

Move to Work, Move to Stay? Mapping Atypical Labour Migration into Germany

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Introduction

With a current GDP per capita of €43,500 and an economy that managed to successfully overcome the impact of the financial crisis, Germany has become one of the major destination countries for migration within the EU (Senge, 2015). Shortly after the fall of the Berlin Wall, Germany experienced a large inflow of migrants from post-communist countries, peaking at more than two million immigrants arriving in 1990 (Worbs *et al.*, 2013). Since then, Germany has remained a major receiving country for European migrants with a constantly rising number of new registrations.

The EU enlargement round of May 2004 prompted a heated debate between business and labour, as well as in the public, about the consequences of the free movement of labour. The fear of a large influx of cheap labour into a labour market which was subject to a far-reaching labour market reform at the same time led to the introduction of transitional arrangements (TAs) to restrict regular labour migration. This policy was strongly supported by both trade unions and employers' organisations, which hoped that it would slow down the massive influx of cheap labour. However, restrictions and controls have only been imposed on regular forms of employment, whereas other forms of atypical labour mobility, such as seasonal work, self-employment, and posting remained largely untouched.

In this chapter, we will analyse the role of temporary restrictions on labour migration after the eastern enlargement rounds of 2004 and 2007 for the employment structures of EU migrant workers in Germany. Using data on the different forms of intra-EU migration to Germany, we analyse the different paths that labour migration has taken since the fall of the Iron Curtain. We map the changes in magnitude, character, and the direction of intra-EU labour mobility to Germany and the relative weight of the different channels through which such movements occurred from 2000-2015.¹

In all accession rounds since 1990, the public debate has almost exclusively focused on whether Germany should grant citizens of the accession states full access to the regular labour market or restrict access through TAs. Other ways to enter the labour market (e.g., posting or self-employment) have largely been ignored. One reason for this blinkered discussion is the lack of information and data regarding such forms of labour migration. In this chapter, we will, therefore, map all existing forms of intra-EU labour mobility (and migration) to Germany and focus on the interrelationship

¹ Most of the data were collected during a project funded by Hans-Böckler-Stiftung in 2014, 'Arbeitskräftemobilität in Deutschland', though some of the data have been updated. Data are accessible from the National Statistical Agency or the National Employment Agency. However, some of the data were requested and provided during the project and could not, therefore, be updated for this paper (Wagner and Hassel, 2015a).

between restrictions on regular labour migration and the development of alternative forms of labour mobility.

We aim to test whether the combination of eastern enlargement and temporary restrictions on labour migration through TA has contributed to a shift towards atypical employment for migrant workers, which has not only been associated with bad working conditions but has also prompted negative responses by the media and local authorities.² Our analyses show that migration to Germany from Central and Eastern Europe has increased steadily since the early 90s. Regular and seasonal employment was comparatively high before the first accession round of 2004. In contrast to other EU Member States, such as the UK or the Nordic countries, mobility to Germany, based on the free movement of workers and the flow of labour related to the free movement of services, was reasonably consistent until the repeal of the transitional restrictions in 2012 when the rise in regular migration accelerated.

The data presented in this paper show that temporary restrictions on regular labour migration are associated with a parallel rise in atypical employment, which has been particularly concentrated in those sectors where many migrants work. This has apparently been amplified by the fact that migrants in standard employment are entitled to equal treatment as native workers, whereas migrants coming through atypical forms of labour migration are generally cheaper and have weaker employment rights. Although regular labour migration increased, once the temporary restrictions were suspended, irregular forms of migration have equally increased. We therefore assume that the temporary restrictions on the free movement of labour were largely unsuccessful in protecting the German labour market against downward competition but have actually strengthened the dynamics of segmentation or dualisation by reinforcing a shift from regular to nonstandard employment. This assumption is further reinforced when including the average length of stay of regularly employed workers in Germany in the analysis. The data reveal that the German labour market is attractive for workers from other Member States of the EU but seems to offer few incentives to stay long-term.

We will first provide a short overview of the institutional and legal frameworks for mobility and migration within the EU. The subsequent theoretical framework is based on the distinction between typical and atypical forms of labour migration within the EU. Using quantitative data on the different forms of labour migration to Germany, we will then show how restrictions in some forms have contributed to growth in atypical patterns of labour migration.

² In 2013, the German Cities Association (Deutscher Städtetag) wrote a paper declaring that the numerous migrants coming from Romania and Bulgaria were creating a problem for some regions that was no longer manageable without intervention by the federal government. According to the paper, the poverty-driven migration of citizens with few or no qualifications was creating major financial problems to social security funds at the regional level.

Institutional and legal frameworks for migration within the European Union and the German implementation strategy

Crossing borders within the European Union (EU) is a fundamental right for its citizens (article 21, Treaty on the Functioning of the European Union, TFEU). When migrating, an EU citizen has to register in the host state and define his or her legal status within a maximum period of three months. After this time, the right to reside in another Member State depends on a number of different legal criteria, which are linked to the migrant's economic situation and relationship to the host country's labour market (Directive 2004/38/EC, articles 6 and 7). Among these various forms of cross-border labour mobility, the basic and most common status is the free movement of labour.

An employment contract in a different Member State secures equal rights (and duties) for native citizens regarding labour law, social security, and taxation for EU citizens.³ Besides this regular form of labour migration, European legislation differentiates between three additional forms of labour mobility that can vary in duration, contract types, social rights, and the scope of national regulation. These forms are seasonal employment, the posting of workers, and self-employment related to the free movement of services, including subcontracting (laid down in §54 of the TFEU). Before EU accession, employment for non-EU Member State citizens in Germany was possible only with work permits. These work permits were issued on a case-by-case basis because Germany had established a ban on the recruitment of foreign workers in 1973.

Seasonal work in another Member State is part of the free movement of labour. However, there are some legal characteristics that distinguish seasonal workers from regular employees. The most important distinction refers to the fact that seasonal work can be exercised for a maximum period of six months per year without being recognised as regular employment. The workers have to clarify before starting work if they will be paying social contributions in the home or host country. However, if seasonal work is carried out for a period of fewer than 70 days, no social contributions have to be paid at all, whereas taxes are due irrespective of the duration of a work contract. Before EU accession, seasonal workers from Central and Eastern Europe were already employed in seasonal work in Germany, based on a bilateral agreement with neighbouring candidate countries (Haug, 2004).

The conditions for the temporary posting of workers to another Member State to carry out business services are regulated within the EU by the Posting of Workers Directive (PWD) 96/71/EC, which came into force in 1996. This directive is based on the freedom to provide services within the EU and was designed to help companies expand their economic activities beyond national borders by simplifying legal requirements for this purpose, especially in regard to equal treatment in core working conditions. According to the directive, companies can conduct cross-border services and send (post) their own employees for a determined period to another country where the company has received a service contract. For the duration of the posting, workers remain employed and pay

³ Various regulations and directives have clarified that EU citizens working in the host Member State are entitled to the same rights as host country nationals without discrimination based on nationality (e.g., Regulation 1612/68 or Regulation (EU) 492/2011, Directive 2004/38/EC etc.).

social contributions and taxes in their home country. The directive also implies that, unless uniformly regulated in the receiving country, wage levels of the sending country might apply for posted workers. For the sending company, the main legally binding requirement for posting is the so-called A1 form, confirming the registration and payment of social security contributions in the home country. According to the PWD, posted workers are covered by a small nucleus of statutory host-country working conditions (laid down in article 3 of the directive), whereas social security and other rules pertaining to the employment relationship are covered by home country rules for the first two years. Before the implementation of the PWD, Germany had bilateral agreements with EU candidate countries in which quotas for service contracts with foreign companies were established. These companies had the right to temporarily post their workers to Germany for a maximum period of two years (Wagner and Hassel 2016).

In addition, freedom of establishment enables companies or individuals to establish a company in another Member State with a long-term perspective (article 49, TFEU). Any citizen or company from one Member State has the right to open a company in another Member State and offer their services on the market without discrimination. The Services Directive, 2006/123/EC, has strengthened this freedom, clarifying the sectors for which the freedom of establishment is subject to national verifications as well as the sectors in which companies from other Member States can directly offer their services. Under this legal framework, individuals are entitled to register as self-employed in another Member State and offer their labour force on the market for the price they see fit.

These European directives aim to enhance the mobility of companies and services as well as labour migration. However, they have left a certain amount of leeway to Member States in the application of home or host-country conditions with regard to remuneration, taxes, and the recognition of qualifications, which are clearly visible in the example of Germany. Apart from the EU legislation designed to enhance mobility and migration within the EU, Member States also had the possibility to temporarily restrict access to the labour markets through s TAs. They were first introduced during the preparations for the accession of Spain, Portugal, and Greece in 1985 and allow old Member States to temporarily restrict the level of free movement of labour from new Member States.

