

Is Ignorance Really Bliss? Germany's Labour Migration Policy

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Introduction

After years of restricting labour migration from non-EU countries and focusing on guaranteeing free movement of workers inside the EU-15, the European Commission along with many member states is now increasingly promoting the opening-up of EU labour markets for third-country nationals.[1] The message is clear: skill gaps in the labour markets and an ageing and diminishing workforce call for foreign labour. According to the Commission, the newcomers should be managed under a “proactive approach”,[2] subject to “controlled open immigration policies for third country nationals”.[3] The discussion of labour market *needs* is being followed by the discussion of *means*, i.e. the reform of (labour) immigration policies.

However, the call for management of migration flows so far has not led to a comprehensive reform of national immigration policies. Instead, countries are undertaking timid reforms of temporary schemes for migrant workers, or exempting certain sectors from the recruitment ban. While it appears that member states are testing new initiatives here and there, they do not seem to be quite willing to make a great leap into the unknown.

Immigration policies have always been a sensitive issue. Since the 1970s, many of the old member states have denied that they are a destination for immigration. Bearing in mind the wide range of implications immigration entails – cultural, economic, social and legal – a degree of caution may indeed be warranted. The problem is that the overly cautious approach of policy-makers towards immigration policies produces an incoherent patchwork of regulations in many EU countries. As a result, the already highly complex phenomenon of migration is becoming even more complicated.

Using the example of Germany, this article attempts to show how a denial of being a destination for third-country nationals and the poor regulation of current immigration policies make it difficult to assess migration levels and flows. This lack of assessment may in turn be partly responsible for the hesitation that seems to surround the badly needed reforms, causing further delays.

Germany is a Country of Immigration

Germany's political leaders officially denied until the early 1990s the (already established) fact that their country is a destination for foreigners and hence needs an immigration policy. Chancellor Helmut Kohl pointed out in 1983 that “the recruitment ban for foreign workers is not enough”.[4] Edmund Stoiber, at the time the Bavarian Minister of the Interior, announced at a party congress in November 1992 that “Germany is not a country of immigration and therefore in no need of an immigration law”[5].

Today, Germany is without doubt an ‘immigration country’: about 7.3 million foreigners live there, representing nine percent of the total population. Since 1954, about 31 million people moved to Germany, while 22 million left the country during the same period. Many of those who entered did so for work.

Yet until recently, Germany did not have an immigration law.[6] Labour (or economic) immigration has been officially ‘banned’ since 1973. Hence, from the oil crisis onward, immigration for working purposes, especially with regards to *permanent* immigration, did not constitute a separate area of competence. Foreign workers that entered Germany have been covered by other categories of immigration (e.g. family reunification) or by various schemes under bilateral agreements that regulate the issuance of work permits to non-EU nationals on a *temporary* basis. In Germany, there are several special work permit programmes: a programme for IT specialists (the ‘green card’), a guest-employee programme, a job-on-contract programme, a cross-border programme, and a seasonal workers programme. Each work permit programme has a different time-frame. For example, the ‘green card’ is limited to five years,[7] while the seasonal work permit is valid for a maximum period of three months. Except for the seasonal workers programme, the schemes are subject to quotas. For each scheme these are different. For example, the quota for ‘green cards’ has been extended from 10,000 at the start of the programme to now 20,000. The quota for contract workers was 56,000 in 2002. Where these quotas are existent, they are not fully used. So far, 16,000 ‘green cards’ have been issued while 46,153 work permits in the contracts programme were issued in 2002.

In countries with a long history of immigration, such as Canada for example, permanent immigration for labour purposes constitutes a distinct category, the so-called ‘economic classes’ (alongside family reunification and refugee

protection). The economic classes comprise skilled workers, provincial and territorial nominees, investors, entrepreneurs and self-employed persons. Such workers are selected for their skills based on a point system that assesses education, language proficiency, work experience, age and potential adaptability of the immigrants. A single department – Citizenship and Immigration Canada (CIC) – is responsible for *all* types of immigration, as well as for citizenship. Data on numbers of immigrants within the different categories can be easily obtained from the CIC.[8]

In Germany, such clear division between the various types of migration is absent. The consequence is a contradictory policy: while the Government officially denies third-country nationals entrance to German labour markets, it allows for loopholes in the system. Because of this, immigration procedures in Germany are scattered across different jurisdictions, which make it extremely difficult to gather relevant data.

