is that the predominant focus over the last years on irregular arrivals, border management and asylum has contributed to limiting options for legal migration. Where **opportunities for regular labour mobility are limited or non-existent**, as in the case of Italy—and, to a lesser extent, Spain—there will be **an increase in so-called abusive asylum claims** as the only means to achieve temporary legal status, even though there is strong demand for these workers in sectors such as agriculture, construction and domestic care. Cracking down on unfounded

asylum applications without addressing the need for foreign workers will simply make life even harder for all asylum seekers. What is harder to prove—although it is an oft-repeated mantra at EU level—is that more legal migration channels will lead to less irregular migration⁶³. In Germany, the hope is that in the long run the legal migration system now in place will indeed reduce the number of irregular migrants from countries where protection needs are limited. However, as even German consular capacity cannot currently meet demand were all third countries to be eligible to send workers to Germany under the new law, it is likely that specific states will be targeted for bilateral deals—not necessarily the ones most unfounded asylum claims come from.

This report has shown that **managing labour migration and reducing the number of undocumented foreigners is possible, relatively simple and does not necessarily entail a public backlash**. Although national contexts vary, **the EU does have a significant role to play**, as outlined in the following recommendations.

RECOMMENDATIONS FOR EU POLICYMAKERS

- **Take a truly whole-of-government approach to labour migration, linking measures on legal mobility to employment, social affairs and sectoral policies.** And while the external dimension of migration management is crucial, it cannot be limited to cooperation on returns (or threats to withhold visas for foreign dignitaries and their entourages) in exchange for token quotas of migrant workers, nor can it be managed solely by interior ministries. The new Talent Partnerships which are due to be unveiled in the spring of 2021, for instance, should be developed involving **social partners, civil society organisations and all relevant parts of government on the European side** (as laid out in the EU Pact on Migration and Asylum), **but also in third countries.** It should also not be assumed that non-governmental intermediation is always benign—recruitment agencies, for instance, should be better regulated to prevent abuse.
 - When **revising existing legislation** as laid out in the EU Pact on Migration and Asylum (e.g. the Seasonal Workers Directive⁶⁴ or the Single Permit Directive⁶⁵), **allow for in-country applications, for in-country job seeker permits, for conversions of permits into other types and for multiple changes of employer.**
 - **The European Commission should issue guidelines and recommendations on good practices on granting migrants a more secure legal status,** some of which are outlined in this report. Extending legal protections to undocumented migrants, those on short-term residence permits or those at risk of deportation
- need not be—and is indeed not, as the examples above show—taboo, whether or not it is defined as a regularisation. And the benefits, be it in the form of increased tax revenues, a potential reduction in labour exploitation or a decrease in what is perceived as unfair competition on the job market, are enough to outweigh arguments about alleged ‘pull factors’ or ‘free passes’.
- **Favour a cross-sectoral, comprehensive approach to EU labour migration,** rather than rolling out multiple policies and pieces of legislation addressing specific sectors. This is also a key demand on the part of employers, who fear the red tape involved in recruiting through sector-specific legal migration routes.
 - Whilst refining EU tools for attracting global talent (e.g. via the revised Blue Card Directive⁶⁶), **involve social partners and civil society in discussions on the definitions of skills** and the consequences these labels have in labour market and social terms, including wage and social security levels. When envisaging new EU labour migration systems or schemes, **approach skills in the same way as sectors, privileging efficient, streamlined processes which do not segment the market based on presumptive skills (or wage) levels.**
 - **Include labour rights protections in all labour migration measures.** Labour migration deals are generally presented as ‘triple wins’ for migrants’ countries of origin, the states they move to and employers, but they should include a fourth winning category - the migrant workers.