Facing the biggest enlargement round in EU history, the German government decided to temporarily restrict access to its labour market for the EU8⁴ countries for a period of seven years. It also later restricted access to Romania and Bulgaria (EU2) for the same length of time but, in 2015, repealed the TA for Croatia after two years of EU membership. The adoption of TA was supported by both the employers' organisations and the trade unions, and it originated from a real fear of an uncontrollable influx of cheap labour (DGB, 2002). The TA limited access to employment, especially for the low skilled, by requiring work permits. These work permits were given only to applicants with specific qualifications (doctors or engineers) or when employers had concrete positions to fill and had proven that the vacancy could not be filled with domestic workers. Employment for citizens coming from the new Member States was subject to prior assessment by the National Employment Agency (a so-called priority examination).

⁴ The EU8 countries are: Latvia, Lithuania, Estonia, Poland, the Czech Republic, Slovakia, Hungary, and Slovenia.

With regard to the directives promoting labour mobility, the implementation strategy in Germany shows that individual labour rights vary, not only between Member States but also across sectors, depending on host country regulations. When implementing the Posted Workers Directive (PWD), the Member States had to establish the *lex loci laboris* (i.e., the principle of equal treatment with host country workers), for a limited nucleus of conditions laid down in article 3.1 of the directive, whereas regulation of other conditions fell under the jurisdiction of the home country. With regard to pay, the directive states that, unless collective agreements have been declared universally applicable or a national minimum wage exists, pay levels of the home country should apply to the posting. Germany implemented the directive through the Posted Workers Act (PWA), which followed the home country principle with regard to pay.

Initially only for construction, the number of sectors in which host country minimum pay would apply were consecutively extended⁵ to include cleaning, postal services, security services, etc.,⁶ whereas, in other sectors, such as meat processing⁷ or household support, posted workers could be remunerated according to home country pay levels. The sectors included into the PWA were characterised either by strong trade union support, as in construction, or political initiatives, such as the care sector. Because of their direct borders with EU8 countries, Germany and Austria were also the only Member States of the EU to be able to impose TAs for posted workers.⁸

In the case of Germany, this meant that posting in the sectors mentioned in the PWA was subject to annually defined quotas. A large number of sectors with low trade union coverage were left out of the PWA, allowing for a substantial difference in pay levels between native and posted workers. In addition, from 2004 onwards, in all sectors not mentioned in the act, foreign companies could post workers paid at home country wage levels, social contributions and taxes.⁹ This provided a strong incentive to substitute regular migrant or native workers with posted workers who were substantially cheaper in terms of labour costs.

With the introduction of the national minimum wage in January 2015 and the inclusion of the minimum wage into the PWA, Germany set a wage floor for all workers, whether temporarily or permanently employed in Germany. The minimum wage of €8.50 was also included in the PWA and applies to all workers who are not covered by the collective agreements mentioned in the act. However, there are other forms of employment, such as solo self-employment, for which the minimum wage does not apply.

The freedom to set up a company in Germany by EU nationals has not been subject to any transitional restrictions or quotas. The freedom of establishment is part of the freedom to provide services and offers a legal possibility for individuals to register and open a business in another Member State of the EU. The administrative hurdles in Germany decrease with the size and

⁵ The PWA was revised and expanded to include new sectors in 1996, 2006, 2007, 2009, 2012, and 2014.

⁶ See §4 of the PWA for a full list.

⁷ Meat processing was included in the PWA in June 2014.

⁸ These transitional arrangements were imposed as annual quotas restricting the number of posted workers per federal state, depending on unemployment rates and economic growth.

⁹ According to German law, every posted EU citizen active in the German labour market for a period of fewer than 183 days is allowed to pay taxes in another Member State. After this period, taxes have to be deducted in Germany, while social security contributions are paid in the home country.

qualification of the individual business. Whereas business registrations in certain skilled, manual professions require a verification at the local chamber of commerce, businesses in cleaning and construction services can be registered directly. As we show in this chapter, self-employment has offered an opportunity to circumvent existing restrictions in other forms of mobility. Employers have increasingly hired their workers as self-employed contractors (so-called 'bogus self-employed'). This way, the user companies could not only circumvent employment rights and national insurance contributions, but they could also undercut the minimum wage.

Theories of migration: typical and atypical labour migration

In the European policy discourse, migration and mobility are used interchangeably, both referring to the process of movement from one country to another (Arpaia *et al.*, 2014). However, in the academic discourse, the difference between migration and mobility is defined by the timeframe and orientation of the individual (Cyrus, 2000; Jordan and Düvell, 2002). Whereas migrants are considered to have a long-term orientation and also move the focus of their life to the country where they have decided to move, mobility refers to a short-term stay in another country for a specific purpose (Cyrus, 2000). Mobile workers generally keep the focus of their lives in their home countries and also intend to spend their incomes there. In most cases, mobility is driven by economic incentives and work. Workers spend a definite amount of time in another country to work and return to their home country once the job is done. Previous research often refers to circular migration when analysing mobility through posting or seasonal work, as these forms already legally entail a short-term stay in the host country or, alternatively, commuting between home and host country on a regular basis (Doomernik, 2013, PWD Preamble 8, 10, 12 and PWD Art. 1c, Art. 2d). From a sending country's perspective, mobile labour leaving the country is beneficial for the unemployment statistics and for the economy because of remittances (Comini and Faes-Cannito, 2010). From a receiving country's perspective, the role of labour migrants is often characterised in the comparative political economy literature, often as competing with natives over resources, public provisions, and jobs (Freeman, 1986) but also boosting domestic demand and labour supply.

In the EU labour migration literature, there is little differentiation between migration and mobility. The role of posting has been critically analysed on a regional and European level (Cremers, 2006; Dølvik and Eldring, 2006). However, self-employment and seasonal work are rarely included in discussions of labour mobility and migration within the EU. Labour migrants are commonly perceived as competing with natives at the low end of the labour market for jobs, undercutting wages, and bringing standards down (Anderson, 2014; Freedland and Costello, 2014). Migrants are attracted by high wages in rich(er) countries, whereas employers seek to fill vacancies that are unattractive to the native labour force because of low wage levels and/or high workloads (Wagner and Hassel, 2016). The gap in income between rich and poor countries and job opportunities in times of economic crisis drive the process of migration (Collier, 2013). However, in most post-industrialised destination countries, labour migrants are confronted with the dualisation between a primary and secondary labour market (Häusermann and Schwander, 2012). Depending on the labour market institutions of the country, some migrants might gain access to jobs for so-called insiders in the primary, stable, and secure market but are more often than not left to compete for jobs with outsiders in the secondary, more insecure, and unstable market. According to Michael Piore, jobs available for migrants are

characteristically the ones that cannot be filled by native workers (Piore, 1979). Migrant labour is, therefore, more likely to access the secondary labour market with insecure jobs and comparatively low pay, whereas entry into the primary labour market with stable employment relationships tends to remain the privilege of native workers and high-skilled migrants (Piore, 1979). The level of interaction and interchangeability between the two labour market segments is shaped by the institutional framework (Häusermann and Schwander, 2012) and the access of migrant workers to either segment (King and Rueda, 2008).

The forms of integrating migrants into the national labour market reveal two different patterns, which are influenced by access to the primary and secondary labour markets. We distinguish between typical and atypical forms of labour migration, where:

- **typical** labour migration denotes a cross-border move for longer term employment. It is based on the free movement of labour within the EU and legislative frameworks creating the same rights with regard to remuneration and labour protection and the same responsibilities with regard to social and tax contributions for migrant workers as for native workers. This form of labour migration theoretically entails access to the primary labour market.
- **atypical** labour migration has a temporary character and is regulated by specific restrictions. Seasonal work, posting, and solo self-employment are more likely to belong to this group and to be part of the secondary labour market. As will be shown later, these forms of migration are also characterised by the higher risk of low wages and labour exploitation. Because the EU has left a certain degree of freedom when establishing the legal frameworks for these forms of labour mobility, it depends on the national legislation to decide how much seasonal work, posting, and solo self-employment are part of the primary or secondary labour market.

Based on this distinction between the existing forms of mobility, we aim to test if the combination of temporary labour market restrictions and the particular institutional framework of German labour market regulation since 2004 have skewed the influx of labour migrants from typical to atypical labour migration. This pattern of labour migration is nurtured by three factors: 1.) workers from other Member States are willing to migrate to Germany to take up employment and improve their personal situation; 2.) the institutional framework of receiving countries like Germany underwent structural changes towards deregulation and liberalisation; 3.) companies in predominately labour-intensive sectors in the receiving state often face a shortage of native labour for unattractive jobs and use the existing institutional frameworks of EU labour migration and mobility to employ cheap labour.

