



## Working papers

**LAB-MIG-GOV Project**  
“Which labour migration governance for a more dynamic and  
inclusive Europe?”

# **Labour migration governance in contemporary Europe. The case of Spain**

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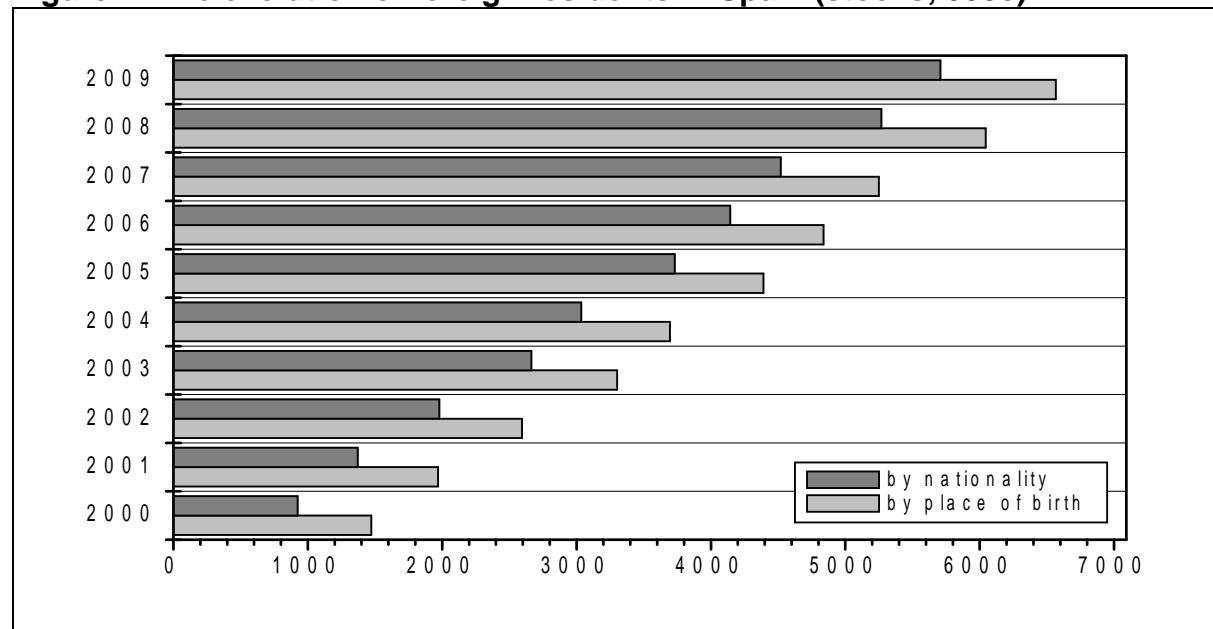
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## INTRODUCTION

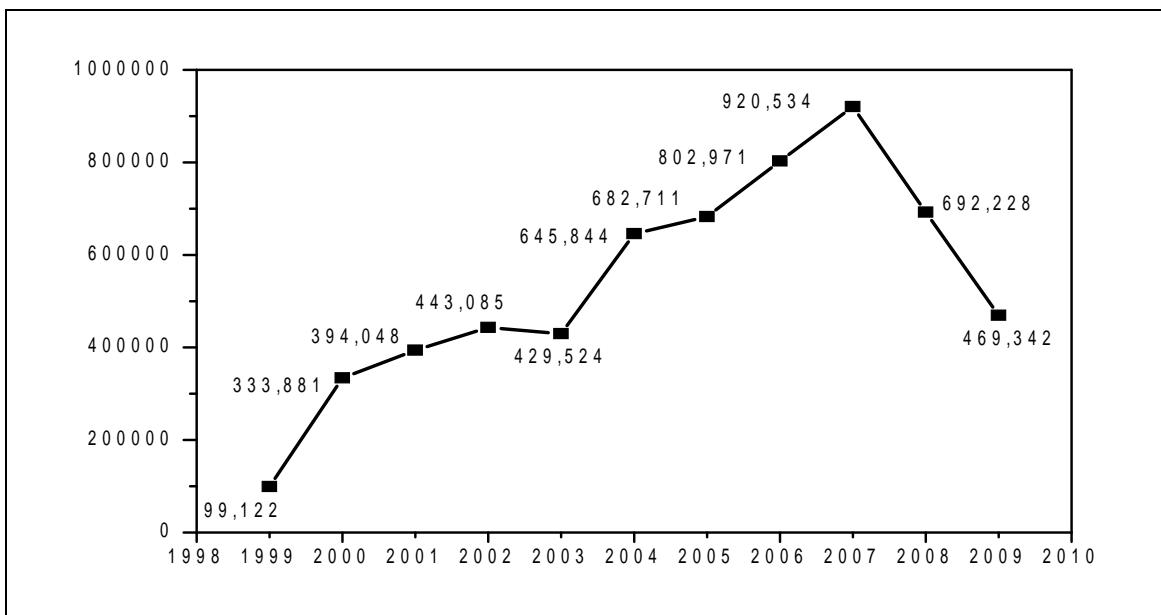
Spain's migration history is primarily a history of emigration. Almost 2.5 million Spaniards migrated to the American continent from 1860 to 1969, whereas 2 million Spanish guest workers left Spain from 1950 to 1970 for other European countries, such as Germany or Switzerland. Before the 1960s, only a few foreigners entered the country for work purposes. For instance, a few thousand African workers, most of whom were from Morocco, entered for labour-related reasons, while most of the immigrants during that period consisted of returning migrants from Germany and Latin America or of European retirees (Lopez, 1996). In the mid-1980s, the number of foreigners started to grow considerably, though their total number remained modest and far from the figures presented by traditional immigration countries in continental Europe (Arango 2000). At the beginning of this century, Spain experienced a spectacular demographic upsurge that ushered in what has been called a 'prodigious decade' of immigration (Oliver 2008). Together with Italy and the United Kingdom, Spain became one of the major labour importers of the European Union. Boosted by a booming economy, the foreign population in Spain increased from one million to almost six million foreigners between 2000 and 2011.

**Figure 1: The evolution of foreign residents in Spain (stocks, 000s)**



Source: National Statistic Institute (INE)

**Figure 2: The entry of new foreigners (flows)<sup>1</sup>**



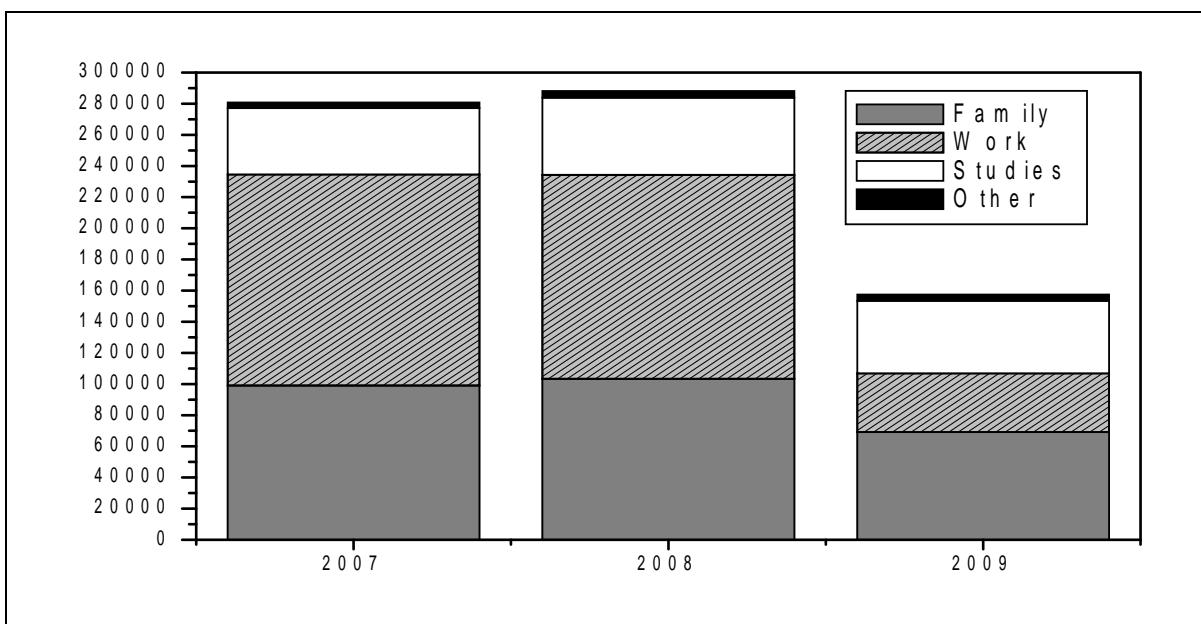
Source: National Statistic Institute (INE)

Currently, foreigners represent 12.2 per cent of the Spanish population. Among the third-country nationals legally residing in Spain in 2010, 43 per cent already have a long-term residence permit. Among those with a temporary residence permit 48 per cent have a permit for work purposes and 24 per cent have a permit for family reasons. Only a small portion of the immigrants to Spain currently consists of asylum seekers and students. The predominance of entries for work purposes can be also observed in the visa distribution according to the reason of stay between 2007 and 2009<sup>2</sup>:

<sup>1</sup> These figures are based on the first registrations into the Municipal Registry (*padrón municipal*).

<sup>2</sup> It is important to note that this type of data classification is available only since 2007. Data for 2010 were not published at the time this report was finished.

**Figure 3: Entry Visa for Residence Visa issued according to the type of stay**



Source: Spanish Ministry of Interior.

Despite the clear relevance of labour migration, the increase in the number of foreign workers in Spain was not the result of an efficient immigration policy aimed at matching labour market demands and broader social and political constraints. In contrast, the Spanish migration regime has been characterised for at least two decades by a ‘policy of the backdoor’ based on the toleration of irregular residence, informal employment and *ex post* regularisations (Baldwin-Edwards 1997; King, Black 1997). Only in the last years the government has attempted to implement a rational entry policy that combines entry quotas, individual recruitment for stable workers, temporary recruitment schemes and a fast-track entry channel for high-skilled workers.

The objective of this report is to analyse the evolution of labour migration governance by devoting special attention to the functioning mechanisms of the new recruitment tools. To this end, the author analysed secondary literature and newspaper articles. Furthermore, fifteen interviews with state officials of the Ministry of Labour and Immigration, trade unions’ representatives, the managers of two large Spanish businesses and the senior advisors of the Public Employment Service (*Servicio Público de Empleo*) were conducted. Most of the stakeholders, managers and advisors contacted by the author agreed to be interviewed. However, the report was written in a politically complicated phase that affected the preparation of the field work. After an exceptional period of economic growth, Spain is currently experiencing a deep economic and financial crisis, which is particularly reflected by the high unemployment rates of both the natives and the foreigners. Because the national economic crisis and the international financial crisis seriously destabilised the socialist government, in September of 2011, the government called for elections to be held in November of 2011. Immigration issues played a marginal role in the electoral campaigns of the two main parties, the Socialist Party and the *Partido Popular* (Popular Party). In particular, given the high unemployment rate, debates about labour migration governance were considered of secondary importance. Therefore, it was impossible to conduct interviews on immigration issues with the party members of both sides. Furthermore, the author realised that most of the

contacted civil servants preferred to be interviewed in the absence of a recording instrument. Because of the interviewees' unwillingness to be recorded, the author abandoned the idea of using a recorder and decided to transcribe the information obtained from the interview as soon as the interview was finished.<sup>3</sup> All interviews were performed in Spanish and then translated into English. Therefore, quotations are not literal but reflect the opinion of the interviewed person. This method allowed the author to interview most of the contacted persons. The extensive information obtained from several representatives of the public administration, trade unions and employers has helped the author to draft a quite comprehensive report on labour migration governance in Spain. The first part of the report provides an overview of the immigration debate in Spain whereas the second and the third parts analyse the tools for recruiting foreign workers and the available functional equivalents of these tools. Finally, the fourth part briefly describes a few functional alternatives to the recruitment of foreign workers in times of crisis. The final goal is to show how Spain turned into the major labour importer of the European Union and which actors and policies favoured this process.

## **1. THE IMMIGRATION DEBATE IN SPAIN BETWEEN STRUCTURAL NEEDS AND RESTRICTIVE IMPERATIVES**

### **1.1 Immigration as a Security Issue**

Spain's transition from an emigration into an immigration country coincided with a period of political and economic transformation. In fact, the democratic turn after Franco's death accompanied a period of deep structural changes that affected the labour market demand and the organisation of labour relations in particular. In the 1980s, the active population primarily increased because of the incorporation of women into the labour market. Whereas the agricultural sector registered many losses, the service sector started to expand. Additionally, native labourers started to become increasingly skilled and less interested in accepting low paid or low-skilled jobs. Finally, trade unions became a new important actor in the institutional regulation of labour market relations after they were liberalized at the end of Franco's dictatorship (Cachón 1995a). In a short period of time, it became clear that Spain was a segmented labour market with a high level of demand for low-skilled labour, which could not be fulfilled by natives who preferred to wait for better employment conditions rather than take low-skilled and low-paid jobs (Izquierdo-Escribano 1993; Cachón 2002). Additionally, an increasing number of scholarly works started to outline the relevance of foreign domestic work to the maintenance of the new social system, where an increasing number of women worked outside of their houses (IOE 1991). The demographic disparities between Spain and the Southern Mediterranean were highlighted as another structural pre-condition of the increased migration flows to Spain. In particular, the increasing number of Moroccans coming to Spain was considered a clear indicator of the potential of trans-Mediterranean migration in the years to come (Arango 1993).