Lack of a Solid Information Base

Due to the lack of a specific body in charge of economic migration in Germany, the information content and reliability of data on labour immigrants are limited. Data on the levels and flows of these economic immigrants are not being explicitly collected. As a consequence, one has to rely on statistics that cover all categories of migrants, but are not very detailed, or one can draw upon data provided by the different authorities that deal with the different categories of inflows. This makes for an array of responsible agencies. Thus, the Federal Office for Recognition of Refugees (*Bundesamt für die Anerkennung ausländischer Flüchtlinge*) is responsible for processing asylum applications; the Aliens Departments (*Ausländerbehörde*) of the Länder process cases of exceptional leave to remain; the Visa Department of the Ministry of Foreign Affairs deals with cases of family reunification; and the Federal Agency for Employment (*Bundesagentur für Arbeit*) processes work permits. In addition, the German federalism comes into play.

For example, data on migration flows into and from Germany are made available by the Federal Bureau of Statistics (*Statistisches Bundesamt*). Reporting is based on official registration of migrants with the administrations of the Länder. Such data are broken down by gender, age, and countries of origin/destination. Yet neither foreign citizens' length of stay, nor the types of immigrants (workers, asylum seekers, family members, etc.) are recorded, and hence made available by the Federal Bureau of Statistics. In addition, since legislation of individual Länder generally foresees filing only if a municipal apartment is rented, foreign visitors that use private accommodation or hotels are not registered. Moreover, different laws in place at the Länder level result in different bases for statistical reporting. In some, for example, even short-term stays are included in statistics, even though terming this type of movement as 'migration' is questionable.

More detailed information on foreigners that enter Germany for employment purposes can be obtained from the Federal Agency for Employment, which publishes "official statistics on foreign employees according to nationality". These data contain quotas as well as the actual number of work permits issued to foreign workers under the diverse bilateral agreements.

However, the Federal Agency for Employment does not publish official visa statistics covering *all* categories of foreigners that enter Germany for work purposes. The data provided do not include self-employed foreigners, nor professions exempted from the need for work permits (e.g. researchers). Moreover, due to the different time spans of the various work permit schemes, the reliability of the official statistics on foreign employees can be questioned. The time limit for the programmes is often very short. In the case of seasonal permits, valid for up to three months, this means that throughout a year, the same worker is able to hold more than one permit. (Even though this is not very likely, it is possible.) There is also the possibility that some foreigners obtain a work permit but do not get to actually use it. The current data on foreigners working within the programmes can only be obtained at the level of some 180 regional employment agencies that operate throughout Germany. These data are not, however, being collected consistently and made publicly available. Finally, there are no uniform reporting standards across authorities, owing to the division of competencies and varying grounds for data collection – which in most cases is done only for internal administrative use.

As a consequence, the figures on registered migration flows published by the Federal Bureau of Statistics deviate greatly from the figures one could obtain from summing up the numbers recorded by respective authorities dealing with issues touching migration, e.g. the issuance of residence permits or work permits.

In 2002, for example, the Federal Agency for Employment reported that roughly 320,000 new work permits were issued to citizens from the Central and Eastern European Countries (CEECs) under different temporary employment schemes. Yet the number of registered persons from these countries for the same year, obtained from the Federal

Bureau of Statistics, just show up to 91,250 persons. The discrepancy is indeed striking. The two figures provide neither an insight into the number of actual labour immigrants, nor the number of foreign citizens who came for work purposes to Germany.

The German example shows that if a clear division of responsibilities in policy regulations is missing, these regulations become non-transparent. This lack of transparency, in turn, not only makes it extremely difficult to assess developments in actual (labour) migration levels and flows in Germany, but it also prevents politicians from taking a big and necessary step.

Cautious Approach to Immigration Policies

Absence of a specific immigration authority, on the one hand, and chronic absence of reliable data on migrants in Germany, on the other, inject a large dose of caution in official and public attitudes towards migration. In practice, this translates into some 'closed-door policies'.

Thus, Germany's cautious approach to immigration is manifested in delaying free movement of workers from the new member states through introduction of transitional periods. These transitional arrangements, which were first agreed in the EU Treaty of Accession signed in Athens on 16 April 2003, restrict access to EU-15 labour markets for workers from the new member states, which in Germany is realised through maintaining quotas for work permits. For a period of up to seven years, i.e. potentially until May 2011, member states can continue applying bilateral agreements limiting 'the right to move and reside freely' within the EU, one of the fundamental expressions of European Union citizenship.