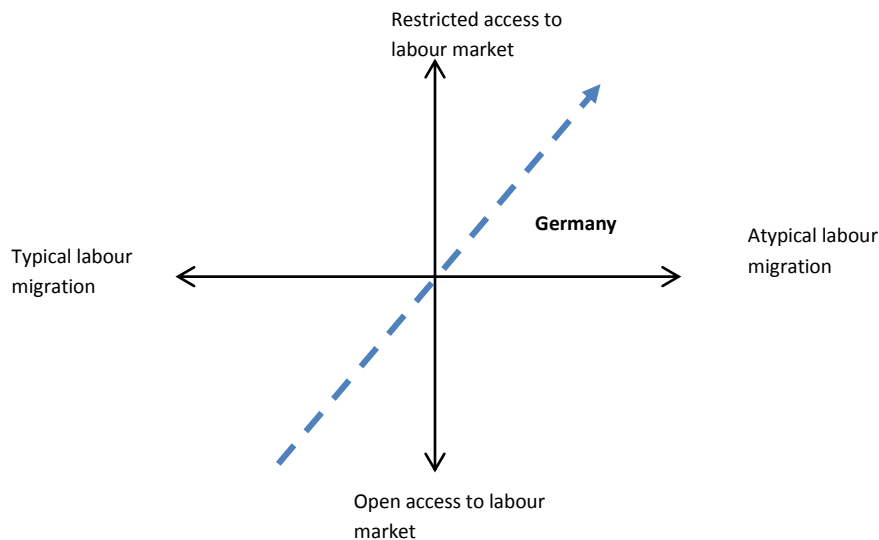
Whereas typical labour migration and the option of finding regular employment offer a long-term perspective for migration and integration into the receiving country, atypical labour migration, such as seasonal work or posted work, classifies more as mobile labour because workers keep the focus of their lives at home and temporarily work in the receiving country without actually moving there. Sectoral studies (e.g., in the meat industry) reveal that economies can create permanently profitable structures based on the constant influx of atypical labour migration (Hassel *et al.*, 2016; Wagner and Hassel, 2016). Within the EU, the existing regulations for migrants and mobile workers reveal that the institutional structure and implementation choices of directives differ significantly because they have been predominantly left to the Member States.

The Varieties of Capitalism literature distinguishes between different institutional frameworks that shape labour markets in Europe. Germany has been characterised as a coordinated market economy with strong social partners, centralised bargaining, and a welfare state based on conservative structures (Hall and Soskice, 2001; Molina and Rhodes, 2007; Hassel, 2014). It has gradually opened its labour market but kept its primary protective focus on labour market insiders while facilitating access to temporary posting work or self-employment (Brenke, 2013; Hassel, 2014). Research on the insider-outsider orientation of labour markets in Europe concludes that Germany's institutional structure has produced a welfare state that is insider-oriented and reinforces the existing labour market dualisation (Häusermann and Schwander, 2012). The authors claim that labour market insiders are typically workers in standard employment relationships, whereas outsiders have a high risk of being affected, either by unemployment or by atypical employment. Although the EU regulation of regular labour migration entails the right to unemployment benefits in the host state, enduring unemployment increases the risk of losing the right to reside in the host state.¹⁰

Previous studies of EU labour migration show that national actors, like employers, selectively use EU legislations to switch between different EU legal frameworks for labour mobility, which are associated with different national rights, depending on their own preferences. Lillie *et al.* (Lillie *et al.*, 2014) use the term 'regulative arbitrage'; others refer to 'regime shopping' (Dølvik and Eldring, 2006; Houwerzijl, 2014). Sharing this perspective, we would expect that countries in which labour market regulations and the implementation of EU legislation follow a path of insider orientation (such as Germany), with high regulative protection for labour market insiders and less protection for outsiders, are likely to facilitate atypical forms of migration, such as posting and seasonal work (figure 1). Countries with strict regulation and enforcement in the primary as well as the secondary labour market and egalitarian, encompassing wage setting are more likely to be characterised by relatively higher shares of regular/typical migration forms because the gap in conditions between typical and atypical migration is smaller. However, what the consequences of labour migration and mobility imply for national labour markets depends on the national specifics. Depending on the institutional framework created at the national level for labour migration, the mix of typical and atypical labour migration can be expected to vary, and the workers in atypical labour migration structures can be more or less prone to be channelled into the secondary labour market.

¹⁰ The legal basis for this is Directive 2004/38/EC. In Germany, the freedom of mobility (Freizügigkeitsgesetz) entails a paragraph (§3.7) specifying the conditions under which a citizen can lose the right to freely reside in another Member State. One possibility is the lack of economic activity after a minimum period of six months if no other income is generated and the person is dependent on state support to ensure his or her livelihood.

Figure 1: The relationship between labour market regulations and atypical labour migration



Based on these theoretical assumptions, we first map the different forms of migration during 2004–2014 (focusing on potential shifts related to the introduction [2004] and repeal [2011] of the TA), before examining their interplay and impact on labour migration to Germany in general.

Germany: the major receiving country of Europe’s mobile labour

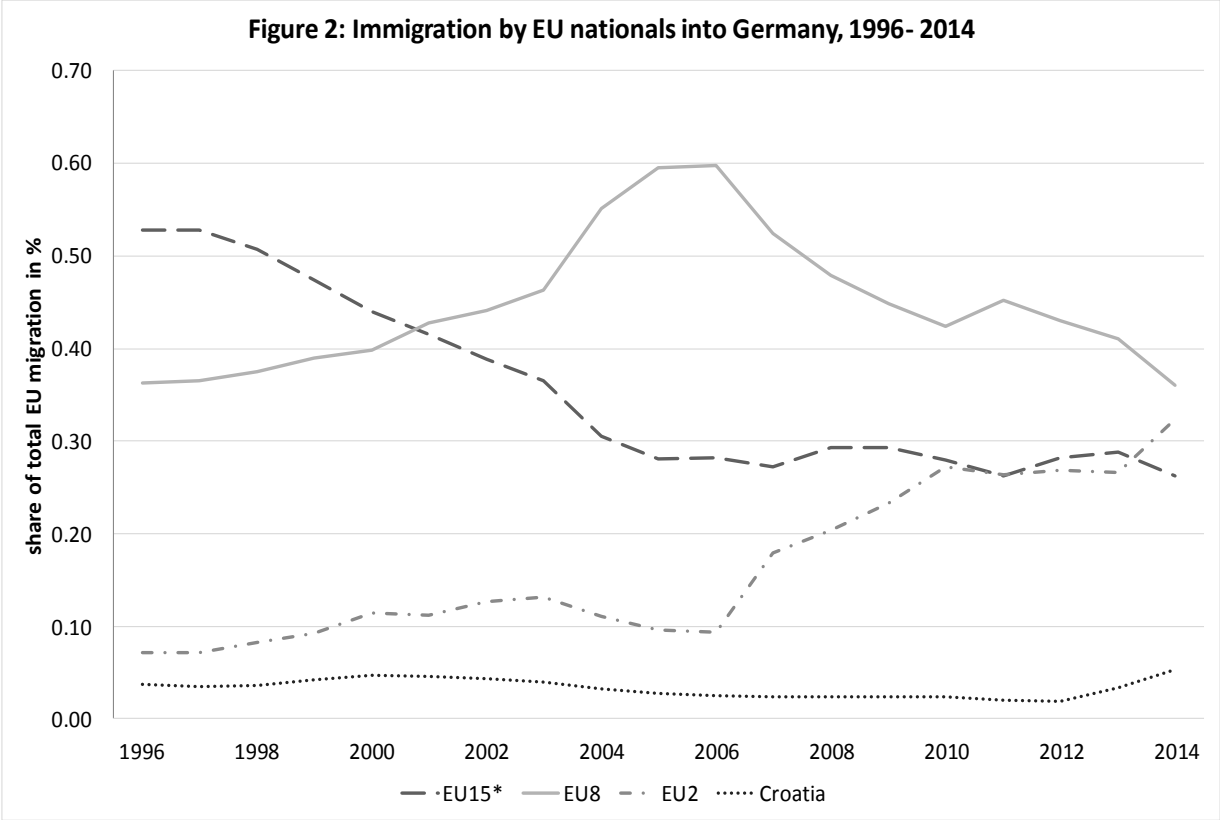
Since the end of the Cold War, intra-EU labour migration has gained importance on the European agenda. The increase of labour migration from the new Member States of the EU and the economic crisis have shifted the migration discourse in Germany in two different directions. On the one hand, demographic change and an ageing society have induced labour shortages and prompted the business community to ask for simpler visa requirements or green card legislations (see Meardi et al., this issue). On the other hand, the experience of labour migration has not been overwhelmingly positive. Recent studies and media coverage on migrant labour coming to Germany have shown that workers have restricted access to the regular labour market and that wages are below average (Tenbrock and Wielinski, 2007; Lehmer and Ludsteck, 2013). In addition, reports on the exploitation of migrant labour have increased during the past few years (Cyrus *et al.*, 2010).

As the largest economy in the EU, Germany has experienced a large influx of migration from other EU Member States, which has significantly increased since 2004, despite the TA. With 3.6 million registered resident EU citizens in 2014, Germany had the highest number of EU migrant registrations in the EU.¹¹ However, compared to the total population of 80.9 million, only 4% of the population come from other EU countries. Figure 2¹² reveals that the share of new registrations from the EU8 and EU2 countries has increased significantly during the last decade, especially after the

¹¹ Source: Statistisches Bundesamt Ausländische Bevölkerung Fachserie 1 Reihe 2 – 2014.