Interestingly, the growing awareness of increasing demand for low-skilled labour was accompanied by the almost complete absence of a political debate on how the recruitment of foreign workers should be regulated. Instead, border security issues were at the top of the agenda. Similar to other Southern European countries in

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<sup>3</sup> However, all of the interviewees agreed to answer by telephone a second round of questions if the author believed that the information obtained from the first interview had to be clarified.

those years, ‘old’ European member states such as Germany and France blamed Spain for its weak if not nonexistent immigration controls. Consequently, one of Spain’s main commitments to the European membership was to strengthen its border controls and to fight against irregular migration. The first socialist government approved an Asylum and Refugee Law in 1984 and the Foreigners Bill (*Ley de Extranjería*) n. 7 of 1985, which was more focused on administrative issues regarding the entry and residence of foreigners than on conceiving effective regulation instruments (Arango 2000). In the following years, the government adapted to the Schengen requirements by introducing visa obligations for third-country nationals, such as citizens from Cuba and the Dominican Republic.

Interestingly, Spanish policymakers did not neglect the need for foreign workers, even if the government knew that their entry had to be (at least symbolically) limited. Without a doubt, the government adapted its recruitment policy for foreign workers to restrictive European imperatives by introducing the labour market test obligation, which allowed foreign workers to be hired only if natives or citizens from ‘privileged’ countries were unavailable for the same job. The so-called ‘labour market check’ was meant to protect the Spanish labour market in times of high unemployment rates and followed the restrictive orthodoxy imposed by the European Union. The Spanish law also allowed for the establishment of yearly contingents of foreign workers under the name of the *contingente*. The *contingente* offered a certain number of entry slots for a predefined range of occupations in a limited number of economic sectors. Its introduction was supported especially by the trade unions and the employers’ associations. In particular, the main Spanish employers’ association, the *Confederación Española de Organizaciones Empresariales* (CEO), stated that the *contingente* was a necessary instrument because certain occupations could not be filled by foreign workers (El País, 11/03/1993; El País, 12/03/1993). Clearly, this type of migration programme adopted a neo-corporatist policy that required a foreign worker to be recruited before his (or her) entry into the country of destination (Sciortino 2009). Because this policy produced cumbersome recruitment procedures, most employers started to hire foreign workers who were already living in the country.

At the same time, the inadequacy of the entry rules reinforced the mismatch between market demand and state regulations. Consequently, irregular migration became a structural feature of the Spanish migration regime and much of the national (and international) political debate remained strongly influenced by security concerns.

## 1.2 Immigration as a Structural Need

The focus on the struggle against irregular migration overshadowed the debate on a better labour migration policy in the 1990s. Weak immigration regulation and insufficient immigration programmes characterised Spain as an emerging immigration country, while the *contingente* never turned into an effective policy regulation. This secondary role was not only embedded in the modest immigration volume but also in the troubled Spanish economy. In fact, the anticipation of the national elections in 1993 clearly affected the implementation of the *contingente*. In March of 1993, the socialist government announced its intention to reduce the *contingente* of 20,600 entries planned for 1993, as the high number of offered slots contrasted with the high unemployment rates of the natives (El País, 13/03/1993).

The same occurred in 1994 when the *contingente* was reduced again for the same reason (*El País*, 21/06/1994). Finally, the *contingente* was used to regularise immigrants who had already found jobs in the country as a type of recruitment policy ‘by subterfuge’. In addition, mass regularisations became the most suitable policy instrument for addressing the challenge represented by irregular migration. In this respect, no relevant differences can be noted between the governments chaired by the Socialist Party (1983-1996) and the following governments ruled by the *Partido Popular* (1996-2004).

The attitudes of policymakers towards labour migration did not change even when migration flows to Spain started to increase rapidly and intensively at the end of the 1990s. Immigration was still presented by the *Partido Popular* government (1996-2004) as a threat to security rather than as an opportunity for the country’s labour market. However, at the beginning of the new century, the need for foreign workers started to appear in the declarations of the political representatives of several Autonomous Communities<sup>4</sup>. In 2000, the Labour Councillor of the Autonomous Community of Valencia, Rafael Blasco, declared that his Autonomous Community needed approximately 4,000 new immigrants to face the challenges of the market (*El País*, 4/04/2000). The same issue was raised by the representatives of other Autonomous Communities, such as the Community of Aragón and the Community of Madrid, where the Delegate for Economy stated that without recruiting foreign workers, the Autonomous Community of Madrid would not have been able to grant basic social services (*El País* 26/6/2000; *El País* 5/07/2000; *El País* 26/07/2000). Near the same period, the Labour Councillor of Catalonia, Luis Franco I Sala, pointed to the persistence of unemployment even though there were still occupations in need of labour (*El País*, 27/7/2000). The need for foreign workers was confirmed by the declarations of eight employers’ associations in the same Autonomous Community, which recognised “a clear disfunctionality between the people registered in the unemployment lists and the type of employees required by the Autonomous Community” (*El País* 27/6/2000). In the same year, other employers’ associations, such as the union of ceramic producers ASCER, argued for recruitment policies that would be better able to fulfil the need for foreign workers (*El País*, 27/06/2000). For this reason, in March of 2000, the Catalan employers’ organisation CECOT organised a pilot project to recruit foreign workers for the textile and metal industry, as no labour force that met the needs of this industry could be found in Spain (*El País*, 25/03/2000). A member of the advisory Council on Immigration of the Catalan Community, Miguel Pajares, criticised the lack of legal entry channels for foreign workers and argued for a better implementation of the *contingente*. The same author pointed to Europe’s restrictiveness as one of the reasons for Spain’s difficulties in recruiting foreign workers (*El País*, 16/06/2000).

Among employers, the need for foreign workers was supported by companies searching for workers who apparently could not be found among the native labour force. The difficulty in finding workers in this period was highlighted by a human resources manager of a large Spanish restaurant chain with 10,000 employees. During the interview for this report, he stated that his business’s growth program from 1999-2009 was initially hampered by the limited number of native workers available for the jobs offered by the company (mainly waiters and cooks). With the help of the Ministry of Labour and Social Issues (later known as the Ministry of Labour and

<sup>4</sup> The Spanish State is divided into 17 territorial units, the Autonomous Communities, and the two Autonomous Cities of Ceuta and Melilla. Since the democratic transition, the Spanish state has transferred a large number of competences to the Autonomic governments.

Immigration), the company started a program to hire unemployed workers in different Spanish cities. However, only a few candidates were ultimately employed: “We sent 10,000 telegrams to 10,000 unemployed workers inviting them to work with us; 1,700 people called, and 461 attended the interview. Ultimately, we could only offer a contract to 61 people” (RESTAURANT, 2/11/2011). The results of this recruitment campaign were considered as further proof that no economic growth would have been possible without opening the Spanish labour market to foreign workers.

The need for foreign labour was also supported by the trade unions. However, the unions revindicated the protection of native workers. For instance, the organisation *Unión general de Trabajadores* (UGT) accused the employers’ associations of finding ways to reduce salaries (*El País*, 13/07/2000). Additionally, the other large Spanish trade union, *Comisiones Obreras* (CC.OO), asked the government to analyse the real employment situation before opening new entry channels for foreign workers (*El País*, 22/07/2000).

Probably because of the increasing pressure for new recruitment schemes, the immigration law n. 8/2000 introduced a new, refined form of the *contingente*, whose determination involved both the employers’ associations and the Autonomous Communities. Nevertheless, the number of entry slots provided by this new form of the *contingente* was limited and completely failed to address the real needs of the labour market. Additionally, in 2002, an administrative memo from the Ministry of Interior limited the legal employment of foreigners to the yearly *contingente*. This memo eliminated *de facto* the possibility of a nominal request based on the Regimen General. Evidently, the *contingente* alone could not fulfil the demand of an expanding economy because the yearly quotas did not exceed 30,000 workers a year and concerned mainly temporary workers. Furthermore, new waves of migrants (and potential overstayers) entered Spain thanks to favourable visa regulations, such as the lift of visa obligations for Romania. The increasing migration flows and the failures of the *contingente* triggered a spectacular increase in the irregularity rate (Gonzalez-Enriquez 2009), which forced irregular migration, security and criminality to remain at the top of the political agenda.

### **1.3 Immigration as a Source of Conflict**

The perception of immigration in the public opinion was seldom related to episodes of xenophobia and racism. At the beginning of the 1990s, the most salient episode was probably the murder in the town of Aravaca (Madrid) of a Dominican woman employed as a domestic worker by a group of ultra-right Spanish extremists. In fact, this episode caused a deep shock to Spanish society, which was still trying to come to terms with forty years of right-wing dictatorship (Herranz-Gomez 1997). In the following years, the increasing relevance of labour migration in the public debate never met public hostility. An exception is represented by an incident in the Andalusian town of *El Ejido* in 2000, where the murder of a young woman by immigrants caused the hosting community to react violently. This reaction was more the consequence of marginalisation in a poor neighbourhood than a reflection of anti-immigrant feelings rooted in labour market competition. By contrast, anti-immigrant feelings were responsible for the events that occurred in the town of *Elche*, where natives attacked the shops of Chinese shoe producers. In this case, the xenophobic outbursts were explained as the outcome of immigration growth in an economic region particularly affected by the collapse of the Spanish industrial model, which

itself was caused by the increasing internationalisation of the economy (Cachón 2004).

Nevertheless, these episodes remained isolated and did not reflect the beginning of a generalised anti-immigration trend. In fact, the surveys conducted at the end of the 1990s showed that Spanish people generally considered immigration to be a positive phenomenon, which also indicates that the Spanish exhibit a low degree of racism (Díez-Nicolas 2005). Certainly, the surveys also showed that Spanish people seemed to be more worried about immigration and its consequences for Spanish society during this time period than in the past. However, the intensity of these concerns seemed to be somehow related to the ‘cayuco-crisis’, i.e. the wave of arrivals of boats full of clandestine migrants on the Spanish coasts, especially between 2005 and 2007. This crisis was widely covered by the Spanish media. Increasing changes in the public attitude towards immigration were observed only after the economic crisis of 2008. These changes seem to be related to the weakening of the functionalist discourse linking the need for immigrants with the existence of jobs that are rejected by the natives (Rinken et al. 2011). The open attitude of the Spanish population has been sustained by an intensive period of economic growth that has reinforced the economic legitimisation of immigration. In this context, no regularisation process in Spain, not even the ‘big’ regularisation of 2005, triggered hostile reactions among the natives. Together with the pressure exercised by employers and a favourable governmental majority, the absence of hostility against immigrants paved the way for a fundamental reform of the Spanish labour migration regime.

## **2. OPENING THE FRONT DOORS TO LABOUR MIGRATION**

### **2.1 Immigration and the Labour Market in Spain during the 2000s**

The regulation of labour migration started to become a political issue in Spain in the 2000s, in a phase of intensive economic growth. The increasing attention devoted to labour migration governance is the outcome of a bottom-up process that first involved the Autonomous Communities, the employers' associations and the trade unions. This change is deeply embedded in the characteristics of the Spanish economy and the labour market structure (Cachón 2002). According to a senior advisor of the Spanish Ministry of Labour and Immigration, three main factors determine the need for a foreign labour force in the Spanish economy. First, the GDP variations are more intensive in the Spanish economy than in other countries because of the low technology level of the Spanish economy and its high dependence on external sources of energy. Consequently, these GDP variations transformed the Spanish economy into an elastic economy in which the variations in employment are highly dependent on the variations in GDP. Second, thanks to flexible laws, the widespread use of temporary labour contracts allows employers to hire workers in times of intensive economic growth and to reduce their numbers in times of economic crisis. Third, the structural need for foreign workers is deeply embedded in the strict differentiations between ‘good’ jobs and ‘bad’ jobs, which natives usually refuse to perform because they have a higher level of expectations (MTIN, 11/10/2011). In this respect, a senior expert of the Public Employment Service also suggested that employers might have imposed labour and salary

conditions that respect the collective agreements between the trade unions and employers' associations but are still too low to be accepted by native workers (SEPE, 28/11/2011). This assumption was reinforced by the following statement from the representative of the Catalan Employers' Association CECOT:

"It is also probable, I am speaking about an intuition, it is also probable that the (native) medium-skilled workers in some occupational categories demanded excessively high salaries [...] In the case of foreigners, it was not possible to go below the minimum level of salary. However, no extremely high salaries were paid" (CECOT, 21/06/2011).