ENDNOTES

- 1 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on a New Pact on Migration and Asylum (COM(2020) 609 final).
- 2 Art. 79 of the Treaty on the Functioning of the European Union, in fact, establishes exclusive member state competence over the volumes of admissions of third country nationals for the purposes of work, whilst legal migration per se is a shared competence with the EU.
- 3 Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities (COM/2011/0386).
- 4 Figures according to the Central Register of Foreign Nationals/Federal Statistical Office, 2020, Foreign population by status under residence law, Wiesbaden (accessed 19 November 2020)
- 5 This figure increased by almost 18,000 in the first six months of 2020, which can partly be attributed to the disruption in international travel during the global COVID-19 pandemic. A similar decrease also took place as regards deportations and departures through Assisted Voluntary Return programmes (see German Bundestag, printed matter 19/22457 of 15 September 2020, p. 28; German Bundestag, printed matter 19/21406 of 3 August 2020, p. 3).
- 6 N. Cyrus, D. Vogel, 2005, Germany, in: Current Immigration Debates in Europe: A Publication of the European Migration Dialogue, eds. J. Niessen, Y. Schibel, C. Thompson (accessed 21 Nov. 2020); J. Schneider, 2012, Practical Measures for Reducing Irregular Migration, Research Study in the Framework of the European Migration Network, Nuremberg (accessed 19 November 2020).
- 7 Section 25 para. 5 Residence Act.
- 8 Sections 25a and 25b Residence Act.
- 9 Federal Office for Migration and Refugees, 2017, Migration, Integration, Asylum. Political Developments in Germany 2016, Nuremberg (accessed 22 November 2020).
- 10 J. Fuchs, A. Kubis, L. Schneider, 2019, Zuwanderung und Digitalisierung: Wie viel Migration aus Drittstaaten benötigt der deutsche Arbeitsmarkt künftig?, Gütersloh (accessed 19 November 2020).
- 11 H. Brücker, Y. Kosyakova, E. Schuß, 2020, Fünf Jahre seit der Fluchtmigration 2015: Integration in Arbeitsmarkt und Bildungssystem macht weitere Fortschritte. IAB-Kurzbericht 4/2020, Nuremberg (accessed 19 November 2020).
- 12 W. Kluth, 2019, Next Steps: Die Gesetze des Migrationspakets 2019 folgen jeweils eigenen Pfaden, in: Neue Zeitschrift für Verwaltungsrecht, 18/2019, p. 1305–1313.
- 13 Fachkräfteeinwanderungsgesetz of 15 August 2019, BGBl. I, Nr. 31, p. 1307–1346.
- 14 In the run-up to the new legislation, the rhetoric often implied that this was the first-ever law to govern labour migration. However, the first German migration law had come into force as early as 2005 and established, among other things, the Residence Act, which was then further reformed. For two examples of remarks of this kind see the report by the Social Democratic Party group in the German Bundestag of 9 May 2019 („Deutschland bekommt ein modernes Einwanderungsgesetz“, accessed 22 November 2020) as well as the article by FAZ.NET of 19 December 2018 („Nach 30 Jahren Streit: Deutschland bekommt ein Einwanderungsgesetz“, accessed 22 November 2020).
- 15 D. Thym, 2019, The German Migration Package: A New Deal on Labour Migration?, in: Immigration and Asylum Law and Policy Blog of 1 October 2019 (accessed 20 November 2020).
- 16 Sections 18 and 18a Residence Act.
- 17 H. Beirens, C. Le Coz, K. Hooper, K. Popp, J. Schneider, J. Süß, 2019, Legal migration for work and training: Mobility options to Europe for those not in need of protection, Berlin, p. 32 (accessed 21 November 2020).
- 18 Section 16d Residence Act.
- 19 Section 16d para. 3 Residence Act promulgates as a general rule that 'a foreigner is to be issued with a temporary residence permit for a period of two years to have the professional qualification acquired abroad recognised and the foreigner is to be allowed to do skilled work'. The main prerequisites include elementary knowledge of the German language, official recognition that the candidate primarily lacks practical skills, know-how and abilities, a concrete job offer, the employer's commitment to fill the skill or knowledge gap through training on the job and approval by the federal employment agency.
- 20 Reportedly Brazil, India, Indonesia, Jordan, Mexico, and Vietnam, although there is no official confirmation at the time of writing.
- 21 Section 17 para 1 and section 20 para 1 Residence Act
- 22 Gesetz über Duldung bei Ausbildung und Beschäftigung of 8 July 2019, BGBl. I, Nr. 26, p. 1021–1024.
- 23 Section 60c Residence Act.
- 24 Section 19d para 1a Residence Act.
- 25 Section 60d Residence Act.