¹² Figure 2 is based on data of new registrations per year per citizenship and provides an overview of the yearly development of registrations irrespective of their employment status. All data sources used for the figures in this chapter are listed in the reference list.

enlargements in 2004 and 2007. The share of migrants coming from the accession countries is particularly high in Germany, accounting for approximately 32% of all registered migrants in 2014.



Source: National Statistical Agency/Statistisches Bundesamt (1996 - 2014) Bevölkerung und Erwerbstätigkeit.
 *EU refers to the Member States before 2004, without Germany.

Figure 2 also reveals that the share of new registrations from the EU8 countries was already significant before accession and surpassed the share of EU15 migrants before accession. After EU accession in 2004, the share of EU8 migrants rose to approximately 60% of all EU nationals registered in Germany in 2005. The share of citizens from the EU2 countries was significantly smaller before accession but almost tripled in the first years of EU membership, despite the TA. This suggests that migrants coming from these countries were either highly qualified or much needed and received the necessary labour permit, or that they entered the labour market based on another economic status. Furthermore, the figure suggests a correlation in the decline in immigration share from EU8 countries and the increase in immigration share of citizens from EU2 countries.

Absolute numbers on immigration from Poland show a decrease in Polish migration once the economic crisis hit Germany in 2009 (Bundesamt für Statistik, 2010), whereas the number of migrants from EU8 countries leaving Germany has remained above 100,000 per year since the EU accession in 2004 and exceeded the 200,000 mark in 2012 (Statistisches Bundesamt, 2013). Large numbers of deregistration indicate that the threshold of entry into the national labour market is difficult to reach for EU migrants, resulting in short-term residency.

Table 1: Net migration (differences between registration and deregistration), 2002–2014

(Six main countries of origin: Poland, Romania, Hungary, Bulgaria, Italy, and Croatia)

	2002	2003	2004	2005	2006	2007	2008	2009	2010	2011	2012	2013	2014
PL	13,811	15,372	29,749	50,681	48,341	29,627	450	371	20,923	64,521	68,122	70,326	58,500
RO	6,372	4,547	3,863	3,234	3,080	19,609	9,901	12,431	25,621	36,028	45,684	49,440	75,040
HU	889	-520	1,115	3,071	4,016	5,459	3,735	3,175	8,795	17,030	26,165	24,355	16,508
BG	4,478	3,257	1,480	147	553	12,391	8,046	8,954	15,573	22,159	25,044	20,689	33,285
IT	-8,892	-9,548	-13,824	-7,374	-5,720	-3,824	-4,865	-3,039	3,058	9,779	21,270	32,232	36,556
HR			10,118	8,956	8,310	8,418	8,418	8,832	9,939	11,197	12,608	12,547	26,983

Source: National Statistical Agency/Statistisches Bundesamt (1996–2014) Bevölkerung und Erwerbstätigkeit.

Table 1 shows that the economic situation of Germany, and especially the impact of the economic crisis on the labour market, influenced migration from the three largest countries of origin: Poland, Romania, and Bulgaria. Net migration numbers decreased significantly in 2008 and 2009 and increased as the economy recovered, leading to the conclusion that—as the labour market recovered opportunities for longer term stay—it also increased for EU8 and EU2 citizens.

Table 2: Average period of stay in years (in %) in 2013

	below 4	4 - 8	8 - 10	10 - 15	15 - 20	20 - 30	> 30	mean
PL	39.38	19.36	9.39	10.77	7.53	10.95	2.62	8.9
IT	10.12	3.75	1.66	6.63	10.13	19.10	48.62	28.1
GR	16.28	2.99	1.52	7.06	9.37	22.19	40.60	25.6
RO	63.55	17.26	3.37	6.94	3.06	5.47	0.35	5.0
BG	60.16	20.53	4.03	8.39	2.12	4.07	0.70	5.1
ES	29.45	7.35	2.83	6.18	5.36	7.65	41.17	22.6
HU	58.39	13.80	3.93	6.78	4.37	8.56	4.17	7.3

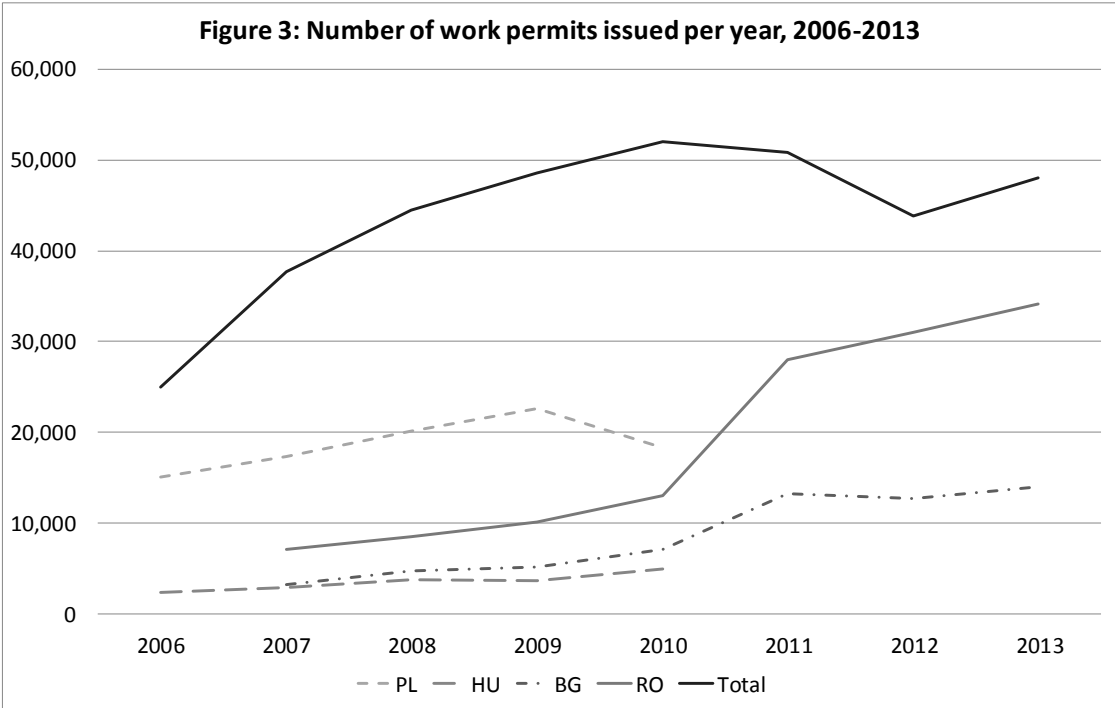
Source: own calculations based on the Federal Office for Migration and Refugees Bundesministerium für Migration und Flüchtlinge (2014) Migration report 2014.

Recent data (2013) on the average length of stay of EU citizens show that, whereas the majority of citizens from EU15 countries stay a minimum of 20 years in Germany, the majority of citizens from the EU8 and EU2 countries leave Germany within the first four years (see table 2). If we compare this table with the figure on annual immigration shares (figure 2), we note that, although citizens from the EU8 and EU2 countries started to migrate to Germany from the mid-1990s and have exceeded the shares of EU15 citizens since 2001, EU8 and EU2 citizens are less likely to stay in Germany than citizens from EU15. Data on the average length of stay from the early 2000s provides a similar picture (Migration Report, 2002).

However, the number of registrations offers a very limited impression of the real number of migrants coming from other Member States or their situations in the labour market because two important forms of mobility, posting and seasonal work, do not require (prior) registration. To shed more light on the economic activity of these migrants, we will now focus on data regarding work permits issued per nationality to see how far the numbers from figure 2 and table 1 can be explained.

According to German law, EU citizens covered by TA can receive a work permit for a minimum of three months and a maximum of two years. After working in Germany for two years, they receive full access to the labour market. Figure 3 provides an overview of the number of permits issued between 2006 and 2014. The increase in work permits confirms that the German labour market was in need of labour from these countries irrespective of the financial crisis. Two possible reasons might explain this increase: either an increasing demand for labour that was not met by the native labour force or, alternatively, employer demand for labour with a specific level of qualifications and/or low wage expectations of workers coming from this region.