Both the representatives of the Ministry of Labour and Immigration and the business' delegates interviewed for this report have pointed to the existence of a "structural unemployment" in Spain, which is mainly due to young natives who prefer to be unemployed rather than take jobs below their "acceptance threshold". The interviewed human resources manager of the restaurant chain stated the following in reference to Spain: "We do not produce electronic chips. We are a service industry [...] However, the social conditions of the restaurant business cause people to not want to work in this sector" (RESTAURANT, 2/11/2011).

The relevance of the demand for low-skilled labour in the Spanish labour market has been outlined by a large portion of the literature. Nonetheless, all of the interviewed stakeholders and business managers have also indicated that Spain is affected by a worrying lack of native workers with specific medium-level skills, which is embedded in the poor performance of the vocational training provided by the Spanish education system. The human resources manager of a large Spanish energy business stated, "In Spain, vocational training is bad [...] There is a very deep mismatch between the market and the education system" (ENERGY, 6/10/2011). The interviewed manager added that he had difficulties in finding electricians and medium-skilled workers in general who could be employed in services related to a specific type of industry, such as the maintenance of windmills. A senior advisor of the Spanish Ministry of Labour and Immigration tried to explain the reasons for the lack of medium-skilled workers:

"The system of vocational training is not well-programmed. It lacks quality because there is no coordination among the vocational training part of the education system, the re-qualification courses carried out by the Public Employment Service for unemployed workers and the vocational training for those who still have jobs but that want to improve their employment situations" (MTIN, 11/10/2011).

Hence, the labour admission channels were reformed in 2004 in response to the structural weaknesses of the Spanish labour market and to the pressure exerted by employers. The reform was also enacted to prevent a new increase in irregular migration after the regularisation performed in 2005. The aim of the reform was to establish a migration model based on the interconnections among different policy fields related to immigration, such as the management of regular migration flows, the fight against irregular migration, the strengthening of border controls, the relationships with third-world countries and the integration of immigrants. The former Secretary of State for Immigration, Consuelo Rumi, explained that the objective of the new regulation was to help prevent irregular migration by enacting efficient recruitment policies "because if immigration management is efficient, if immigration channels work, if entry quotas are flexible and agile and the General Regime can respond to the needs [...] if bilateral agreements work, if the trade unions and the

employers' associations collaborate, migrants will see that they can legally enter our country" (*El País*, 12/05/2004). Hence, the new Regulation of 2004, which was based on a large consensus among the trade unions, the employers' associations and the government, was conceived as a systematic reform that included different admission channels, including an individual regularisation mechanism (*arraigo*), and recognised the prominence of labour migration. Thus, the preamble of the Spanish immigration regulation n. 2393 of 30/12/2004 stated, "The architecture of the current migration system and the admission of new immigrants into our country are fundamentally based on the need to fill job vacancies".<sup>5</sup>

Additionally, the socialist government transferred immigration competences from the Ministry of Interior to the Ministry of Labour and Social Affairs by creating a special Secretary of State for Immigration and Emigration<sup>6</sup>, whereas the Ministry of Interior maintained its competences in preventing illegal migration and continued to be responsible for the asylum procedure. The creation of the new Secretary of State reflected a clear intention to give certain priorities to the regulation of labour migration by turning immigration more into a matter of labour than of security. A stakeholder of the Ministry of Labour and Immigration stated, "It is important where migration management is located [...] Spain has clearly bet, and I think correctly, on the Ministry of Labour and Immigration because migration flows to Spain are predominantly labour migration flows" (MTIN, 5/10/2011).

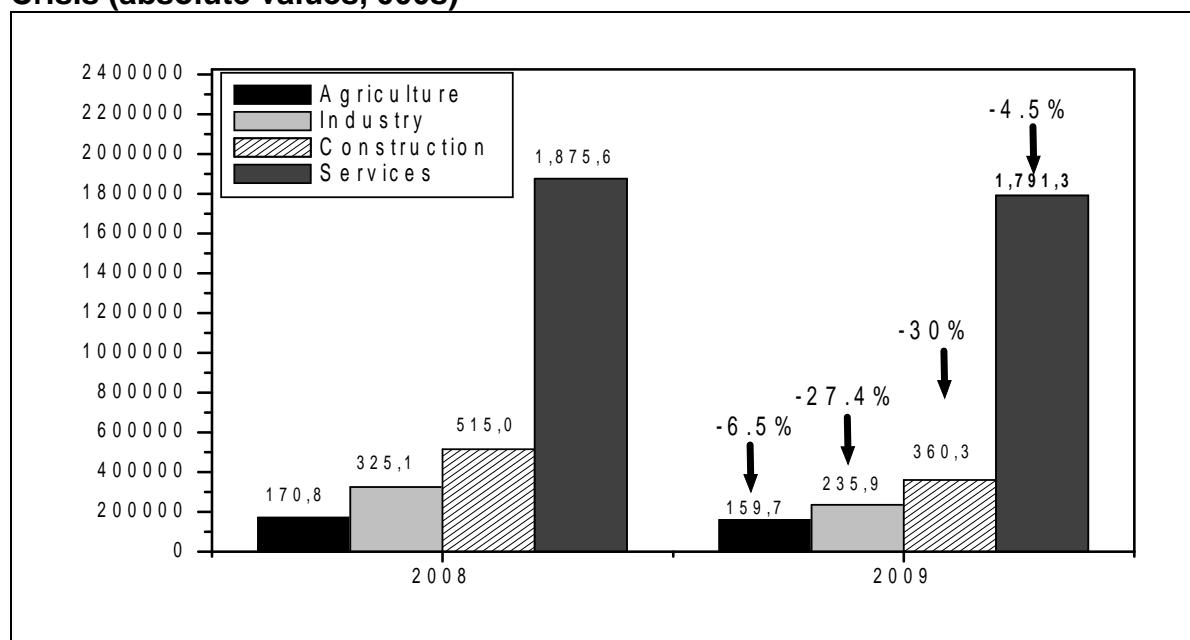
However, the economic crisis of 2008 produced a spectacular increase in the unemployment rate of foreigners, which increased from 12 per cent to almost 30 per cent between 2007 and 2009. This increase was mainly due to the breakdown of the construction sector and the aforementioned elasticity of the Spanish labour market, which boosts unemployment during economic downturns.

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<sup>5</sup> "En la arquitectura del sistema migratorio actual la admisión de nuevos inmigrantes en nuestro país está fundamentalmente basada en la necesidad de cobertura de puestos de trabajo".

<sup>6</sup> The new Secretary of State had competences that were previously shared by the General Direction for the Organization of Migration Flows, the Institute of Migrations and Social Services and the Government Delegation for Foreigners and Immigration.

**Figure 3: Loss of Jobs experienced by migrant workers due to the Economic Crisis (absolute values, 000s)**



Source: Survey on Active Population (EPA)

The recent economic developments certainly affected the Spanish perception of the need for foreign workers. However, labour migration has remained the main pillar of the Spanish migration regime. In fact, the new immigration regulation n. 557 of 30 June 2011 reiterates the strict connection between immigration and the labour market as well as the legislature's intention "to consolidate a model based on regularity and linked to the labour market". Therefore, the next session will describe and analyse the types of instruments that have been created in Spain to consolidate this model and how they have been recently modified to respond to the consequences of the economic and financial crisis.

## 2.2 Legal Channels for the Recruitment of Foreign Workers

### 2.2.1 Individual Recruitment through the General Regime (*Regimén General*)

According to the General Regime (*Regimén General*), individuals are recruited based on an employer's nominative and individual application to hire a certain worker. In this case, the most important criterion is the evaluation of the 'national employment situation' (*Situación Nacional de Empleo*) based on a preceding labour market check. The main actor in this procedure is the Public Employment Service. Since the 1990s, employers have to check with the corresponding office of the Public Employment Service in the Autonomous Community,<sup>7</sup> regardless of whether there

<sup>7</sup> The competences concerning active labour market policies have been transferred to the Autonomous Communities. Thus, the Autonomous Employment Services are responsible for issuing the negative certification for the employment of foreign workers. Nevertheless, the work and residence permits are issued by the central government. The only exception is currently represented by Catalonia, where the autonomic government is entitled to issue initial work permits, as will be explained in point 2.4.1. of this report.

are Spanish citizens or EU citizens available for the offered job. If no worker is available, the corresponding Employment Service issues a ‘negative certification’ (*certificación negativa*) to the employer. As a result, the labour market check turned the hiring process into a complex and bureaucratic procedure that increased the attractiveness of irregular employment. However, the reform of 2004 introduced the possibility of avoiding the labour market check for occupations included in the “Catalogue-of-Hard-to-Find-Occupations” (*Catálogo de ocupaciones de difícil cobertura*). According to this new procedure, if a vacancy refers to a job type listed in the Catalogue, an employer can immediately start the hiring process undergoing without the labour market check. In this case, an employer presents a formal recruitment offer. Based on this offer, the immigrant has to apply for an entry visa to work in Spain in his or her country of origin. In any case, the workers have to possess the credentials that are necessary according to the Spanish law to execute the required activity. The lack of necessary qualifications might be considered a reason for denying the residence permit.

Until the regulation of 2011, the Catalogue was published every three months by the central office of the Public Employment Service. The central office of the Public Employment Service elaborated a sort of ‘pre-catalogue’ based on the available statistical information that was sent to the Employment Services of the Autonomous Communities. There, the provisions contained in the pre-catalogue were negotiated with the employers’ associations and the trade unions. The pre-catalogue was changed according to the labour offers submitted to the offices of the Employment Services in each Autonomous Community and sent back to the central office of the Public Employment Service in Madrid, where the final version of the Catalogue was elaborated. The content of the Catalogue was then approved by the Tripartite Labour Commission of Immigration (*Comisión Laboral Tripartita de Inmigración*), which is composed of the representatives of the employers’ associations, the trade unions and the Secretary of State of Immigration. The final version of the Catalogue was finally published as a resolution of the Public Employment Service. Most of the occupations included in the Catalogue were low-skilled and medium-skilled occupations. However, some high-skilled occupations, such as engineers or doctors, were also included.

Almost all of the interviewees from the public administration and the trade unions noted that the first few catalogues were extremely long. This length mainly depended on whether and how the Autonomous Communities intervened in the construction of the Catalogue. According to a senior advisor of the Public Employment Service, the Autonomous Communities tended to maintain the pre-catalogue as proposed by the central office of the Public Employment Service without making any changes. Only the Basque Country, Extremadura and Navarra, three Autonomous Communities that have a historically low immigration rate, tended to keep the number of occupations included in the Catalogue low (SEPE 28/11/2011). Conversely, according to the representative of the trade union UGT, the Autonomous Communities played a significant role in extending the length of the Catalogue “because they included an infinite list of occupations in the Catalogue, and nothing was done to stop this practice” (UGT, 27/5/2011).

By introducing a new individual recruitment system based on the Catalogue, the government responded to the need to tighten the individual recruitment procedures. As noted by a representative of the Spanish trade union UGT, “the Catalogue is also an employment tool and not only an instrument to regulate migration flows” (UGT, 9/06/2009). However, the Catalogue was criticised for being

too specific for the ‘generalised’ needs of the Spanish labour market. The Catalogue was conceived as a selective tool, as the listed occupations were narrowly specified through eight-digit-classification. Thus, the job categories included in the Catalogue refer to specific types of jobs, even though the greater part of the demand for labour in Southern Europe (including Spain) concerns unspecified, low-skilled activities in agriculture, domestic service and construction. In particular, this procedure favoured the employers’ interests, which were always able to find “a loophole” for their candidates. Additionally, the representatives of the Spanish trade unions have reported that the use of the Catalogue is not necessarily exempt from fraud. As a senior Spanish state official has noted, many employers have recruited foreign workers through the catalogue specifically to avoid the labour market check, and these same workers have then been employed in positions that differed from the positions for which they were originally recruited.

The new immigration regulation n. 557/2011 changed the procedure of individual recruitment based on the Catalogue. First, a bottom-up procedure replaced the former procedure. In this new procedure, the Autonomous Communities elaborate a pre-catalogue that is then sent to and evaluated by the central office of the National Employment Service. The Catalogue will not include those occupations that could be filled by unemployed people who have participated in occupational training sessions organised by the Public Employment Service. Furthermore, the law decided that the occupations listed in the Catalogue will be classified as eight-digit occupations only if such a classification is absolutely necessary (e.g., if a certain medical specialty is required). The rest of the occupations will be classified as four-digit occupations, which will considerably rationalise the recruitment procedure.