The rejection of a proposed point-based system to facilitate access to German labour markets for foreign citizens is another example of the German cautious attitudes towards migration. The introduction of a broad selection scheme for economic immigrants was one of central ideas of the new immigration law.[9] Similar to the Canadian selection scheme mentioned above, this system would have allowed for better matching of data on immigration according to type, in this case economic immigration, and to assess the human capital characteristics of foreign workers.

Last but not least, this legal and policy limbo in which (labour) migration in Germany finds itself also impacts public opinion. Hence immigration tends to be associated with 'social-welfare tourism' rather than a much needed contribution to the labour market, economy, and ultimately society at large.[10]

Conclusions

What if German data on economic immigration/entry for working purposes were more reliable? Then it might be possible for researchers to show that transitional periods are irrelevant. 320,000 work permits granted to citizens from the CEECs could illustrate that even with 'closed doors', inflows of workers from the new member states are quite substantial, and in the range of what is projected for the first years after the free movement comes into effect.[11] The fact that existing restrictive quotas in the temporary schemes have not been fully utilised already suggests that the regulations now in place (which will apply as long as the transitional arrangements will last) may not be necessary. There are no queues of workers in the new member states waiting eagerly to work in Germany.

And what if, given a broad selection scheme for workers, one would be able to see that the group of economic migrants entering Germany consists of skilled people with the means to support themselves and their trailing family? Would Germans still be afraid of 'welfare shoppers'?

This is the real dilemma: if the absence of coherent immigration policies is rooted in the lack of evidence, missing assessments in turn may lead to a further reluctance to overhaul immigration policies, making a proper analysis of the future effects of these reforms even less likely.

One chance to break this vicious circle with an overarching immigration law could be a clear definition of labour immigration as opposed to temporary entry for work purposes. With this starting point, a better monitoring of actual labour immigration as well as mobility would be possible, paving the way for an evidence-based policy formulation.

Footnotes

[1] A number of member states have developed concrete policy initiatives to address labour market shortages. For example, in the UK reform of the Immigration Act in 2002 introduced a programme to attract highly-skilled immigrants, which is based on a point system. In Germany and Ireland, the 'green card' for IT specialists and the introduction of the work visa scheme represent the latest initiatives to foster immigration in certain sectors of the economy. Exceptions in standard immigration law for certain professions have been made in the Netherlands. For an overview of recent policy developments in the EU, please see Anna Turmann, *A New European Agenda for Labour Mobility*, CEPS-ECHR Task Force Report, Brussels, April 2004.

- [2] European Commission (2000), *Communication on a Community Immigration Policy*, COM(2000) 757 final, Brussels, 22 November 2000.
- [3] European Commission (2003), *Communication on Immigration, Integration and Employment*, COM(2003) 336 final, Brussels, 3 June 2003.
- [4] AP agency notice, 26 January 1983.
- [5] Quote listed by the Green political party under: <http://www.gruene-wl.de/themen-stoiber.html>.
- [6] After almost three years of debate, the political parties agreed on the bill on 17 June 2004.
- [7] Even though the name of the German work permit for IT specialists was borrowed from the American 'green card', these two immigration channels have little in common. In the American context, a green card represents the right of an immigrant to live and work in the US permanently. After five years, the immigrant can apply for American citizenship. Thus, the US green card holds with it the prospect of unlimited residence status.
- [8] For further details on immigration data for Canada, see Citizenship and Immigration Canada (2003), *Facts and Figures*, at: <http://www.cic.gc.ca>.
- [9] The proposals of the Commission for the immigration law, set-up by the Federal Government in 2000, can be found at: <http://www.bmi.bund.de>.
- [10] The topic has recently been debated in connection with the need for transitional periods towards the new member states of the EU. The UK and Ireland, being the only countries besides Sweden to announce that they would not impose barriers to workers from the accession countries just declared that they will restrict access to non-contributory social-welfare payments to new entrants unless they can prove to have been habitual resident in the country of destination for a certain period of time.
- [11] A newly updated study by the DIW (*Deutsches Institut für Wirtschaftsforschung*) on migratory patterns states, for example, that the potential inflow from CEECs over the next 25 years will at most be 3.7 million persons in total. The inflow into the EU-15 on a yearly basis is estimated to be between 318,000 and 400,000 from the start of free movement. For Germany, which attracts 60 percent of the immigration from new member states, yearly flows are projected to be around 220,000 people.