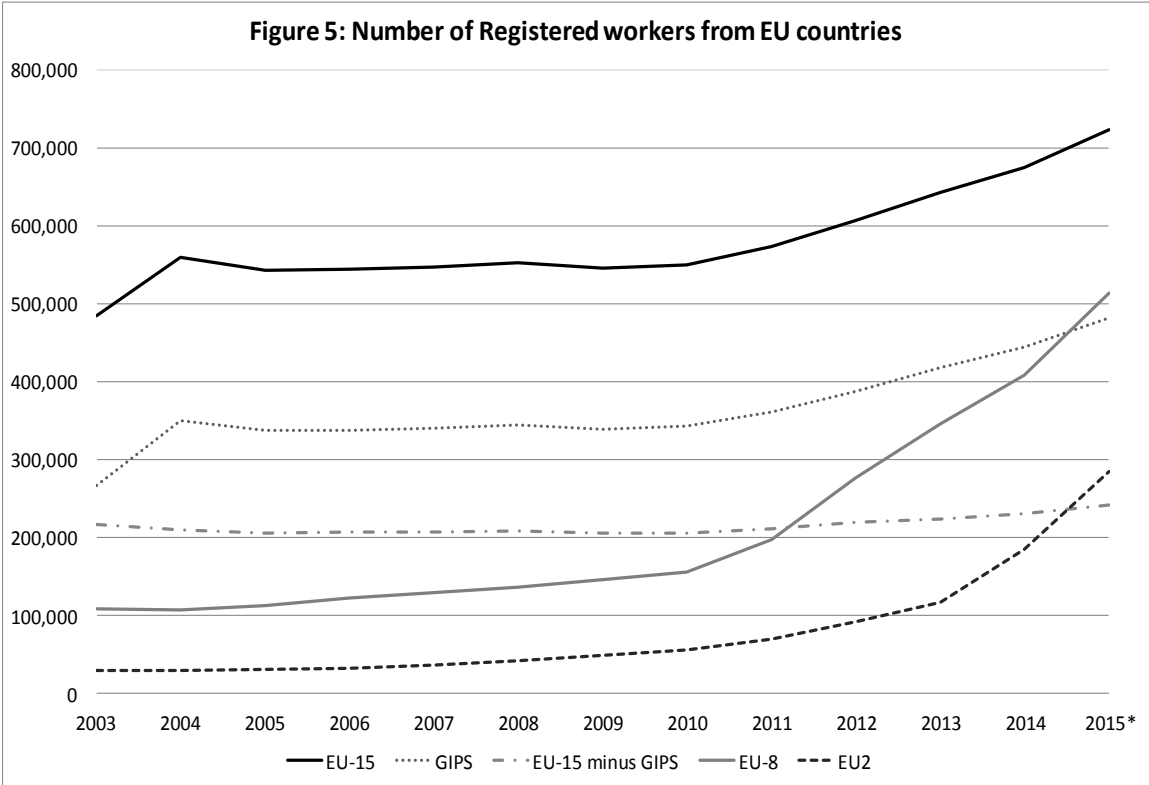
As figure 3 shows, full access to the labour market for the EU8 countries did not lead to a significant fall in the total number of work permits issued. On the contrary, the abolition of work permits for EU8 citizens seems to have been accompanied by an increase in work permits issued for EU2 citizens. The repeal of the TA for the EU8 countries between 2011 and 2012 reveals only a minor drop of 5,000 work permits. The total number of permits for citizens from accession countries reached its peak in 2010 and has remained stable, at approximately 45,000, until 2013. Neither the total number of permits issued nor the total number of rejected applications was much affected by the crisis.



Source: National Employment Agency/Bundesagentur für Arbeit (2006 - 2013) Arbeitsmarkt in Zahlen – Arbeitsgenehmigungen EU – Zustimmungen.

However, a comparison of the number of registrations with the number of work permits issued shows that, of the newly registered citizens from Romania and Bulgaria in 2012, only about 55% received work permits; the remaining number of registered citizens must have decided to stay on the basis of a different legal status.

If we add information on EU migrants active in the German labour market in regular employment to the number of work permits issued, we note that the overall number of workers coming from the EU as a whole has increased during the last decade, especially the number of EU8 and EU2 migrants. For migrant workers from EU8 countries, we see a steady but modest increase between 2004 and 2011, and then a steep increase in 2012, after the TA was lifted. The same is true for EU2 labour; from accession in 2007 to 2013, the number of workers from Romania and Bulgaria grew from 36,670 to 117,335 under the TA. When the restrictions were lifted in January 2014, the number of registered EU2 workers almost doubled to more than 200,000, increasing as much in one year as in the preceding six. Furthermore, the number of registered employees reveals that the inflow from so-called GIPS countries (Greece, Italy, Portugal, and Spain) increased after the financial crisis hit the south of Europe, from 2010 onwards (Hannewinkel and Engler, 2013).

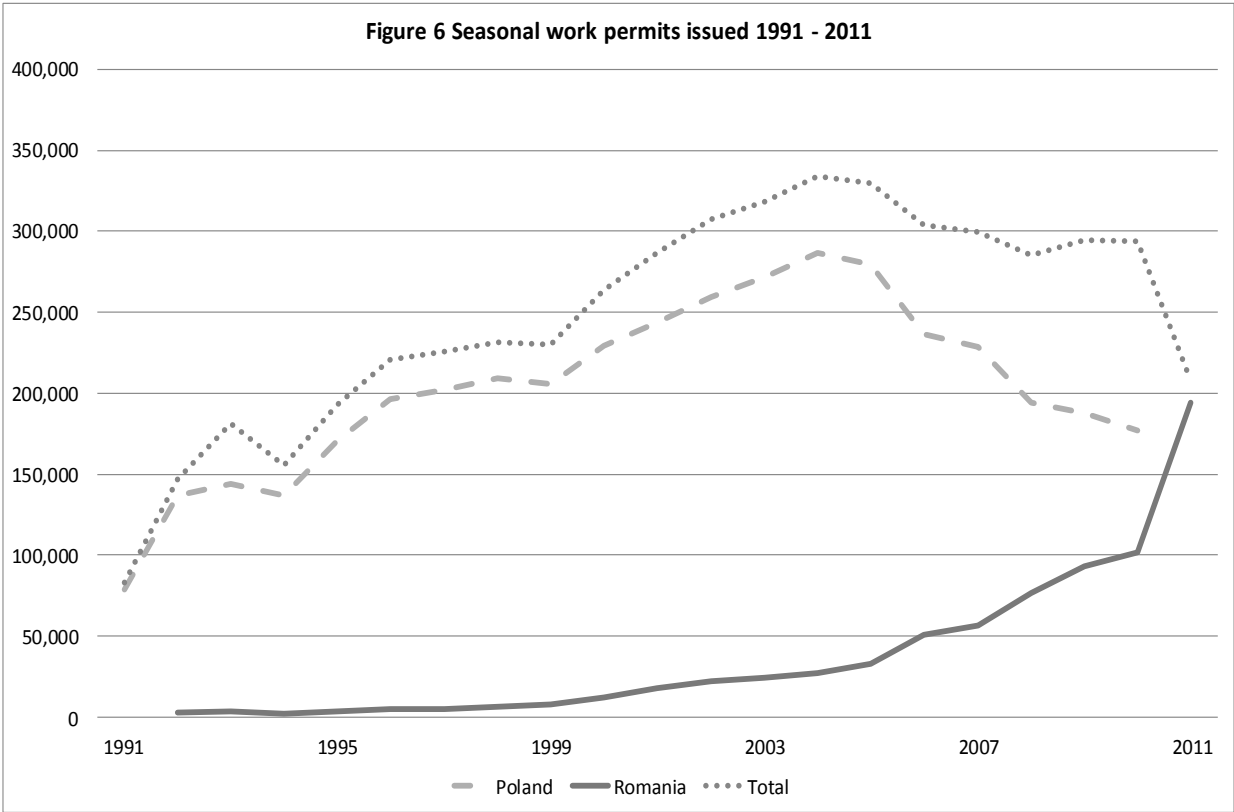


Source: National Employment Agency/Bundesagentur für Arbeit (2016) Arbeitsmarkt in Zahlen – Beschäftigungsstatistik 1990–2015.

Overall, the number of EU citizens in regular employment in Germany increased very slowly during the TA, especially compared to other Western EU countries, but turned upwards with the onset of the crisis in Southern Europe and was reinforced by the lifting of the TA for EU8 in 2011 and EU2 in 2014. We can note that with the EU accession round of 2004, the previously increasing number of regular employees from the GIPS countries abruptly stagnated until 2011. In comparison with the number of registered workers from the EU8, the share of workers coming from EU2 countries has been growing markedly, even before the TA was lifted. A major reason for these increases push factors for migration, such as the huge gap in pay and unemployment between their home countries and Germany.

Seasonal Work

Irrespective of labour market regulations, whether permanent or short term, Germany established a system of simplified seasonal work permits long before the EU enlargement in 2004. Seasonal workers from the EU8 countries needed to register only during their temporary stays at the National Employment Agency. No priority verification or proof of native labour shortage was necessary. This system was maintained after EU accession for the same duration as the TA. For EU2 citizens, seasonal work permits were obligatory until 2012. Although the TA lasted until 2014, Germany granted access to seasonal work without specific permits from 2012 onward because of an increasing demand for seasonal labour. Seasonal workers do not appear in the statistics on regular employment because they are exempt from social security contributions in the host country under certain circumstances (e.g., if the duration of stay does not exceed 70 days). One of the major sectors profiting from foreign seasonal workers is agriculture. According to the National Statistical Agency, foreign seasonal workers account for approximately 31% of employment in agriculture (Statistisches Bundesamt, 2011).