The requirement for obtaining a “negative certification” for an occupation that is not included in the Catalogue was not changed. In fact, in this case, recruiting in the country of origin is allowed only if the employers can demonstrate that they could not find a native candidate who could fill the vacancy. However, in contrast to the former procedure, the employment offer will be publicly made at the national level through all of the channels available to the Public Employment Service.<sup>8</sup> After 25 days, the employer has to communicate the results of the selection procedure to the corresponding Employment Office. If no native or EU foreigner can perform the offered occupation, the office expedites a negative certification, which will include the number of potential workers who applied for the position but considered not suitable for the job advertised, the number of unemployed people registered in the province who could perform the offered job and all of the workers who could be employed in the offered occupation after being adequately trained. A negative certification with the aforementioned information will be evaluated by the Secretary of State for Immigration, who has the final word on the employers’ applications.

In sum, the new immigration regulation has introduced a certain number of filters with the intention to adapt the foreign recruitment process to the national employment situation, which is currently characterised by a high unemployment rate for the natives. According to a senior advisor of the Ministry of Labour and Immigration, this new system “really responds to a labour migration philosophy based on the national employment situation” (SEPE, 28/11/2011). Therefore, one of the most interesting innovations is the intention to foster the recycling of native and foreign unemployed workers who participate in training activities. However,

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<sup>8</sup> A senior advisor of the Public Employment Service suggested making the offer public in other types of channels, such as newspapers or internet platforms. However, this proposal was rejected by the rest of the committee in charge of elaborating the catalogue.

scepticism on this issue is quite widespread because the recycling potential of immigrants is considered to be limited to those workers with adequate skills, who represent the smallest proportion of the unemployed workers in Spain. A senior advisor of the Spanish Ministry of Labour and Immigration stated the following in an interview: "It is therefore very difficult for a construction worker to pass from the construction to the service sector because the vocational training system is not agile enough. There is no capacity to adapt to the market's needs. In the 'Table for the Social Dialogue,' they always say that vocational training should be improved, but nothing happens" (MTIN, 11/10/2011). Similarly, a representative of the Catalan Association of Employers CECOT noticed that

"those unemployed workers who have the highest educational or professional levels can be recycled, but in many cases, the first step is to provide the unemployed worker with the instruments that are necessary to look for a job, such as help in preparing a CV or some training to prepare for job interviews" (CECOT, 21/06/2011).

## **2.2.2 Collective Recruitment through the '*contingente*'**

The *contingente* is a specific type of annual entry quota for foreign workers. This instrument has existed in Spain since 1993. However, from 1993 to 2000, the *contingente* was based on nominative offers that facilitated its use as an *ad hoc* method of regularising irregular workers who were already in the country. Since 2002, the *contingente* has no longer been based on nominal offers and has therefore offered less opportunities to commit fraud. The use of the *contingente* as a new recruitment instrument was then refined by the reform of 2004, which was fully implemented after the regularisation of 2005. In contrast to the Catalogue, which regulates individual recruitment, the *contingente* allows Spanish companies to recruit a group of people to be employed in a specific business to perform a specific type of occupation. In this respect, "the *contingente* responded to the needs of large and established businesses that demanded special treatment" (SEPE, 28/11/2011). For the first time, foreign workers were selected based on generic offers in the country of origin. Since 2006, the number of available stable and temporary occupations has been published yearly by the Secretary of State of Immigration.<sup>9</sup> However, this number can vary according to the needs of the labour market, especially in the case of the recruitment of temporary workers. In qualitative terms, the occupations offered by the *contingente* are specific eight-digit occupations that encompass low-skilled, medium-skilled and high-skilled occupations. In general, recruitment is possible only in the countries that have signed bilateral agreements with Spain related to the recruitment of foreign workers (see point 2.4.3. in this report). In some cases, before a bilateral agreement is signed, a pilot project is conducted to test the likelihood of collaboration with the partner. For instance, in 2006/2007 a pilot project was conducted in the case of Senegal.<sup>10</sup> In other cases (e.g., Ukraine), there was no need to start a pilot project. As stated by the stakeholders of the Ministry of Labour and Immigration, the existence of a pilot project depends on the type and stability of the

<sup>9</sup> See Resolution of 30 December of 2005, Resolution of 26 December of 2006, Resolution of 26 December 2007, Resolution of 26 December of 2008, Resolution of 23 December of 2009, and Ordinance of 28 December 2011.

<sup>10</sup> However, the pilot project has never been followed by a real bilateral agreement, probably because of the economic crisis.

diplomatic relations between Spain and a given non-EU country. Nevertheless, the regulation also allows exceptions for the occupations that are not available in the countries with which bilateral agreements have been signed. Such an exception was made when sheepshearers and anti-fire helicopter pilots were needed. In these cases, an employer only had to write an application providing evidence of the lack of workers in Spain who could be employed in the required occupation, and the Secretary of State usually gave permission after checking that the request fit the ‘national employment situation’ (MTIN, 3/06/2011). Nominal recruitment through the *contingente* is possible but only in exceptional cases. An advisor of the Spanish Ministry of Labour and Immigration also noted that recruiting doctors through the *contingente*, for instance, might hide a *de facto* nominal recruitment of somebody who is already known by the recruiting institution (MTIN, 11/10/2011).

The ministerial decree with the list of occupations offered in the *contingente* is published yearly by the Secretary of State of Immigration. In constructing this document, the Secretary of State considers the information on the national employment situation collected by the Autonomic Employment Services and subsequently revised by the national offices of the Public Employment Service, which may correct the information according to the ‘national employment situation’. The final proposal is discussed within the Tripartite Labour Commission of Immigration, which has the last word. Additionally, the Secretary of State will always consider the reports by the Sectoral Conference of Immigration (which was called the Superior Council of Immigration until 2008) and the Interministerial Commission on Foreigners.

The selection process occurs in the country of origin after the interested businesses have submitted their formal requests for workers to the Secretary of State. The selection commission is composed of representatives of the Spanish government and delegates of the country of origin. Additionally, the selection commission can include (although not necessarily) representatives of the employer(s). Private employment agencies are not allowed to participate to the process and “it is the firm intention of the ministry to prevent their involvement” (MTIN, 3/06/2011). However, employers’ organisations frequently participate in this process (e.g., the Catalan employers’ association CECOT). The interviewed member of CECOT explained,

“Our participation in the recruitment procedure in the country of origin was related to our role as intermediaries for those businesses that asked us to find workers with a given profile. In particular, we were asked to recruit medium-skilled workers, such as welders, tinkers or bus drivers. We were never asked to recruit high-skilled workers. When we could not find the requested workers in Spain, we checked the Catalogue and went to Eastern European countries to search for workers. When we had a special office for this goal in the country of origin, as we had in Bulgaria, we also used the individual recruitment channel. Otherwise, we resorted to the *contingente* (I mean, to the ministry)” (CECOT, 21/06/2011).

The selected workers sign a pre-contract in the country of origin, and the real contract is then signed in Spain. The contract must contain the worker’s net salary provisions, which have to respect the minimum salary conditions established by the collective agreements signed between the employers and trade unions of each job category. The employers that were directly involved in the process have also partially benefited from government subsidies, which were used to pay for the journeys of the business’ delegates to the country of recruitment.

The *contingente* accounts for the possibility of training foreign workers in their countries of origin. For instance, the large Spanish energy business mentioned in this report used the facilities of a training centre in Dakar, which had originally been sponsored by a Japanese business to train electricians for the Japanese boats fishing in this part of the Atlantic. This training centre could be used in Senegal thanks to the pilot project conducted by the Spanish and the Senegalese governments that allowed the company to recruit a total of 150 workers in 2007 and 2008. The training process included the teaching of the Spanish language, the prevention of risks at the workplace and intercultural education. The same company has also used training centres in Honduras to coach the mechanics to be employed in the shipping industry (ENERGY, 6/10/2011). However, training centres were not limited to medium-skilled occupations. The manager of the Spanish restaurant business interviewed for this report trained the company's workers using the facilities provided by the education institutions in the recruitment country. Later on, the same business also used *ad hoc* funding provided by the Spanish Ministry of Labour and Immigration to train its workers in Colombia, Morocco, Peru and Romania. Nevertheless, the interviewed manager also argued that the process would have been easier if the Spanish government had established a selection and training structure in the recruitment country.

The delegates of the General Directorate of Immigration have indicated that the initial implementation of the *contingente* was not an easy process. The negotiating parts raised disputes over, for instance, the type of occupations to be included in the final decree. Other disagreements concerned the consequences of a possible employer's failure to comply with the legal requirements, such as the minimum salary conditions. Currently, however, the *contingente* is considered by the public administration to be a "rapid instrument that goes well and is completely oriented to the needs of the labour market" (MTIN, 3/6/2011), where the public administration and the employers complement each other. On the one hand, the interviewed human resources managers were quite satisfied with the functioning of the *contingente*, particularly with the role played by the Spanish public administration. The CECOT delegate stated, "At that time, the advantages of the system offered by the ministry were that it allowed businesses to respond to the problem related to a serious and quite urgent labour demand" (CECOT, 21/06/2011). Several interviews showed that both the public administration and employers agree on this point. The human resources manager of the energy business argued that without the help of the public administration, recruitment in this form would not have been possible. Additionally, a delegate of the General Directorate of Immigration stated, "The work performed by the employers' association is very important because it is the employers that search in the countries of origin and create determinate networks" (MTIN, 5/10/2011). In a similar vein, the human resources manager of the restaurant chain highlighted the positive experience of the *contingente*, which, in his opinion, reflected a "model within a legal framework that allowed us to do things in the proper way" (RESTAURANT, 2/11/2011).

Despite the positive reviews, the number of stable occupations offered through this channel was relatively low compared with the number of occupations offered through other types of entry channels.

**Table 1: Entry of foreign workers during the economic boom (2005-2007)**

Sector	Regimen General			Contingente (stable jobs)			Contingente (temporary jobs)		
	2005	2006	2007	2005	2006	2007	2005	2006	2007

Agriculture	9,046	17,061	23,434	-	-	189	-	-	62,940
Industry	4,139	6,837	11,171	-	-	868	-	-	118
Construction	11,700	27,558	43,404	-	-	369	-	-	86
Services	42,988	68,868	100,331	-	-	4,295	-	-	1,572
Total	67,873	120,324	178,340	3,901	5,555	5,721	33,297	78,300	64,716

Source: Perez-Infante 2008: 106.

For this reason, the *contingente* is considered a small engine in the overall Spanish recruitment system. A delegate of the Public Employment Service highlighted this secondary role stating: "...the only important thing about the *contingente* is the name" (SEPE, 28/11/2011). The relevance of this channel decreased even further after 2008, as the number of offered slots fell from 15,731 in 2008 down to 14 in 2011.

**Table 2: Contingente of foreign workers (2006-2011)**

2006	16,878
2007	27,034
2008	15,731
2009	901
2010	168
2011	14

Source: Ministry of Interior.

### **2.2.3 Recruitment of Temporary Workers<sup>11</sup>**

The *contingente* offers entry slots for both stable and temporary jobs. The majority of temporary workers are employed in the agricultural sector for a maximum period of nine months. The slots offered in this category are based on the requests of the farmers' organisations, which present their formal applications after the *contingente* decree is published. Temporary workers are usually hired for different types of agricultural campaigns during the same year so that the farmers' organisation can maximise their presence in Spain. In this type of recruitment regime, the agricultural organisation can employ the same agricultural worker every year because the regulation accounts for the possibility of nominal recruitment in exceptional cases. This regime ensures a higher degree of efficiency because the employer does not need to coach new workers for the same type of activity. Moreover, it triggers a circular pattern of temporary migration, which is also strengthened by the employer's obligation to ensure by all possible means that the workers return to their countries of origin after the end of their work contracts. If employers do not succeed in this task, they might be assigned fewer slots in the framework of the next *contingente*. With respect to the dangers of overstaying, there has also been a clear intention to prevent the "dispersal of workers" by allowing only workers with strong family ties in the country of origin to be hired. For instance, the recruitment of strawberry pickers in Andalusia has been limited to women who come from rural areas and have children (Moreno Nieto 2009). The selection procedures

<sup>11</sup> Because the representative of the farmers' organization COAG suffered a sudden illness, this part of the report is based on secondary studies and on two interviews conducted with another representative of the same association in 2007 and 2008, respectively.

are usually performed in the country of origin by an employers' delegation along with the representatives of the public employment services of the country of origin. This mixed selection procedure, which represented an institutional novelty, was introduced after several cases of corruption and nepotism came to light in the years before 2004 (Moreno Nieto 2009). Despite these improvements, the recruitment of temporary workers still has weaknesses that are mainly related to the length of the procedure. In this respect, the representatives of the agricultural sector in Spain, such as COAG<sup>12</sup>, complained that the existing recruiting procedures still require too much time (i.e., from four to five months) to fulfil the immediate necessities of a flexible and often unpredictable sector such as agriculture.<sup>13</sup> In addition, the success of these procedures depends primarily on the region in which they are implemented. The recruitment procedures in the Province of Huelva have proven to be more efficient than those conducted in the Region of Murcia. Furthermore, a recent study on circular migration in Spain has shown that both the Spanish and Moroccan stakeholders desire a simplification of the recruitment bureaucracy (González-Enriquez, Reynes Ramón 2011). Nonetheless, these programs have proven to be quite successful. In addition to the interviews that have been carried out in this migration policy field for former projects, the existing studies on temporary migration in Spain show a high level of satisfaction among employers with regard to this recruitment method, which has been considered to provide a certain degree of security and protection for both the employers and the workers.