- 26 See Sachverständigenrat deutscher Stiftungen für Integration und Migration, 2019, Bewegte Zeiten: Rückblick auf die Integrations- und Migrationspolitik der letzten Jahre. Jahresgutachten 2019, Berlin (accessed 22 November 2020).
- 27 Sechste Verordnung zur Änderung der Beschäftigungsverordnung of 27 October 2020, BGBl. I, Nr. 49, p. 2268.
- 28 See J. Bither, A. Ziebarth, 2018, Creating Legal Pathways to Reduce Irregular Migration? What We Can Learn from Germany's "Western Balkan Regulation", Berlin (accessed 23 November 2020); H. Brücker, M. Falkenhain, T. Fendel, M. Promberger, M. Raab, P. Trübswetter, 2020, Evaluierung der Westbalkanregelung: Registerdatenanalyse und Betriebsfallstudien. Abschlussbericht, Berlin (accessed 23 November 2020).
- 29 H. Kolb, J. Schneider, [in preparation], „Woher kommen Sie denn eigentlich?“ Zur (neuen) Relevanz einer eigentlich verpönten Frage im deutschen Erwerbsmigrationsrecht, to be published in *Zeitschrift für Ausländerrecht und Ausländerpolitik*.
- 30 There is no space to further elaborate on this here; for further details see for instance ECRE's commentary (<https://www.ecre.org/germany-parliament-passes-orderly-return-law/>) or the opinion written for the expert hearing in the Bundestag by D. Thym (<https://www.bundestag.de/resource/blob/645276/42c22c67b7ac69a279c34540bf2cf00e/A-Drs-19-4-286-B-data.pdf>)
- 31 Sachverständigenrat deutscher Stiftungen, 2020, Stellungnahme zum Referentenentwurf des Bundesministeriums für Arbeit und Soziales einer Sechsten Verordnung zur Änderung der Beschäftigungsverordnung vom 11. August 2020.
- 32 See J. Bither, A. Ziebarth, 2018, Creating Legal Pathways to Reduce Irregular Migration? What We Can Learn from Germany's "Western Balkan Regulation", Berlin (accessed 23 November 2020), p. 19–23.
- 33 [MIGR_EIORD]
- 34 Idos, 2020, *Dossier statistico Immigrazione*.
- 35 Norme in materia di collocamento e di trattamento dei lavoratori extracomunitari immigrati e contro le immigrazioni clandestine.
- 36 M.Colucci, 2018, *Storia dell'immigrazione straniera in Italia dal 1945 ai nostri giorni*.
- 37 No. 91 of 1992.
- 38 Nationality laws based on the nationality of one or both parents rather than birth on the territory or residence (*jus soli*).
- 39 Calculations by the author based on figures provided in M.Colucci, 2018, *Storia dell'immigrazione straniera in Italia dal 1945 ai nostri giorni*; M. Giovannetti, N. Zorzella, *Ius migranti. Trent'anni di politiche e legislazione sull'immigrazione in Italia*.
- 40 Interior Ministry.
- 41 The regularisation scheme, described as a measure aimed to counter undeclared work and to regularise foreign nationals who were already present in the country, was included in Decree Law No. 34 of 19th May 2020, the so-called *Decreto Rilancio* ('[Economic] Kickstart Decree'), later converted into Law No. 77 of 17th July 2020.
- 42 Idos, 2020, *Dossier statistico Immigrazione*.
- 43 Ibidem.
- 44 <https://www.interno.gov.it/notizie/decreto-flussi-30850-ingressi-lavoratori-non-comunitari-consentiti>
- 45 Real Decreto 463/2020, *de 14 de marzo, por el que se declara el estado de alarma para la gestión de la crisis sanitaria ocasionada por el COVID-19*.
- 46 In the Spanish case and as in other European countries, irregular migration is more linked to reasons of residence than entry. Despite the increase irregular arrivals by sea, the majority of the population that ends up irregularly residing in Spain has regularly entered Spanish territory, with visas (or without the need for them, as is the case of nationals of many Latin American countries) and have extended their stay beyond what is permitted.
- 47 See https://www.boe.es/diario_boe/txt.php?id=BOE-A-2020-4784. The municipal register for all residents is compulsory in Spain since the XIX century. It currently provides access to public services such as education or health care. Some municipalities have been reluctant to register irregular migrants (especially those living in substandard housing and settlements), but the new regulation emphasises municipal authorities' obligation to register people irrespective of their administrative and living conditions.
- 48 Speech by the Minister to the Congressional Committee on Labour, Inclusion, Social Security and Migration, 8 June 2020. http://www.congreso.es/public_oficiales/L14/CONG/DS/CO/DSCD-14-CO-97.PDF
- 49 In the Spanish system, the initial residence permit requires an employment contract, while temporary renewals (two years) require proof of sufficient means for the applicant and his/her family. After five years of legal residence, a long-term permit may be applied for.
- 50 See http://extranjeros.inclusion.gob.es/es/normativa/nacional/instrucciones_sgie/index.html
- 51 Hearing of the Minister in the Senate Committee on Labour, Inclusion, Social Security and Migration, 18 June 2020. https://www.senado.es/legis14/publicaciones/pdf/senado/ds/DS_C_14_53.PDF
- 52 Unaccompanied foreign minors arriving irregularly and how to provide them with legal pathways after they turn 18 has been a crucial issue for years for the Spanish devolved administrations.
- 53 http://www.inclusion.gob.es/cartaespana/documentos/Guia_preguntas_profesionales_sanitarios_extranjeros.pdf