Source: Federal Office for Migration and Refugees/Bundesministerium für Migration und Flüchtlinge (2012) Migration Report 2012.

*Note: Data on Poland are only available until 2010 because full access to the labour market was granted in 2011. The total number thereafter refers to seasonal workers from Bulgaria, Croatia, and Romania.

The development of total seasonal work permits shows a marked increase until accession in 2004. This then falls during the TA for the EU8 until lifted in 2011, when the figures dive. As figure 6 confirms, citizens from Poland and Romania already used this form of labour market access long before EU accession. However, we note that in spite of the TA, accession into the EU did not lead to a

continued increase of seasonal workers from Poland (the largest group by far), but to a marked decrease. This was, however, partly compensated by increasing inflows from Romania. In 2011, Romania accounted for 93.4 % of all registered seasonal workers. According to a study by Wagner et al., there is a hierarchy of wage levels among seasonal workers, depending on the country of origin: Polish workers would earn considerably more than Romanian workers in the same field (Wagner et al., 2013). Because employment of seasonal workers was increasing before EU accession in 2004, Stark and Fan have empirically examined whether EU accession led to a shift in migration patterns because EU8 persons could now use other channels (Stark and Fan, 2007). They conclude that higher differences in cost of living between the sending country and the receiving country make seasonal work more likely. Although the number of seasonal workers decreased, as expected, their findings¹³ suggest that seasonal work offers an easy and comparatively affordable path to work in Germany because housing and food are provided by employers. Migrants can work for a determinate period of time and then return to their home countries with their wages, while employers save on social security contributions. In addition, training occurs on the job with few language or qualification requirements. The decreasing number of seasonal workers from Poland after accession may point to the increase in wages in Poland, which was an incentive to stay at home. Alternatively, Polish citizens might have chosen other forms of labour market access in Germany or moved on to countries that had not imposed TAs, such as Ireland and the UK. According to the Office for National Statistics, approximately 676,000 Polish citizens were registered in the UK in 2011 (ONS, 2014).

At the same time, media coverage reported more cases of seasonal workers from the EU8 and EU2 with little or no pay and very bad working conditions (Zeitung, 2010; Glantz, 2015). Because the majority of seasonal workers stay fewer than 70 days, no social contributions are paid in Germany, irrespective of the long hours worked during the stay (Okólski, 2001). Therefore, it is difficult for public authorities to monitor the pay of seasonal workers. With the introduction of a collective agreement in 2014 and the establishment of a national minimum wage in January 2015, employers are now obliged to provide exact hourly timesheets to the authorities. This might improve the pay for seasonal workers. However, data on seasonal workers in Germany are very incomplete after the work permit schemes were phased out in 2012. According to trade unions, EU citizens still represent a large share of workers employed in agriculture (Walker and Kramer, 2014). Based on the trends of issued permits, we assume that the number of unregistered seasonal workers (not visible in the statistics on regular employment) is considerable.

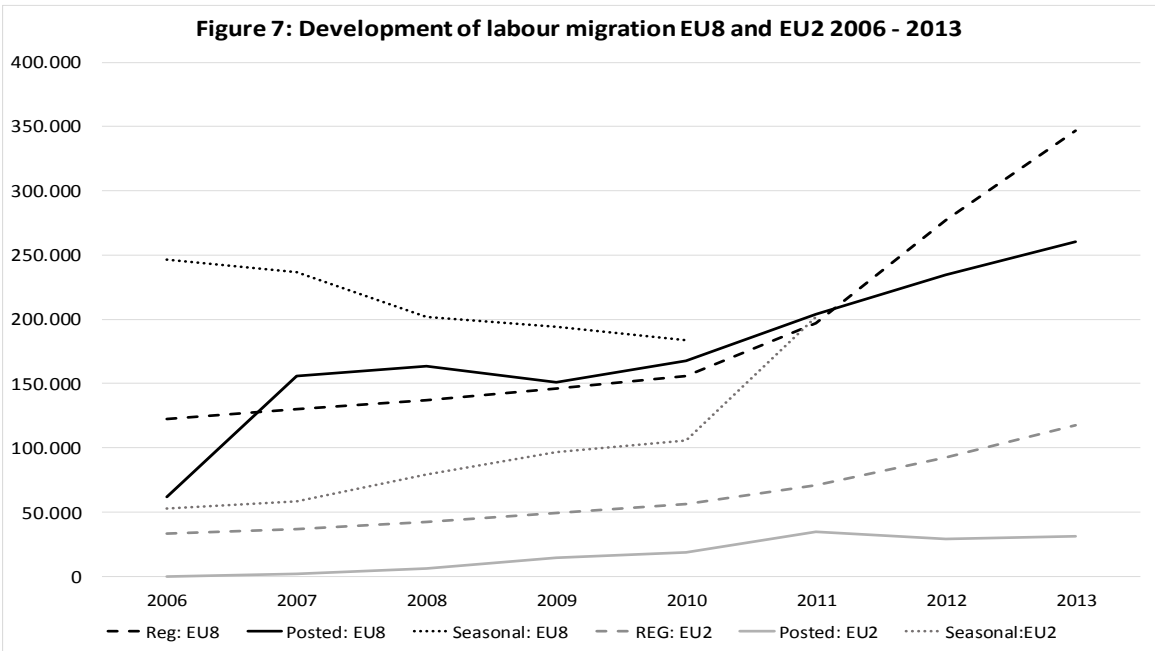
Posted Workers

Posted workers are sent by a foreign firm to another Member State using the firm's freedom to provide cross-border services. The level of remuneration for posted workers while abroad depends on the regulation of the relevant national Posted Workers Act. Before the introduction of the nationally binding minimum wage in 2015, Germany had a sector-specific regulation of minimum wages for posted workers. In sectors where universally applicable collective agreements existed, such as construction, the minimum level of pay for posted workers was the same as for native

¹³ Also confirmed by Wagner et al. (Wagner et al., 2013).

workers. Companies active in sectors not mentioned within the PWA were allowed to post to Germany based on the home country principle. Thus, in practice, Germany received posted workers in some sectors where host country minimum pay would apply, such as construction and cleaning. However, in other sectors, such as meat processing or home support, they could be remunerated in line with home country pay. During the transitory period after the accessions in 2004 and 2007, posting in the sectors mentioned in the PWA were subject to annually defined quotas. However, in all sectors not mentioned in the act, foreign companies could compete with domestic companies without restrictions.

Figure 7 shows that the number of posted workers from the EU8 to Germany temporarily outweighed the number of migrant workers in regular employment, particularly between 2006 and 2011 when the TA were removed. This also accounts for the number of seasonal workers, which, when added to the number of posted workers, amounted to almost twice as many as regular workers. Once the TA were lifted, the number of migrants in regular employment increased faster than the number of postings to Germany. Still, postings to Germany have not decreased but have continued to increase. This might be because posting has been established as a form of mobility used by foreign companies to access the German market. The increasing number of postings also reveal the interest of German companies in passing service contracts to foreign companies temporarily posting labour to Germany.



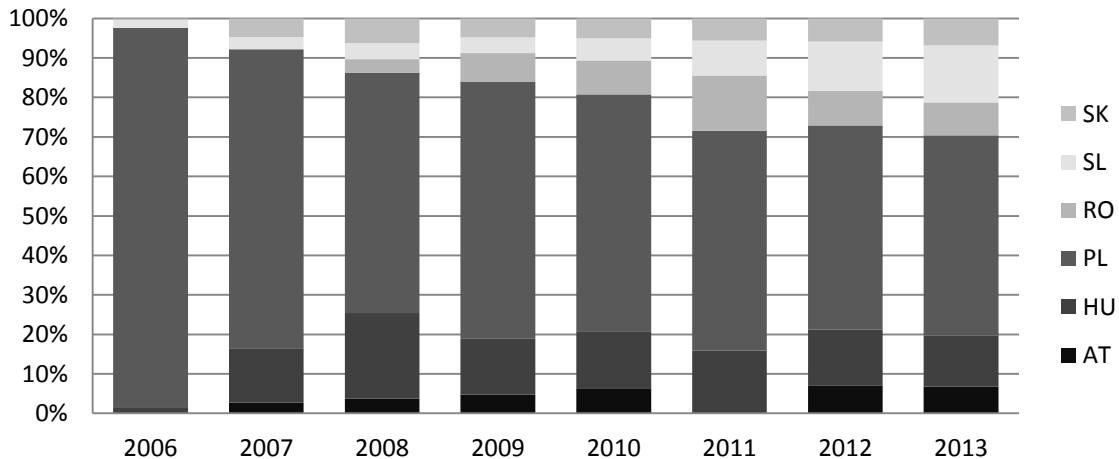
Source: own calculations based on National Employment Agency/Bundesagentur für Arbeit (2013) Arbeitsmarkt in Zahlen – Beschäftigungsstatistik 1990-2014; (ISMERI Europa, 2012) (Pacolet and De Wispelaere, 2014).