#### **2.2.4 The Job Search Visa**

The immigration regulation n. 2393/2004 introduced for the first time in Spain a job search visa. According to this law, foreigners were allowed to search actively for jobs in Spain for three months after their arrival. Moreover, the law accounted for the possibility that the Spanish emigrants' children and grandchildren, could come to Spain to search for a job without undergoing a labour market check. Despite being presented as an important novelty, the implementation of this recruitment tool turned out to be less flexible than its name apparently suggested. The visa for job search was only issued for the sectors and occupations in which a lack of labour was recognised by the government. Therefore, the visa was always limited to a given sector of activity and a given province. In addition, the number of visas offered by the Ministry of Labour and Immigration was included in the yearly *contingente* decree. A state official of the Spanish Ministry of Labour and Immigration explained, "The job search visa represents a variant of the *contingente* and cannot be compared with the job search visa that exists in other countries in which the migrant looks for a job" (MTIN, 3/06/2011). Additionally, the number of visas always depended on the requests collected by the Autonomic Employment Services. The same state officials stated, "The inclusion of this type of visa in the *contingente* decree was primarily a political decision that was mainly promoted by the General Direction of Immigration and was principally applied to the domestic sector" (MTIN, 3/06/2011). The trade unions were the main opponents of the job search visa. A representative of the trade

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<sup>12</sup> The Spanish farmers' association COAG (*Coordinadora de Organizaciones de Agricultores y Ganaderos*) manages the yearly recruitment of 15,000 agricultural workers, who are usually employed in small firms (OECD 2008).

<sup>13</sup> This and the following statements are expressed in an interview with a COAG delegate that was conducted on 11 December 2007.

union UGT argued that the main problem with this type of visa was the lack of internal controls in Spain, which made overstaying not only likely to happen but also attractive because of the scope of the informal economy in Spain. When asked by the author about the possibility of introducing some form of sponsorship to avert the danger of overstaying, the delegate of the Spanish trade union UGT answered that even with a sponsorship, the visa for job search does not represent a useful recruitment tool because the worker's security is granted only "when he or she can enter the country with a contract in his or her hand" (UGT, 27/05/2011).

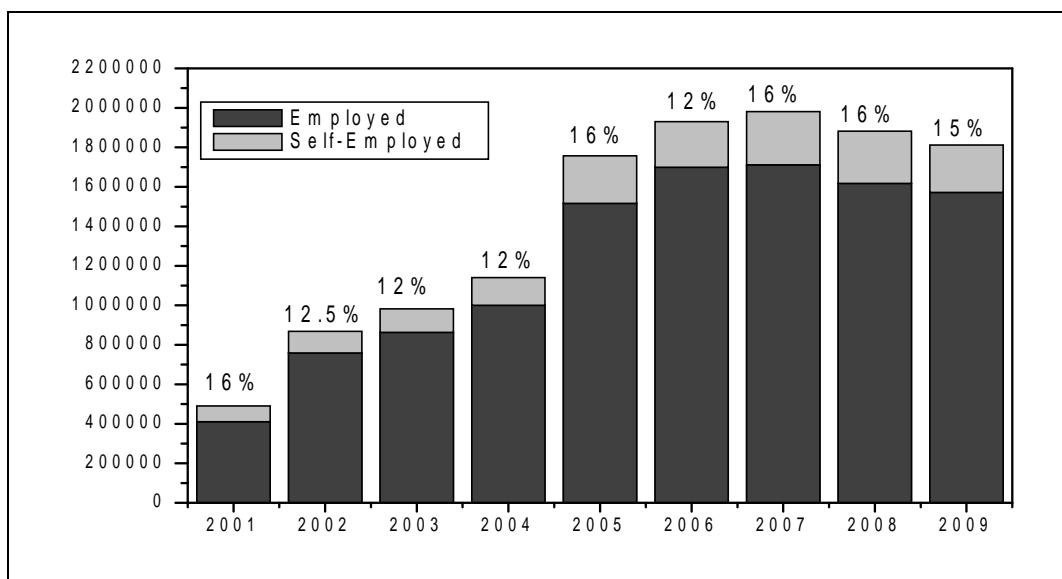
In any case, the number of visas issued remained low, as only 836 and 455 visas were offered in 2006 and 2007, respectively. Most of them were included in the *contingente* for the Autonomous Community of Andalusia and were limited to employment in the domestic sector. The visa for job search still existed in the new regulation of 2011, even though no Autonomous Community has requested the inclusion of this type of visa in the *contingente* decree since 2008.

### **2.2.5 The Self-employment Option**

The self-employment option in Spain is highly regulated. First, foreigners need to provide proof of their professional experience or of credentials that are necessary to perform the planned activity. High-skilled professionals, such as engineers and doctors, must have their titles recognised by the Spanish Ministry of Education, whereas medium-skilled workers, such as gas installers or electricians, must possess the corresponding licence. In addition, applicants have to demonstrate that they have the necessary financial funding to start their businesses and that this funding will be sufficient to sustain business owners and their businesses during the first year of their business activities. In this case, the regulation of 2011 also requires the applicant to demonstrate that the planned business will help to create new jobs. In this respect, the applicant has to provide the public administration with a business plan that describes the type of activity, the planned investment and the expected business' profitability. Currently, however, there are no guidelines establishing the minimum quantity of start-up capital required to start a business, although an administrative memo regulating this aspect is expected to appear soon. As a consequence, the personal professional experience and expertise of the evaluator in the Ministry of Labour and Immigration currently represents the main criterion for assessing the feasibility of a business activity. However, this procedure has been described as a "particular, discretionary exam that does not follow very objective criteria" (MTIN2, 17/11/2011). According to the regulation that came into effect on 30 July 2011, the residence and work permit based on a self-employed activity will last for one year and will be limited to a given province. If an Autonomous Community has the competence to issue initial work permits, the same Autonomous Community will define the geographical limits of the planned business within its territory. In any case, after one year, employees it is possible for employees to change the residence and work permit and to leave the provincial limitation.

However, the percentage of self-employed foreigners in Spain is still low in comparison with the percentage of employed immigrants, even though the former has been increasing since the beginning of the new century.

**Figure 4: Employed vs. Self-Employed Foreigners registered in the Social Security System**



Source: Ministry of Labour and Immigration.

According to the civil servant interviewed on this type of recruitment, there are three main obstacles to starting a business in Spain. The first concerns the availability of start-up funding. Applicants usually have difficulties in demonstrating that their projects are viable and sustainable and that “they will not turn into a burden for the state” (MTIN, 3/06/2011). This problem is related to the nature of entrepreneurship because in the first year of a business activity, it is usually difficult to demonstrate that the planned business will generate gains. Second, business projects “are one-person-businesses that seldom contribute to the production network of the country, which is something that also occurs with natives” (MTIN, 3/06/2011). Finally, it has also been highlighted that the Spanish production system is mainly based on sectors with high demands for low-skilled jobs, whereas self-employment (especially the creation of business) is often focused on medium- and high-skilled activities. Therefore, it is “difficult to ground a business in a country in which the majority of the requested occupations are low-skilled occupations” (MTIN, 3/06/2011). For all of these reasons, legally entering Spain to start a business does not seem to be an attractive option for most foreigners. Foreigners might decide to start a business after settling in Spain. However, the new regulation of 2011 allows immigrants to shift from employed to self-employed activities. Moreover, unemployed foreigners who live in Spain and want to start their own businesses can receive and use unemployment benefits to fund their start-ups. In general, “the request to change from employment to self-employment is accepted if applicants ask to perform on their own what they were previously doing for an employer” (MTIN, 3/06/2011). However, in this respect, it has also been mentioned that there might be other reasons behind the change from employment to self-employment. In fact, some foreign workers might also be forced into self-employment because this status is required to be a member of a cooperative. Moreover, some businesses may require their workers to be self-employed to externalise their services and save social insurance. This business strategy has become much easier to implement since the law n. 20 of 11 July 2007 introduced the category of the “self-employed worker” (*trabajador*

*autonomo dependiente)* to regularise the increasing number of situations of false self-employment.

## **2.2.6 The Recruitment of High-Skilled Workers**

Many studies on the Spanish labour market have highlighted the predominance of the demand for low-skilled labour, which is embedded in Spain's employment structure and welfare regime, whereas high-skilled migration does not seem to play a relevant role. However, the Spanish labour migration regime also accounts for recruitment channels for high-skilled workers. The preamble of the immigration regulation n. 557/2011 states, "The attraction of researchers and high-skilled workers as well as the regulation of the labour migration flows that directly affect activities in which economic, social or labour interests compete or that affect teaching, research or artistic activities represent measures that undoubtedly affect the competitiveness of the Spanish economy and the internationalisation of its business sector". The regulation n. 557/2011 regulates the admission of high-skilled workers in the Spanish labour market, also in application of the guiding principles and common standards set by the European "blue card" directive n. 2009/50/EU of 25/05/2009. According to the rules included in Title V of the new Spanish regulation, an employer who wants to hire a high-skilled worker must pass a labour market check and ensure that the high-skilled worker possesses the necessary credentials to be employed in a certain job. Furthermore, the worker's work conditions and gross salary must be determined according to the content of the collective agreements between the employers' associations and trade unions. As a general rule, the minimum gross salary for high-skilled workers has to be 1.5 times the national gross salary for a certain occupation category. Doctors represent the largest category of high-skilled migrants who are currently recruited in Spain, even though not everybody agrees that doctors should be included in the Catalogue or the *contingente*. For instance, the interviewed delegate of the Spanish trade union UGT expressed serious concerns about the foreign medical professionals included in the Catalogue:

"Currently, we think that there are too much specialised doctors and nurses included in the Catalogue who will probably go to centres for the care of elderly or dependent people instead of hospitals or ambulatories. We have tried to organise various meetings with the Ministry of Health to clarify under which conditions these people are brought into the country and are employed in the private sector because we are convinced that their employment represents a way to reduce costs" (UGT, 27/05/2011).

Interestingly, the Spanish migration regime also contains an additional channel to hire high-skilled workers without conducting previous labour market checks. This alternative channel was first introduced by a ministerial agreement in 2007 that introduced the "Large Companies Unit" (*Unidad de Grandes Empresas*). One of the main reasons for creating this department in 2007 was that the negotiations concerning the European directive on high-skilled workers in Brussels were proceeding slower than expected. At the same time, some large Spanish firms needed a rapid supply of high-skilled workers for their businesses. Thus, the government created the Unit to provide large Spanish companies with a faster procedure for recruiting high-skilled workers in a period in which most of the offices of the Ministry of Labour and Immigration were overwhelmed by a high number of applications.

The creation of the Unit was welcomed by all Spanish companies, whereas the trade unions opposed it and complained about not having been involved in the decision-making process.<sup>14</sup> Interestingly, the Unit remained even after the transposition of the ‘blue-card’ directive into the regulation of 2011. Its name was changed into the “Unit of Large Companies and Strategic Groups”. A high-ranking state official of the General Directorate of Immigration stated,

“The idea behind the *Unidad de Grandes Empresas* is that there are strategic groups that need a more agile recruitment channel. In this respect, the Spanish public administration shows its intention to collaborate in this task. We are talking about strategic groups that include universities, large companies, and artistic collectives” (MTIN, 5/10/2011).

According to the new regulation, large businesses can recruit high-skilled workers from third-world countries through the Unit without undergoing a labour market check. The definition of high-skilled workers used by the Unit is the same as the definition contained in the EU ‘blue card’ directive.<sup>15</sup> Businesses that intend to recruit workers through this Unit must fulfil at least one of the following conditions: i) have more than five hundred workers<sup>16</sup> ii) have an international business volume of 200 Mio. euros per year in Spain or iii) not less of one million Euros of foreign investments in the three years preceding the application. . Additionally, the businesses have to demonstrate that in the three years before the application, they benefited from foreign investments of no less than one million euros. The UGE delegate interviewed for this report stated, “It is easy to understand why large companies were favoured. They bring important executives who are able to attract large projects. For instance, we know about a large energy company that created 450 jobs after setting up in Andalusia” (UGE, 12/07/2011). According to the new criteria, small- and medium-size companies can also benefit from this “fast-track-procedure”. However, this possibility is limited to firms of the information technology, renewable energy, environmental, water, health, biopharmacy, biotechnology, aeronautical and aerospace sectors. An interviewed state official stated,

“It is difficult to explain this change. It was a surprise to many, and I have verified information that the main employers’ association was against it [...] In addition, we still do not know which national or autonomic organisations will certify that those medium-sized companies that want to recruit personnel through the Unit really belong to the sectors described by the regulation. For the moment, no criteria in this respect have been established” (UGE, 12/07/2011).