- 54 See *Instrucción* DGIAH 2020/03/20 por la que se aprueban instrucciones para la gestión del sistema de acogida de protección internacional y de las subvenciones que lo financian, ante la situación de emergencia de salud pública ocasionada por el COVID-19.
- 55 The situation of irregular arrivals by sea has become more complicated after the period of border closures, especially on the Canary Islands route. The worsening of the situation in countries of origin and the reduction in irregular arrivals on the other routes (including the Western route which affects the Spanish Mediterranean coast, with a 40% decrease compared to the same period in 2019) may explain the increase in the Canaries, which is beyond the scope of this note.
- 56 See <https://regularizacionya.com/>.
- 57 See https://www.lavozdelsur.es/levantaos/temporeras-andaluzas-racismo-ida-vuelta-nos-llaman-muertas-hambre_251010_102.html, https://www.eldiario.es/desalambre/insultos-argelinos-cuarentena-nietos-cartagena_1_6079349.html or <https://www.france24.com/es/20200726-espa%C3%B1a-coronavirus-lleida-temporeros-brotos>
- 58 See <https://www.bbc.com/news/av/world-54895114>
- 59 See <http://www.rightsinternationalspain.org/uploads/publicacion/d0b782ac0452e9052241b17a646df19ad4edf12c.pdf>
- 60 Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions: Action Plan on Integration and Inclusion 2021-2027 ((SWD(2020) 290 final)).
- 61 Directive (EU) 2019/633 of the European Parliament and of the Council of 17 April 2019 on unfair trading practices in business-to-business relationships in the agricultural and food supply chain.
- 62 Cf. 12/10/20, Uber commissariata per caporalato sui rider, chiusa l'inchiesta: "Condizioni di lavoro degradanti", La Repubblica.
- 63 Cf. M. Jaroszwicz and I. Sushko, 2020, 'More legal migration will stem irregular arrivals' – does this assumption hold true? A case study on Ukrainian migration to Poland, Open Society European Policy Institute.
- 64 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.
- 65 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.
- 66 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.

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