Data on posting, based on the number of A1 forms issued per year in other EU States with Germany as the country of destination (Pacolet and De Wispelaere 2014, ISMERI Europa 2012),¹⁴ indicate that

¹⁴ Posted workers do not appear in statistics focusing on the number of registered EU citizens in Germany, nor do they appear in data on regular employment.

this increased by more than sixfold between 2006 and 2013, reaching more than 373,000 in 2013. Poland issued the majority of A1 forms for Germany, followed by Slovakia, Hungary, and Romania.

Figure 8: Distribution of A1 documents issued to Germany, 2006 - 2013 (in %)



Source: own calculations based on (ISMERI Europa, 2012; Pacolet and De Wispelaere, 2014).

As outlined in figure 7, German companies hiring service providers with posted workers have, therefore, mainly preferred providers (subcontractors) from countries that entered the EU after 2004. According to a study conducted for the European Commission, Germany has also hired the highest number of posted workers within the EU, both in absolute and relative terms (ISMERI Europa, 2012). This is in sharp contrast to its comparatively low hiring of regular EU8 migrant labour (e.g., compared the UK). This lends further support to the interpretation that the TA contributed to the hiring of atypical labour migrants.

Based on the legal framework established in the Posted Workers Act, posting to Germany became a way of instituting different pay for the same work at the same site. Sector-specific data on posting to Germany from 2013 show that the majority of posted workers were active in meat processing, road transport, construction, and plumbing industries. Of those sectors, only the construction sector was covered by the PWA until 2014 (Wagner and Hassel, 2015b).¹⁵ During the restrictions on regular employment, posting offered an alternative atypical path for labour migration to Germany. Previous research reveals that posting in Germany has been used by domestic and foreign companies in a variety of sectors and has aimed to circumvent collective agreements and statutory working conditions (Cremers, 2011; Wagner, 2014; Wagner and Hassel, 2015b). Studies also suggest that posting in some sectors has become an inherent part of the system of production and product market competition in which subcontracting to foreign employers, who repeatedly send their own

¹⁵ Data reliability on posting is uncertain because the existing data on posting only provide information on the number of A1 forms issued per year. Because posting can last from one day to a maximum period of two years, we do not have information on the actual number of posted workers active in Germany in any given year but only on the number of documents. The only sector in which data on the number of postings exist is construction because of the existing social institution on its transferrable social provisions. According to the German equivalent, SOKA-BAU, 88,923 persons were posted to Germany in construction in 2013 compared to 18,219 in 2003 (SOKA-BAU, 2014). This number does not match the existing numbers in previous studies, proving that data on postings can be treated only as an approximation.

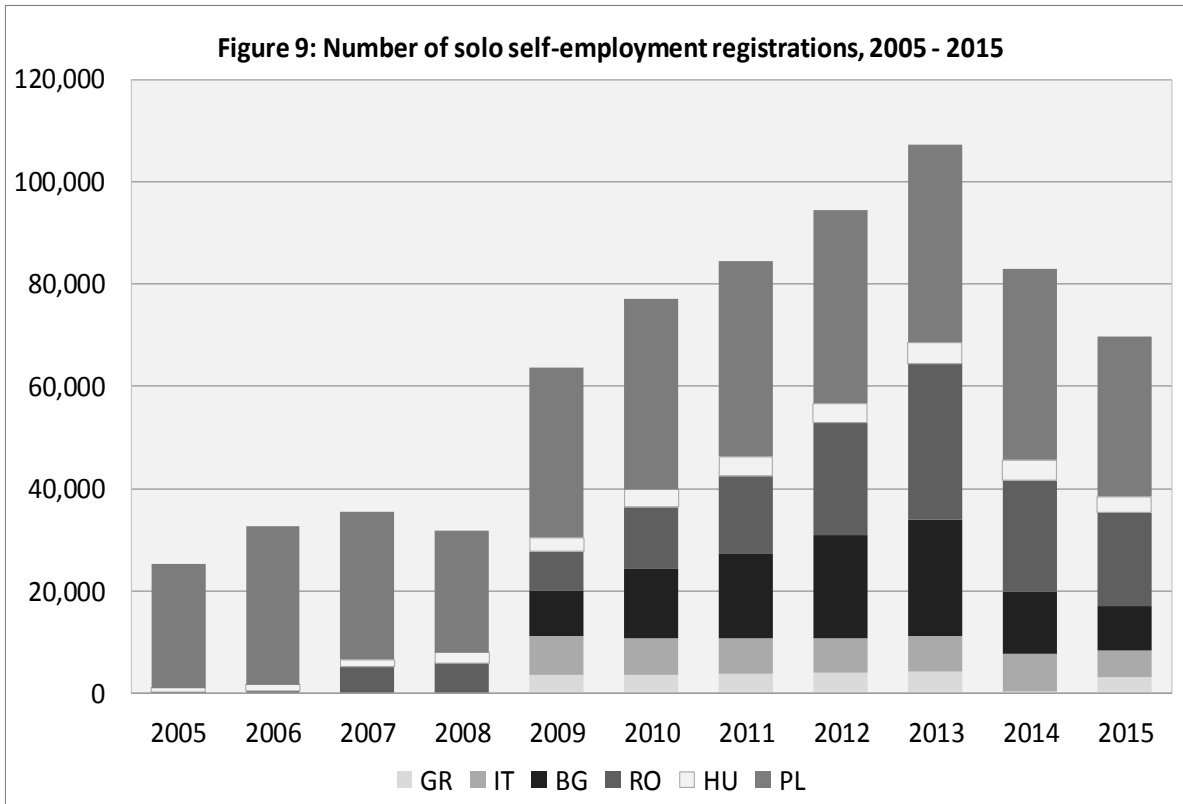
workers, has replaced direct employment and ultimately shifted the economic risk onto the posted workers (Wagner and Hassel 2016).

However, the introduction of the national minimum wage in 2015 has created a common wage floor, which also applies for posted workers in all sectors not mentioned in the PWA. Although the minimum wage level is, in most cases, below regional collective agreements, this has improved the situation of posted workers, irrespective of their home country wage levels. In addition, sectors with a large number of posted workers, such as meat processing, were added to the PWA in 2014 in an attempt to improve the labour conditions for mobile labour in Germany. Still, the remaining gap between the minimum wage and the regular wage levels of in-house workers may suggest that the use of subcontracted posted workers in Germany will not cease.

Solo self-employment

Solo self-employment has only recently appeared on the agenda of labour migration within the EU (European Commission, 2010; Koch *et al.*, 2011). The legal basis for the solo self-employment of EU citizens in other Member States refers to the free provision of services. It allows every EU citizen the opportunity to register a business in another Member State. In Germany, the only precondition is a prior registration. Every EU citizen can register a one-person company after paying a lump sum of approximately €30.¹⁶ In addition to a valid registration address in Germany, the freedom to provide services for the solo self-employed also entails the obligation to have health insurance and pay tax contributions in Germany above a certain income level. However, there is no obligation to comply with collective agreements on wages or working time. Self-employed workers are free to define their own hourly wages and structure their own working times. Self-employment has been critically addressed by national and European trade unions because it is considered to be a way to undercut wages, whereas the working persons are actually often bogus self-employed and subject to the direct orders of their contractors (Oostveen *et al.*, 2013; Schmiz, 2013). No data on the sectoral distribution of self-employment exist. However, sector-specific research has shown that self-employment has rapidly increased in such sectors as construction, which is shifting from one that was previously regulated with collectively protected working conditions into one characterised by atypical migration (Buelen, 2015). The number of business registrations of solo self-employed workers in Germany between 2005 and 2013 is shown in figure 8 and reveals that business registrations of citizens from Poland, Romania, and Bulgaria have been increasing steadily since 2005. During the period in which a TA existed for both EU8 and EU2 countries, no prior verification or restriction existed for the registration as solo self-employed.

¹⁶ There are some professions that pre-require a verification of validity by the Chamber of Commerce. These are professions in which the qualification level acquired abroad is verified to correspond to the level in Germany. However, especially in professions that require few or no pre-qualifications, prior verification is not necessary.