The procedure for recruiting high-skilled workers through the Unit is faster than the normal procedure based on the ‘blue card’ regulation. The time limit for the decision is set at 30 days (while the deadline for issuing the ‘blue card’ is 45 days), and the corresponding visa must be issued in 10 days. However, in this case, the Spanish company has to apply to hire a given worker by presenting a summary of its business activities and the curriculum vitae of the requested worker. The request is nominal, and the individual must be contracted for at least one year. Before the ‘blue card’ directive was approved, there was no way to establish the minimum salary level

<sup>14</sup> The trade union *Comisiones Obreras* (CC.OO) denounced the previous version of the new regulation because it allowed companies with ambitious projects to recruit workers through this channel, even though the workers did not fulfil the minimum requirements established by law.

<sup>15</sup> In the previous regulation, high-skilled workers were considered those with a university degree and at least one year of experience in their sector of expertise.

<sup>16</sup> The previous regulation had set the limit on 1,000 workers.

required for a high-skilled worker. It was also impossible to use the collective agreements as a reference because

"there are thousands of them, and we had to define a homogeneous criterion. So we looked at a ministerial memo that established how much money a foreigner had to carry with him or her when entering Spain and multiplied the established amount for 12 months" (UGE, 12/07/2011).

After the transposition of the 'blue card' directive into national law, the level of salary required had to follow the criteria set by the European regulation. In this case, the minimum salary is calculated by taking the minimum yearly salary established by the National Classification of Economic Activities (CNAE), which was published by the National Statistics Institute, and multiplying the value by 1.5. Clearly, the minimum salary calculated according to the guidelines of the 'blue card' directive is higher than the minimum salary calculated according to the past procedure. This change reduced the attractiveness of foreign workers' recruitment through the UGE and, as a result, "many businesses, especially those in the energy sector, are complaining because the salaries they now have to pay are higher than the salaries paid in the past" (UGE, 12/07/2011).

The regulation establishes that high-skilled workers hired through the Unit have the same rights as high-skilled workers hired through the 'blue card regime'. Hence, the hired workers can come to Spain together with their families. Family members can be issued permits for work purposes and do not need to pass a labour market check even in the case they will be employed in low-skilled occupations. Recently, however, an information note on the Unit has been published. According to this note, the high-skilled technicians recruited through the Unit can be hired through either the 'blue-card' regime or the general regime. In the latter case, the worker has to present a university degree and demonstrate at least one year of professional experience in a similar occupation. Although the minimum level of salary required in this case cannot be lower than average minimum gross salary of 28,090 euros, this salary is lower than the salary established for the 'blue card' regime.<sup>17</sup> Finally, the worker can bring his or her family along. However, the family members are not allowed to work (UGE, 21/12/2011).

The number of workers hired through the Unit did not decrease abruptly after the crisis.

**Table 2: Applications submitted to the Large Companies Unit (2007-2010)**

	2007*	2008	2009	2010
<b>Executives/High skilled workers</b>	1,301	2,410	1,646	1,557
<b>Researchers/teachers and professors / public administration</b>	12	58	44	16
<b>Researchers for the</b>	16	31	43	66

<sup>17</sup> However, this rule is valid only for high-skilled technicians. The salary established for executives has to double the average gross salary established by the CNAE for the offered position.

<b>private industry</b>				
<b>Artists</b>	472	504	131	279
<b>Other</b>	69	318	354	196
<b>TOTAL</b>	1,870	3,321	2,218	2,114

Source: Written information provided by the Ministry of Interior.

This finding might be related to the persistent need for high-skilled workers in certain industrial branches, where not only Spanish but also Indian and Chinese businesses can be found. In this respect, the interviewed delegate of the Unit also suggested that the Unit might be particularly attractive to Chinese or Indian companies:

"They prefer to recruit their own engineers because these companies pay their own engineers less than Spanish engineers would be paid. As a matter of fact, we receive many requests for computer engineers. Some companies have also applied for 100 engineers at once" (UGE, 12/07/2011).

The recent regulation on the worker's regime, which allows employers to pay lower salaries for the technicians employed through the General Regime, might reinforce this trend and induce salary dumping in high-skilled occupations.

### **2.2.7 The Limits of Residence Stability**

Foreigners from third-world countries who are registered in the General Regime must renew their residence permits two times before obtaining a long-term residence status. The initial residence permit lasts for one year and is limited to a geographic region and to a specific occupation. As a member of the Ministry of Labour and Immigration has noticed, it is also worth mentioning that this limitation on initial residence permits is also (paradoxically) valid for the stable occupations included in the *contingente* decree. In general, applications for renewal must be submitted at least 60 days before the residence permits expire. The legislator also accepts submissions that are presented in the three months after the permit has expired, although in these cases, the foreign worker has to pay a sanction for the delay. Having a job or the ability to obtain a job is a *conditio sine qua non* for renewing a residence permit. A permit is renewed if the foreign worker is still employed in the same job for which the permit was issued the first time. A foreign worker can also apply for renewal upon evidence that he/she had been employed for at least three months before being terminated for unfair dismissal. Additionally, the worker has to be registered in the unemployment lists of the Public Employment Service and must be actively searching for a job. This close relationship between the residence permit and occupational situation has been criticised for increasing the precariousness of foreign workers' situations and for heightening the exploitation risk.

The Spanish regulatory framework does not include any measure that link residence to integration tests. However, the new immigration regulation of 2011 has introduced the obligation to present a "Report on Integration Efforts" for all foreigners who want to renew their residence permits for work-related purposes. This report must certify the applicant's participation in courses that aim to disseminate the values upon which Spain and the European Union are grounded as well as the principles of democracy, tolerance and equality. Applicants are also asked to demonstrate their knowledge of the official language of the place of residence. It is still unknown which

institutions will be in charge of issuing the requested certificates. In addition, these reports are requested to evaluate the integration efforts but do not have binding effects on the applicant's ability to renew his or her permit. In any case, they represent a clear step towards the use of integration criteria to maintain control of the residence statuses of foreigners, if not their entry.

## 2.3 The Relevance of Foreign Credentials Recognition

The recognition of foreign credentials is often outlined as one of the most important indirect protectionist instruments used to limit and filter the entry of foreign workers.<sup>18</sup> Spanish laws formally require foreign workers who are recruited within the *contingente* or the General Regime to provide the necessary credentials to be employed in a given occupation. However, there are relevant differences regarding the recognition procedures. The Spanish Ministry of Education is entitled to recognise the academic titles and professional experience of doctors, engineers and other types of regulated, high-skilled professions, such as chemists or architects.<sup>19</sup> Such recognition of titles is often necessary to become a member of a professional corporation (*colegio profesional*) and to perform the profession in Spain. The recognition of foreign credentials by the Ministry of Education is requested only if the worker is to have monitoring responsibilities. Otherwise, the long bureaucratic procedure can be avoided. For instance, the UGE advises applicants to use another type of job description in the contract (e.g., technician instead of engineer or researcher instead of chemist) to avert further bureaucratic hassles (UGE, 21/12/2011).

Of course, there have been isolated cases of doctors, for instance, who have practiced in their specialties, even though they were still undergoing the process of receiving recognition for their foreign credentials: "We know about Argentinean anaesthetists who have been employed as generic doctors until their title was officially recognised" (CESM, 17/10/2011). However, there seem to be few possibilities of fraud with respect to the title recognition process. An executive member of the Spanish doctors' trade union, the *Confederación sindical de médicos* (CESM), explained,

"This (*the recognition of the right to perform as a medical specialist, A/N*) is obligatory in public health services. In private health services, the recognition of the specialty is theoretically unnecessary if the concerned doctor does not use his or her specialist title to practice. Nonetheless, something like that is very unlikely to happen because it would directly affect the institution's prestige (CESM, 17/10/2011).

In the case of high-skilled occupations, it is possible that the people who will be hired through the Catalogue or the *contingente* already possess the requested qualifications according to Spanish law. Moreover, it seems that foreign credentials are recognised more easily if bi-national agreements exist. This finding was confirmed by one of the human resources manager interviewed for this report: "We have recruited excellent engineers from Chile, for whom the foreign credential recognition process was quite easy. This was not the case for the engineers from Argentina" (ENERGY,

<sup>18</sup> For instance, the recognition of foreign credentials is one of the most debated issues when the feasibility of the Canadian points system is assessed.

<sup>19</sup> The qualifications obtained in another EU member state are regulated by Real Decree n. 1837/2008 on regulated professions that transposed the European Directive n. 2005/36/CE on foreign credentials recognition.

6/10/2011). With respect to the recognition of foreign credentials, the UGE checks the qualifications of a worker for a determinate position. Therefore, titles have to be translated and legalised.

In contrast, the relevance of foreign credentials recognition to medium-skilled occupations is more difficult to assess because there are few licensed medium-skilled occupations in Spain. Most of the occupations included in the Catalogue or the *contingente* were low-skilled occupations that did not require any type of credential recognition. By contrast, a worker in a regulated profession (e.g., electricians and ship mechanics) needs to acquire a license from the responsible office of his or her Autonomous Community. There are also medium-skilled occupations that require no licenses. The most striking example is plumbers, as there is no state or autonomic law regulating this profession (INCUAL, 24/11/2011). Only those foreign workers with monitoring responsibilities or those who wanted to start their own businesses needed to obtain licenses and recognition of their credentials. In the remaining cases, a high state official of the Ministry of Labour and Immigration has argued that “it is the employer who has the key” (SEPE, 14/11/2011). The relevance of the employers’ criteria has been confirmed in other interviews conducted for this report. The delegate of an important intermediary business for workforce recruitment argued that “sometimes, the only criterion is that the worker fits in the company and that he or she is able to perform his or her job” (MANPOWER, 22/06/2011). Likewise, the delegate of the Catalan Employers’ Association CECOT explained the following:

“Spanish companies seldom required credentials ‘in paper’ (*commas added*). It is enough if somebody demonstrates that he or she is able to do the job. Because there have been cases of people who were recruited without having the necessary credentials, the companies asked us to make sure that the workers had the theoretical preparation and the professional experience required. In the countries of origin, we checked the competence level of the applicant or went to a training school that provided us with the workers we were looking for” (CECOT, 21/06/2011).

## **2.4 The Relevance of Multilevel Governance**

### **2.4.1 The Autonomous Communities**

The role of the Autonomous Communities in the recruitment of foreign workers is embedded in the territorial organisation of the Spanish state, where several competences on labour matters have been transferred to the Autonomic Labour Services. The regulation of the *contingente* of 2002 recognised the territorial dimension of labour market needs in Spain for the first time. In fact, the former Ministry of Labour and Social Affairs had to elaborate the *contingente* every year according to the information received by the single Autonomic Labour Services after consulting with the trade unions and employers’ associations. The proposal was then submitted for consultation to the *Consejo Superior de Política de Inmigración* (Superior Council for Immigration Policy), which was composed of representatives of the Autonomous Communities and other ministries, before being finally approved by the government.

The regulation of 2004 strengthened the role played by the Autonomic Labour Services in determining the labour market demand when the *contingente* and the Catalogue are being elaborated. Nonetheless, the representatives of some

Autonomous Communities, such as Catalonia, started criticising the deep mismatch between the central role of the Autonomous Communities in matters of integration and social service provisions and their secondary, if not irrelevant, role with respect to decisions on the legal status of immigrants. To overcome this mismatch, the *Generalitat*, the Catalan government, started to argue for more competences with respect to the latter role. After a long juridical debate on the new Autonomic Law of 2005, the *Generalitat* was given the competence to proceed and issue initial work permits for those foreign workers who will be employed in Catalonia (Art. 138 *Estatut de Catalunya*).

The acquisition of this competence has been described as a part of a general process of administrative simplification, as “the applicant only deals with one administration [...] The idea is to engage in administrative simplification, which is modern currently and which allows the applicant to avoid attending to different administrations” (GEN1 7/07/2011). Employers or workers submit their applications to the corresponding office of the *Generalitat*. After the submission, the application is simultaneously reviewed by the delegation of the central government (with respect to residence) and by the autonomic administration (with respect to work). In this process, the two administrations are completely independent from one another: the Autonomous Community cannot intervene in the state’s decision to issue a residence permit, whereas the state cannot intervene in the Autonomy Community’s decision to issue a work permit. The official of the Catalan Service for the Management of Initial Work Permits explained the following during the interview:

“In the part related to the residence [...] requirements, the files are evaluated by the state, and we do not intervene. In the part related to work, we analyse and evaluate the requirements. This process is separate and independent [...] At the end, both agree on the final result. If it is a labour matter, the State does not say anything, and if it is the other way around, then we do the same” (GEN1, 7/07/2011).

