

## **Recidivism of the restrictions of labour free movement after the EU-Enlargement 2004**

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One of the most controversial points in the pre-accession negotiations before the EU accession in 2004 was the opening of the borders for the workers from the accessing member states. Four types of the free movements – of labour, goods, services and capital have been enshrined in the EU since the very beginning of 1957 and that policy was extended to the citizens in general in 1990s.

During the last decade, the question of harmonising the EU states' immigration policies has been one of the top agendas of the European Union. Even though several immigration policies have been successfully communalized, the others remain in the hands of the national governments such as labour immigration policy. It has been characterized by the extreme changes across countries and across time, switching between liberal opening and the imposition of restrictive tendencies, depending on changing domestic factors. Policy changes in member states have been prompted by domestic factors such as (un)employment levels, transformations in the different professional requirements, public opinion etc. Labour immigration policy concerning third country nationals has been the object of a struggle of competence between the executives of the member states and EU institutions, with the former ones being so far successful in retaining control.

The issue of the harmonization of immigration policy is of a high importance for EU member states but also for the EU institutions and have the opposite demands from these two poles. Its importance is widely recognized, especially within the scope of the EU attempts to achieve its broad goal of internal free movement of labour as one of its main principles. At the same time, equally recognized related policy makes the level of sovereignty of the member states problematic. So far, the attempts coming from the EU with the aim to harmonize this policy have faced many political blockages from the side of the member states. It implies that the common immigration policy still does not exist (Andrew Geddes, 2005).

General estimations about the scope of potential migration have been published in quite a few publications (of Walterskirchen and Dietz 1998, Boeri and Brtcker 2000, Hille/Staubhaar 2000, Sinn 2001, Organa 2005) or about the impact of restrictions (Fassmann/Münz 2002). Other authors provide data on the profile of potential migrants based on empirical surveys. One of the common conclusions of most of the noted authors, in their attempts to explain the decisions related to the transitional period of the last wave of the EU enlargement, is that the transitional period had no 'clear-cut' economic explanation (Bohle and Husz 2005).

This issue fluctuates throughout three levels –

- a) national preference formation at the domestic level,
- b) interstate bargaining at the EU level and
- c) decision to delegate sovereignty to the supranational institutions.

The bargaining game at the EU level is still based on the principle of unanimity.

In the time of the pre-accession negotiations with the ten plus two new members, Austria and Germany insisted on prolonging free labour movement restrictions. In April 2001, European Commission proposed flexible transitional arrangements for the free movement of workers. There were cross-national variations in response to this proposal. All policies of the 'old' fifteen members regarding the freedom of labour movement after the enlargement can be synthesised into five categories:

- 'no restrictions' policy (by the governments of Sweden, Ireland and the UK),
- 'quotas' (imposed by Portugal and Italy),
- two-year transitional period in Belgium, Denmark, Finland, Greece, Luxembourg, the Netherlands and Spain,
- about five-year transitional period (in France),
- and the longest possible period of seven or more years (Austria and Germany).

The illustrative examples for this discourse are the case of Germany and the UK. The first one can be identified as a form of general accommodation and specific marginalization of the immigrant labour. Kestel and Godmer (2004) observe that there is a broad consensus to keep high costs of entry on the coalitional market for the extremist parties in Germany. They point to the example of Baden-Württemberg, a very conservative Land where there has a coalition been established between the Social Democrats and the CDU to prevent the rise of the Republicans in the early 1990s. The main parties adhere to 'containment' policy. Left, Liberal and Green Party criticized the government for tightening the asylum policy following the line of New Democracy in its reactions to the decision to impose the visa restrictions for Bosnian citizens in 1993. The other demands were the abolition of native language in official teaching processes as well as the expulsion of immigrants who have committed a crime. Government officials in Baden-Württemberg and Bavaria put pressure on the federal government. The influence of the local politicians is also enhanced by the decentralized system of political institutions which gives the states representation in the Bundestag (Federal Council). The other distinctive example is the UK with its two-party response system that had a high salience to the immigration labour issues. This is reflected by the voters' outlook, media coverage and political parties' responses. The representatives of three main parties - Labour, Conservative and Liberal Democrats participated in seminars and meetings to deliberate the strategy to combat the extremist requirements and anti-immigration violence.