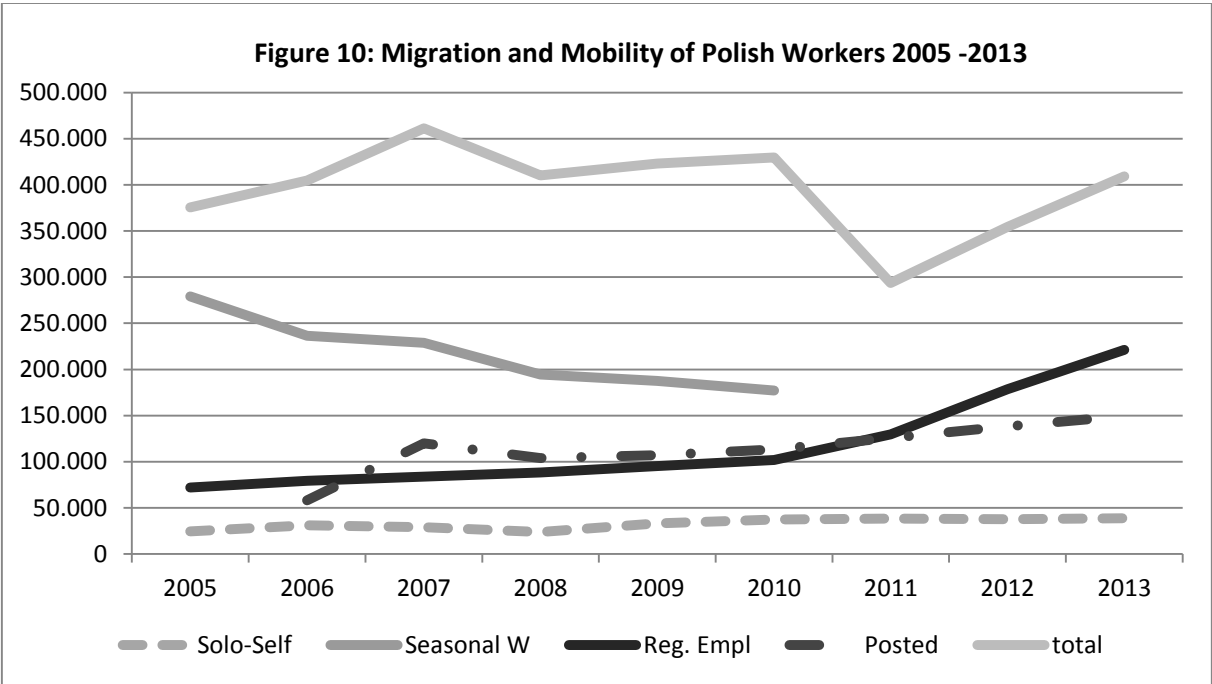


Source: National Statistical Agency/Statistisches Bundesamt (2005–2015) "Unternehmen und Arbeitsstätten: Gewerbeanzeigen in den Ländern".

Apart from the increasing use of solo self-employment as an option to become active in the German labour market, we can also see that this form of migration is used significantly more often by citizens coming from EU8 and EU2 countries than, for example, citizens from Greece or Italy. A possible explanation for this might be that citizens from Greece and Italy have had full access to the German labour market, whereas restrictions have existed for EU2 and EU8 countries. The drop in self-employment registrations from EU2 citizens after receiving full access to the German labour market in 2014 lends support to such an interpretation. Figure 9 shows an increase in registrations of the solo self-employed from EU2 countries right after EU accession. These findings suggest that solo self-employment was used by EU2 migrants as a path to the German labour market, whereas restrictions based on the TA still applied. However, it is important to acknowledge that self-employment is not always a status chosen by the individual mobile workers. Media coverage on bogus self-employment has shown various cases in which migrants from other EU Member States were promised regular employment in Germany but were forced into bogus self-employment to lower wages and circumvent social security and tax contributions (Völpel, 2011; Molitor, 2015).

Restriction and circumvention: typical and atypical forms of migration to Germany

The overview of the various forms of labour migration and mobility to Germany reveals that, despite the restricted access to regular employment before 2012 (2014 for the EU2), migration to Germany has increased steadily but has taken a range of atypical paths. The development of these paths might be causally connected. First, the rising overall number of labour migrants shows that Germany is an attractive destination country for migrant labour and that domestic labour shortages have increased the demand for migrant labour, as some sectors, such as agriculture, appear increasingly unattractive and unprofitable for native workers. In addition, our data indicate that restricting one channel of labour flow (i.e., regular migration) tends to make other unaffected channels with poorer conditions relatively more attractive for companies and jobseekers, such as posting and (bogus) self-employment. As we can see in figure 10, regarding the example of Poland during the TA period between 2004 and 2011, a large number of Poles were recruited to Germany as posted workers, seasonal workers, and solo self-employed. Because (bogus) self-employed migrant workers are not covered by minimum wage provisions or social security, labour conditions and wages are particularly bad. It seems that an unintended consequence of Germany’s desire to protect the national labour market by restricting access to regular employment has led to a flourish of companies active in segments of the labour market that rely on, and profit from, atypical migration.



Source: own calculations based on: (ISMERI Europa, 2012; Pacolet and De Wispelaere, 2014); National Statistical Agency/Statistisches Bundesamt (2005 – 2015) "Unternehmen und Arbeitsstätten: Gewerbeanzeigen in den Ländern"; National Employment Agency/Bundesagentur für Arbeit (2013) Arbeitsmarkt in Zahlen – Beschäftigungsstatistik 1990-2014; Federal Office for Migration and Refugees/Bundesministerium für Migration und Flüchtlinge (2012) Migration Report 2012.

After gaining full access to the labour market in 2011, the numbers of regularly employed Polish citizens increased sharply. However, the number of postings as well as solo self-employment have also continued to rise because Germany has become more and more attractive and, after 2011, also allowed free access to its labour market, contradicting the expectation that access to regular employment would replace these forms. This probably reflects, as reported in studies of the Nordic countries (Friberg *et al.*, 2014), that the TA contributed to a shift in hiring practices and the organisation of work and production that, by altering the terms of competition within the affected industries, tends to become irreversible. For example, in some sectors (such as yards, industrial cleaning, and construction), outsourcing to foreign subcontractors and the self-employed has become a standard pattern of work organisation in these countries. (See also Friberg, this volume, and Sippola, this volume.) In Germany, therefore, we see how posting, seasonal work, and solo self-employment have become permanent features of the labour market, although their relative share of total Polish labour immigration has declined somewhat after the TA was repealed. It seems that the weak regulation of atypical forms of migration relating to both access and working/pay conditions has even influenced the duration of stay in Germany, explaining the rise in circular migration, as shown in tables 1 and 2 of this chapter. Possible reasons for this mobility pattern have been shown in this article and seem to be caused by the institutionalisation and path dependency of atypical labour migration within the EU. This high level of mobility of EU citizens seems to point to a new development in EU migration: circular, pendular (Morakvasic, 2004), or atypical migration. Germany seems to have allowed the development of a highly mobile and atypical labour market for EU citizens.

Conclusion

The aim of this article has been to present an encompassing analysis of the relationship between different forms of labour migration and mobility to Germany since the accession of Eastern European Member States to the EU in 2004. Our claim has been that the transitional restrictions and control of regular labour migration imposed in the first years after the accession rounds of 2004 and 2007 has spurred increases in other forms of atypical labour migration, engendering an atypical and unprotected market for migrant labour from Central and Eastern Europe. Data on seasonal work, posting, and solo self-employment document that Germany has only succeeded in selectively restricting and regulating access to the labour market for CEE migrant labour. Restrictions on access to regular employment might have protected native labour against competition for regular jobs, but may have had the unintended consequence that the shift to atypical forms of employment has accelerated and led to even stronger competitive pressure on wages and conditions for regularly employed workers in the exposed sectors.

In addition, domestic companies have profited from the regulatory loopholes with regard to posting, subcontracting, and self-employment and have used these forms of migration to employ cheap, foreign labour in the German labour market. By failing to protect the German labour market against wage differentials for posted workers or constrain self-employment, it has left the option open for firms to use cheap, foreign labour offered by subcontractors and the self-employed instead of regular

employees, thereby opening the labour and product market up to distorted terms of competition. With the introduction of the national minimum wage, which is also binding for posted and seasonal workers as of 2017, and the possibility of extending collective agreements to all workers in a sector (*erga omnes*), including posted workers, the race to the bottom, driven by employers' hiring of migrant workers, has finally found a wage floor. However, self-employment is still subject to the independent decision and price set by the individual service provider. Although bogus self-employment among EU migrants has been officially recognised as a problem, no policy intervention constraining and controlling its use has yet been implemented (Molitor, 2015). These conditions for labour market access and the scope for undercutting minimum wages have not been addressed in government initiatives, either at the European or at the national level. Therefore, it remains to be seen how far the national minimum wage will lead to a shift from regular employment and posting towards solo self-employment. First reports on certain sectors, such as transport and meat processing, reveal that, with the introduction of the national minimum wage, the use of self-employment as a means of circumvention has increased (Kunze, 2014; Sell, 2015).

At the European level, the conflictual relationship between national level regulations and the intra-EU mobility of posted workers were critically re-examined in the context of the enforcement of the Posting Directive 96/71/EC (Barnard, 2014), and a review of this directive is currently in the pipeline. Germany has not yet implemented the so-called enforcement directive, 2014/67/EU, and it remains to be seen how much it will help to address the existing practices.

In March 2016, a directive amending the Posted Workers Directive of 1996 was presented by the Commission, in which a broader range of host country labour conditions, pay levels, and chain liability schemes were proposed. However, national parliaments of the Member States joining the EU after 2004 have thus far brought its adoption to a halt for now. Therefore, it remains open as to whether recent adjustments, such as the minimum wage or revised implementation of the directive, can reverse the shift in employer hiring practices flowing from the existing asymmetric pattern of migration.

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