The competence transfer was regarded with a certain degree of scepticism. For instance, some scholars predicted that the implementation process would be burdensome and that coordination difficulties would exist between the state and the autonomic administration (Rojo Torrecilla, Camas Roda, 2009). Indeed, the starting phase was not easy. However, most of the implementation problems were related to difficulties in adapting the complexity of the information to the computer application. One of the reasons for these difficulties was related to the fact that the Catalan administration had two different institutional counterparts in Madrid. On the one hand, the Ministry of Labour and Immigration was addressed to solve any juridical or administrative doubts. On the other hand, the Ministry of the Presidency was responsible for the computer application. Thus, the need to address two different administrations at the same time triggered coordination difficulties. By contrast, other types of problems closely related to the interpretation of the new procedure could be rapidly solved via telephone or via telefax between the two administrations.

Nevertheless, the interviewed delegate was satisfied with the process and with the pioneering role of the Catalan Community:<sup>20</sup> “In principle, it is a new competence. We are the first one and have a pioneering role [...] All that we have done to adapt,

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<sup>20</sup> For the moment, Catalonia is the sole Autonomous Community that has implemented this new procedure. The Autonomous Community of Andalusia also foresees implementing this competence into its autonomic regulation but has not done so yet.

especially with respect to the computer application, was experimental" (GEN1 7/07/2011). Similarly, a delegate of the Catalan Secretary of Immigration explained the following during the interview:

"At the beginning, there were coordination problems at the intermediate level, especially as far as the technical aspects were concerned. We needed a year of burn-in, but at the end of the day, we reached our goals. It was a normal process, and we are accustomed to it after transferring hundreds of competences (GEN2, 22/06/2011).

In addition, both state officials agreed that the competence transfer process was also facilitated by the small volume of requests and by the fact that most of the initial work permits were not issued to newcomers but were actually conversions of other permits, such as the study permit, into residence permits for work purposes.

#### **2.4.2 The European Membership**

The European Union played an important role in the initial evolution of the Spanish migration regime. As mentioned previously, Spain had to adapt its control regime to the strict requirements of the EU members in terms of its border controls and regular entries. Similar to Italy during that time period, Spain had to make many concessions of this nature to become a member of the EU. The labour market check that Spain had already introduced in its first immigration law was clearly a tribute to Europe's restrictive orthodoxy in labour migration matters. The European Council Resolution on 20 June of 1994 stated that "no Member State is pursuing an active immigration policy" and that job vacancies have "to be filled as far as possible by the nationals of other Member States or EFTA countries that are parties to the EEA Agreement". The EU anti-immigration dogma completely ignored the increasing demand for low-skilled workers in Southern European countries. This demand was firmly rooted in socio-economic transformation. As a result, EU policymaking was blamed for disregarding the structural differences between Northern and Southern Europe in matters of immigration regulation (Pastore 2002).

Nonetheless, both Spain and Italy were more open to labour migrants than the other European member states. Additionally, it does not seem that the influence of the European 'restrictive' view significantly affected the opinions of Spanish state officials regarding Europe's influence. A high-ranked official of the Ministry of Labour and Immigration stated,

"Europe counts. Its role is very important. We could observe the relevance of the European Union to the recent elaboration of the new regulation, where all of the new European directives had to be transposed. This has been a really complicated process" (MTIN, 5/10/2011).

Furthermore, the same state official emphasised the increasing consensus among EU member states regarding the necessity of certain categories of foreign workers, such as high-skilled professionals. Similarly, the delegate of the Catalan *Generalitat* enthusiastically affirmed the importance of Europe in immigration matters: "Europe has been highly relevant to Spain, and Spain has been loyal to Europe"(GEN2, 22/06/2011). However, some limitations, such as the relevant structural differences among the European labour markets, were also highlighted: "There is a certain need to account for the difficulties related to the existence of labour markets that are not the same everywhere" (MTIN, 5/10/2011). Another case of friction

between Spain and many European countries, which was widely reported by the national and international press, was generated by Spain's regularisation processes, which were sharply criticised by the other European member states. However, the critics have not prevented the Spanish government from advocating for the maintenance of individual regularisation processes as special regulation instruments in the European Pact for Immigration of 2008. Finally, the relevance of the institutional differences between Spain and the other European member states should be mentioned. In fact, Spain is the only European country in which a large number of the competences in immigration matters have been attributed to the Ministry of Labour and Immigration. This competence distribution has created a certain degree of isolation for the Spanish representatives in those meetings of the EU Council of Ministers in which most of the member states' officials were from the Ministry of Interior:

"It is true that at the European level, there are certain difficulties in understanding the Spanish peculiarity (*referring to the competence distribution A/N*). We have to explain that our competences are distributed in this manner because the immigration flows to Spain are predominantly labour migration flows" (MTIN, 5/10/2011).

A state official of the Ministry of Labour and Immigration also highlighted the relevance of Europe with respect to the decision to re-introduce in 2011 the recruitment stop for Romanian workers after its abolition in 2009. As explained previously, Spain was the only EU country that lifted the recruitment stop. This decision put the country in an isolated position, which was believed to have hurt Spain's position in Europe.<sup>21</sup>

In contrast to the positive view expressed by the state officials, the attitude of the trade unions towards the 'European factor' appeared to be less enthusiastic. For instance, the delegate of the Spanish trade union UGT did not agree with the European directive on high-skilled migrants. The delegate argued that the directive contradicts the unemployment structure of the Spanish labour market, which is mainly based on demand for low-skilled labour. In addition, the delegate stated that the

"idea of recruiting only high-skilled migrants is a conservative argument that is also discriminative [...] It has a 'classist' background because high-skilled workers can come with their families, while domestic workers cannot [...] For the moment, the European directives lower equality and national rights. Mobility without equality is a source of social dumping" (UGT, 27/05/2011).

#### **2.4.3 Bilateral Relations with Non-EU Countries**

The signing of bilateral agreements has played a pivotal role in Spain's labour migration policy. To date, Spain has signed four different types of bilateral agreements with non-EU countries: 1) The Agreements on the Readmission of Irregular Migrants, 2) The Agreements on the Regulation of Migration Flows, 3) The

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<sup>21</sup> In this respect, a Cabinet member of the Secretary of State of Immigration pointed out during an informal conversation that "it is not good to be alone in Europe". According to a second informal conversation with another member of the Secretary of State, the Spanish government signed an agreement with France and Italy to lift the recruitment stop for Romanian citizens in 2009. Nevertheless, Spain was the only country that fully complied with the agreement. However, because of the economic crisis and the significant increase in the number of Romanian immigrants from 2009 to 2010, Spain decided to reintroduce the recruitment stop (see also point 3.2.1. on this issue).

Framework Agreements on the Cooperation on Immigration Issues (“new generation agreements”) and 4) The Agreements on Operative Cooperation.

**Table 3: Agreement signed by the Spanish government**

Readmission Agreements	Agreements on the regulation of migration flows	Framework cooperation Agreements in Immigration Matters (“new generation agreements”)	Agreements on operative Cooperation
Morocco 1992	Romania 2001		Peru 2004
Bulgaria 1996	Dominican Rep. 2001	Mali 2007	
Slovakia 1999	Poland 2002	Guinea 2007	
Estonia 2000	Mauritania 2007	Gambia 2006	
Guinea-Bissau 2003	Morocco 2001	Guinea-Bissau 2009	
Latvia (2000)	Ecuador 2001	Cape Verde 2007	
Lithuania (2000)	Colombia 2001	Niger 2008	
Macedonia 2006	Bulgaria 2003		
Mauritania 2003	Ukraine 2009		
Romania 2006			

Source: Ministry of Labour and Immigration

The first bilateral agreements that Spain signed with non-EU countries focused on the fight against irregular migration. By contrast, the first agreements that directly addressed the regulation of migration flows were signed in 2001. However, the so-called *Plan Africa* (Africa Plan) for 2006-2009 marked “a before and afterwards” with respect to the conception of bilateral agreements (Asín Cabrera, 2008: 171). The Plan Africa was part of a new diplomatic effort to foster positive collaborations with African countries. The plan was a political reaction to the clandestine migration movement from Africa to Spain, which peaked from 2005 to 2006. The plan addressed two different groups of countries. The first was the group of countries of ‘priority interest’ and included countries such as Equatorial Guinea, Senegal, Mali, Nigeria and Mauritania. These countries were of strategic importance because of the relevance of their migration systems, their cultural links with Spain and the economic importance of some of them. The second group was represented by countries of specific interest that needed a special cooperation scheme with Spain. These countries were “the origin of or transit for irregular immigration,” had “fishing or tourism potential” or carried “intense historic, cultural or [cooperative] relations” with Spain”.<sup>22</sup>

To foster cooperation schemes with African countries, the Spanish government opened new embassies in Mali, Sudan, and Cape Verde as well as new offices focusing on technical cooperation in Cape Verde, Ethiopia and Senegal. In this respect, it is worth mentioning the creation of a new Labour Office in Dakar, which received the support of the ILO and was involved in the pilot project with Senegal. In the framework of the *Plan Africa*, Spain signed “new generation agreements”

<sup>22</sup> [http://www.maec.es/es/Home/Paginas/20060605\\_planafrikaingles.aspx](http://www.maec.es/es/Home/Paginas/20060605_planafrikaingles.aspx)

specifically aimed at combating irregular migration with the help of effective labour migration policies. The aim of these new agreements was not only to respond to the labour needs of the receiving country but also to limit the brain drain phenomena and the loss of human capital (Ferrero-Turrión, Lopez-Sala 2009). Spain signed the ‘new generation agreements’ with Gambia, Guinea, Mauritania, Mali, Cape Verde and Niger. These agreements included training opportunities in the country of origin to ensure the adequate participation of the workers in the Spanish labour market.

This change in the conception of international cooperation reflected the transformation of Spanish immigration policies from a securitarian view of immigration into a view of immigration as a labour resource. This new ‘global perspective’ on immigration explicitly linked the need to combat irregular migration to the imperative to pursue a positive regulation of labour migration flows for the first time. Additionally, for this reason, bilateral agreements were considered to be win-win deals for all of the parties involved. A highly ranked state official of the Spanish Ministry of Labour and Immigration stated,

“The signing of bilateral agreements always entails political compensation for the country of origin. Sometimes, this compensation does not need to be explicit. Sometimes, it is simply good for some countries to show their own citizens that they have signed these types of contracts with Spain” (MTIN, 5/10/2011)

Another state official of the Ministry of Labour and Immigration highlighted the relevance of political and business relations between two countries:

“The success and the feasibility of bilateral agreements depend on the compatibility of the two regimes involved. It also depends on the political relations between the countries and the relationships between the two countries’ business worlds. Moreover, bilateral relations allow for more permanent relations. For instance, we are currently creating a joint system with some Latin American countries for recognising work experience. For this reason, I think that the coordination between the Employment Services of two countries is an important factor” (MTIN, 5/10/2011).

Finally, the relevance of good bilateral relationships was also highlighted by the business managers interviewed for this report: “It is only possible to implement recruitment policies with countries that have good relationships with Spain. We have tried to do something with Mali, but the Ministry of Labour and Immigration told us to give up” (ENERGY, 6/10/2011).

The economic crisis decreased the intensity of Spain’s cooperation with non-EU countries. As stated by one of the state officials interviewed in this study (MTIN, 5/10/2011), there is currently no need for bilateral cooperation. Therefore, the ministry is not fostering this type of action.

## **2.5 Qualitative versus Quantitative Criteria in a Demand-Driven Regime**

The Spanish migration regime is a demand-oriented regime in which labour market needs predominate. As stated by a high-ranking state official of the Public Employment Service, the national employment situation and the employer’s interests were the driving forces of the Spanish recruitment system (SEPE, 28/11/2011). However, the predominance of the demand factor is confirmed by the general request for a labour market check and the central role played by the employers in the labour recruitment procedure. By contrast, there is no ‘point system’, whereas the use of supply-driven channels, such as the job search visa, was limited to a few years and only possible for certain occupations and geographical regions. In sum, it

can be argued that, although the Spanish labour regime was more open than those of the other European member states to foreign labour, the regime still adhered closely to the European philosophy, which states that the entry of foreign workers should be closely linked to the employment situation and the market demand. Some policy tools might suggest the existence of supply- or worker-driven components. For instance, regularisations could be interpreted as supply-driven channels, as most of them bypassed the national employment situation and supplied the market with potential workers searching for jobs. In fact, all regularisations carried out before 2005 did not depend on the existence of a labour contract. Cachón (1995b: 114) noted, “The priority principle of the ‘national employment situation’ (*commas original A/M*) practically collapsed after the two regularisation processes were conducted in Spain (1986 and 1991)”. This notwithstanding, the regularisation processes did not reflect a formal intention to add offer-related channels to the Spanish labour migration regime. As a matter of fact, the lack of formal offer-oriented channels has been outlined as one of the system’s weaknesses. A state official of Catalonia’s *Generalitat* stated,

“With respect to the Spanish immigration model, what is conditioning us is the inertia of our tradition. Spain has to understand that it is not only the labour market that sets the trend. Spain does not know how to compete for human capital. We still understand immigration as a problem of social services instead of as a resource” (GEN2, 22/06/2011).