Some authors stress that the institutions as such do not cause any outcomes but they facilitate or constrain political actors in pursuing their goals (Thelen and Steinmo 1991). Kunz (2002) tries to explain the restrictions with the fact that politicians faced with great euro-scepticism and the measure that can moderate that common sense trend that differs from the centralised EU institutions. Recently, some authors also tried to develop more scientific models in their discourses such as the method of agreement and indirect method of difference by Mill. As a matter of fact, the explanation of the fact that there has been a great scale of the public policy solutions of the member states in the very moment upon the enlargement 2004, with a special focus on those which opted the longest possible period of the restrictions (Austria and Germany) and those against transitional period at all in the labour migrant strategy (Ireland, Sweden, the UK), lies in the simple conclusion that the EU-member states still hold the competency for their own decision making if it is related to the national interest and security as well as that the member states vary in the sense of the local labour conditions, employment as well as cultural perceptions of itself and 'the others'.

In relation with the countries' democracy type, all countries have had the negative scores on the scale where the highest score means the highest degree of the consensual type of democracy with Sweden on the top of the scale with -0.29 points. One of the elements that characterize consensual democracy is corporatism that links the decisions on the restrictions on labour migration within the scope of the interest of domestic labour and its advantages in the cases of labour scarcity.

The lack of acceptance of foreign labour forces is a topic discussed in many related scientific articles. In order to explain the issue, Lijphart (1999) relates the majoritarian and consensual democracy according to ten differences:

- 1) concentration of executive power in single-party majority cabinets versus executive power-sharing in broad multiparty coalitions;
- 2) executive-legislative relationships in which the executive is dominant versus executive legislative balance of power;
- 3) two-party versus multi-party system;
- 4) majoritarian and disproportional electoral systems versus proportional representation;
- 5) pluralist interest group system with free competition for all and corporative group interests;
- 6) military and centralized government versus federal and decentralized government;
- 7) concentration of legislative power in a unicameral legislature versus division of legislative power between two equally strong but differently constituted houses;
- 8) flexible constitution that can be amended by simple majorities versus rigid constitutions that can be changed only by extraordinary majorities;
- 9) systems in which legislature has the final word on the constitutionality of their own legislation versus systems in which laws are subject to a judicial review of their constitutionality by supreme or constitutional courts;
- 10) central banks that are dependent on the executive versus independent central banks.

There have been the complex varieties among the common public opinions of the EU states-nations on the labour policy towards the citizens of the accessing states. In explaining the puzzle of the different decisions on the transitional period, public opinion has also been taken into account by Bohle and Husz (2005). For instance, according to the Eurobarometer, in Great Britain around 75 per cent of the respondents evaluated migration impact to their country after the enlargement as negative, which is not much less from the results on the same issue in Austria or in Germany where the survey shows the negative attitude in the extent of 80 per cent and 76 per cent respectively. Within that survey, there were three possible answers:

- 'accept without restrictions',
- 'accept with restrictions', and
- 'do not accept'.

Although the role of public opinion is an important factor in creating the public decisions, it fails fully to explain the variety of the decisions of the different EU-member states.

This opposes Freeman's arguments that assume immigration policy as shaped by elites and economic interests. Many of the hypotheses derive from an institutional and state-centred approach settling the issue within the scope of the unemployment rate as the structural cause.

During the period of the fourth stage of the EU institutional transformation which includes

also the changes in the Justice and Home Affairs sector, meaning the period 1999-2006, the main objective has been communalization. While the treaty of Amsterdam brought immigration policies under the community pillar, there was no indication about a common EU immigration policy. This was done in the Tampere Council in 1999 that clearly defined the policy framework in which the member states can create a common immigration policy. The Tampere Summit called for a common EU immigration policy and provided political impetus for the highest governmental level. However, there has been a slow move towards macro-harmonizing of the immigration issues.

Two important developments after 1999 are brought by the Hague Programme and the Green Paper. The Hague Programme retained unanimous voting and, by that, national veto opportunities. It also keeps restricted parliamentary rights for legal long-term migration on third-country nationals, the freedom to travel for third-country nationals for up to three months, the abolition of internal border controls between the member states, standard external border controls etc. In 2005, the Commission presented the Green Paper aimed to the fostering the debate among the EU institutions, member states and civil society under the ‘umbrella of the added value’.

The Green Paper of the Commission was followed by the Commission's Action Plan on legal migration of December 2006. After the publication of the Action Plan, no coordination was organized. It was proved as still early for the member states to claim as definite their own formal positions (Peter Claes, 2007).

Plan on Legal Migration of the European Commission presented in September 2007 directed the conditions of entry and residence of highly skilled workers from third countries with the aim of attracting the professionals needed to sustain the EU competitiveness. Three other proposals aimed at facilitating circular and temporary labour immigration are planned to be put forward and should address respectively seasonal workers and remunerated trainees (autumn 2008), and intra-corporate transferees (2009).