With respect to the recruiting mechanism, the Spanish regime is based on a mix of quantitative and qualitative criteria. For instance, the *contingente* sets only a provisional number of entry slots instead of caps. In fact, it determines a yearly number of entry slots for stable and temporary occupations, whose number can be changed depending on the state of the labour market. According to a high-ranking state official of the General Directorate of Immigration, the existence of provisional entry slots allows for more recruitment flexibility, whereas “the existence of caps forces you to calculate efficiently the caps, which is not always easy.” Thus, caps are seen less as an instrument of efficient recruitment and more as an instrument of control that would stiffen the system as a whole (MTIN, 5/10/2011). However, there have also been state officials who criticised the extreme flexibility of the Spanish *contingente*. For instance, according to a senior advisor of the Public Employment Service, the absence of caps (and therefore the lack of limitations) reflects an unwillingness to pursue any form of planning:

“To limit means to plan ahead. In Spain, there has been no planning in this sense [...] I would prefer that the key did not lie in the hands of the employers, that there were planning and quotas and that the system was transparent. The point system is better and more democratic” (SEPE 28/11/2011).

The lack of rational planning in the Spanish migration regime<sup>23</sup> was also outlined by the delegate of the Spanish Doctors’ Trade Union:

“In 2006, the increase in the number of immigrants together with the increasing number of hospitals built in the Autonomous Communities produced the sensation that more doctors were needed [...] Now that the ministry has decided to return to the previous situation, the sensation is that there are too many doctors in Spain” (CESM, 17/10/2011).

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<sup>23</sup> In fact, some rough estimates for nominal recruitments were only provided by the Secretary of State in 2006 and 2007.

In sum, the Spanish system used mainly quantitative criteria to recruit labour migrants. However, in many cases, these criteria were the results of political consensus instead of a rigid estimation formula. Recently, the enacted reforms have strengthened the importance of qualitative criteria. In fact, few qualitative criteria based on the workers' professional qualifications or nationalities existed until the reform of 2004. The Catalogue represents the most relevant qualitative selection criterion because it allows faster employment procedures for certain occupations. As previously noted, the type of occupations included in the Catalogue depended on the estimations based on the national employment situation. However, more than one interviewed state official pointed out that a general policy of *laissez faire*, which favoured the inclusion of as many occupations as possible, existed during the years of the economic boom. Only recently have political criteria clearly dominated in the drafting of the Catalogue. The length of the Catalogue and the number of professions included in it has been reduced considerably. Currently, most of the professions in the Catalogue are related to the health sector and the shipping industry.<sup>24</sup> For instance, lifeguards and electricians have not been included in the most recent Catalogue, even though demand for these occupations still exists. Including these occupations would have generated high political costs at a time in which Spain is experiencing one of the highest unemployment rates in its history (MTIN, 3/6/2011). Finally, Spain has never implemented recruitment programs for specific types of occupations. The only example in this respect could be the job search visa that was limited to domestic workers.

With respect to the qualitative criteria based on the workers' nationalities, there are privileged channels for Peruvians and Chilean citizens. According to the bilateral agreements signed by their governments with Spain, these citizens can access the Spanish labour market without undergoing a labour market check. Moreover, the children of Spanish citizens living abroad can access the Spanish labour market without passing through the labour market check. Finally, the limitation of the *contingente* to non-EU countries with which bilateral agreements have been signed can also be considered a qualitative criterion (and a tool of positive selection of the citizens of these countries). By contrast, there are no explicit criteria that produce a negative selection, although the new employment stop for Romanian citizens in 2011 could be considered a type of negative selection towards Romanian workers with respect to other European citizens.

As previously observed, the requirement of foreign credentials recognition is particularly relevant in the case of high-skilled occupations in the public health sector. In the case of low-skilled and medium-skilled qualifications, which represent the majority of the occupations demanded by the Spanish labour market, foreign credentials only need to be recognised in those occupations for which a certain degree of monitoring responsibility is required. Language has never been a selection criterion in Spanish migration policies. Only recently has language become a selection criterion for the recruitment of foreign doctors who want to start their medical training in Spain after finishing their medical degrees in a foreign country. A doctor from a country whose official language is not Spanish has to demonstrate sufficient knowledge of the Spanish language (Level C1 or C2) according to the classification of the Cervantes

<sup>24</sup> In this respect, the author was informed about the existence of an agreement between the trade unions and employers of the shipping industry that allows certain professions, such as boat mechanics and boat cooks, to be included in the Catalogue. The agreement aimed to facilitate the recruiting procedures for those employers that decided to keep their boats under the Spanish flag. However, according to the information obtained, the agreement will be withdrawn in the next future.

Institute or the Official Language Institute in the applicant's country of origin. The language criterion is not a consequence of the economic crisis. Rather, the requirement resulted from the enforcement of the European directive on the regulated professions. However, this innovation could also be seen as a form of positive discrimination because Latin Americans are implicitly favoured by the language requirement.

### **3. FUNCTIONAL EQUIVALENTS TO LABOUR MIGRATION**

#### **3.1 The Pivotal Role of Regularisation Processes in the Spanish Labour Market**

Regularisations in Spain were a key tool for readjusting the balance between ineffective state regulations and the large flow of immigrants. Therefore, the regularisation process deserves special attention. Regularisations as 'crisis management' policy tools must be embedded in the dysfunctional mechanisms that have characterised the Spanish migration regime in the past 20 years. During this time period, irregular migration became a structural component of the Spanish migration regime because of the country's inadequate recruitment procedures, extended informal economy and insufficient internal controls. In fact, the informal labour market is calculated to be approximately 22 per cent of the national GDP and is particularly extended in precarious labour sectors, such as the domestic work or construction sectors. These sectors have attracted a large number of irregular migrants. Given the high number of irregular migrants employed in those sectors, regularisations seemed to be the most useful tool for rebalancing the contradictions of the Spanish migration regime, where irregularity and informality constantly feed each other.

Since 1985, Spain has conducted six regularisation programmes. Each programme was presented as a special "one-off" measure. The first regularisation programme occurred in 1985/1986 and was followed by others in 1991, 1996, 2000, 2001 and 2005. Most of the processes targeted irregular workers. However, the programmes have sometimes been extended to other migrant categories, such as relatives (1996, 2000 and 2001), asylum seekers (2000) and specific nationalities (e.g., Ecuadorians) (2001). The requirements for applying to the programmes were not always clear. A general condition common to all of the regularisation processes was that the applicants had to prove they had been living in Spain prior to a certain date (reference date). The lack of a criminal record was another essential condition for most schemes. In some cases, the application requirements included previous employment as a desirable aspect, but the regularisation of 2005 rendered the residence permit bindingly dependent on the existence of a work contract and the foreign worker's registration in the Social Security System. In contrast to previous regularisation processes, the employer had to apply for the regularisation of his or her employees. Legalisation only occurred if the worker had registered in the Social Security System and if the first month's dues had been paid. For these reasons, the regularisation of 2005 has been described by state officials as a "real" regularisation.

In total, Spain regularised almost 1.2 million immigrants from 1986 to 2005. The 2005 scheme was the most successful one, as it allowed for the regularisation of 578,375 applicants. This process considerably increased the size of the legal immigrant population in Spain. In fact, compared with 2004, in 2005, the number of legal non-EU citizens increased by a total of 653,050. In addition, from 2004-2005,

the number of foreign workers registered in the Social Security System increased by a total of 616,655 to 1,757,081 (Finotelli 2011). In general, the residence permits issued after each regularisation process were valid for one year. Thus, similar to the immigrants in Italy during that time period, a regularised immigrant in Spain had a precarious status and was required to renew his or her permit regularly. In addition, the process excluded a sizeable number of eligible applicants because they lacked the necessary documents, such as the official certificates of their registration to the municipal registry. However, the large number of immigrants who participated and obtained residence permits remains striking. Furthermore, the data suggest that most of them could also renew their residence permits in the subsequent years (Finotelli, Arango 2011). Certainly, regularised immigrants are often more exposed than other migrants to the risk of losing their regular status. Furthermore, it should also be noted that having a residence permit does not always prevent an immigrant from working illegally if the internal controls are weak and there is high demand for labour in the informal sector. However, it can reasonably be assumed that regularisations also contributed to the employment stabilisation of a substantial proportion of the regularised immigrants.

The stabilisation function of regularisation processes becomes even clearer when we compare the number of regular foreign residents in Spain with the number of regularised immigrants in the past ten years.

**Table 4: Foreign population and regularised immigrants in Spain (2000-2006)**

	Regularised foreigners 2000-2005	Regular non-EU foreigners 31/12/2006	% of residents regularised
<b>Total</b>	<b>1,019,997</b>	<b>2,360,804</b>	43%
Bolivia	43,197	52,587	82%
Romania	127,586	211,325	60%
Ecuador	199,152	376,233	52%
Senegal	13,965	28,560	48%
Ukraine	30,576	52,760	57%
Pakistan	18,938	29,669	63%
Bulgaria	31,469	60,174	52%
Algeria	17,748	36,499	48%
Colombia	101,474	225,504	44%
Morocco	146,610	543,721	26%
China	22,397	99,526	22%
Dominican Republic	5,936	58,126	10%
Peru	6,250	90,906	7%

Source: Spanish Ministry of Labour and Immigration.

Table 4 indicates that regularisations are likely to have permitted the legal inclusion and stabilisation of 43 per cent of the total foreign population, despite the precariousness of the initial residence permits issued. As it was already mentioned, most regularised migrants did not lose the residence permit obtained through a regularisation. In the long term, the “stabilisation” process will be strengthened by family reunions.

In sum, regularisations turned out to be one of the most important mechanisms for repairing the inconsistencies of the Spanish migration regime. Regularisations enabled governments to regain control over the presence of irregular foreigners, helped to stabilise foreign populations and enabled unwanted immigrants, the so-called “wanted but not welcome” (Zolberg 1987) immigrants, to become politically integrated into the formal labour market structures. In this vein, regularisations have helped governments to meet the structural needs of their respective national economies providing *a posteriori* the foreign labour needed when official admission policies failed. Additionally, the public acceptance of these processes, which usually affected unskilled foreign workers, was generally high because of the low rate of unskilled or low-skilled workers in the Spanish unemployment statistics, as unemployment usually affected well-educated young people awaiting better opportunities in the labour market. In short, as Christian Joppke (2005: 109) argued in the case of France, regularisations clearly “stand for the primacy of the market over the state in controlling immigration flows.” For this reason, the regularisations of irregular migrants can be considered the main functional equivalent to labour migration policies in Spain.

As noted previously, only in recent years has the Spanish government improved its labour migration policies, as it has become aware that regularisations cannot substitute for the efficient regulation of labour migration flows. In addition, the government has exhibited stronger commitment against informal employment in the past several years. The Office of Labour Inspection (*Dirección General de Inspección Laboral*) not only strengthened the cooperation between the central and the peripheral administration but also increased the number of workplace controls (at least until 2008). Finally, the government also recognised the impossibility of completely preventing irregularities and introduced the *arraigo*, a new regularisation procedure that ‘corrects’ for irregularities on an individual basis. The *arraigo* can be obtained by demonstrating either the pre-existence (for a certain number of years) of a work relationship for at least one year in Spain or social integration (essentially in the form of family relationships) for at least three years. The connection of the *arraigo* to a pre-existing labour relationship turns this tool into a ‘third way’ (Perez Infante 2009: 16) of obtaining a Spanish work permit. However, few work permits have been issued in connection with the *arraigo laboral*, and this number is much lower than the number of applications. This weakens the impact of the *arraigo laboral* compared with the effectiveness of the *arraigo social*. After one year, the *arraigo* can be renewed as any other residence permit under the conditions established by law. Although the dimensions cannot be compared with the previous regularisation processes, the number of residence permits issued for the *arraigo* has been increasing every year<sup>25</sup> and can still be considered a functional equivalent of the formal labour recruitment schemes.

### **3.2 Additional Functional Equivalents to Labour Migration**

#### **3.2.1 Intra-EU mobility**

EU citizens represent almost half of the foreign residents in Spain. Many of them are retirees from Britain, Sweden and Germany who have decided to enjoy the

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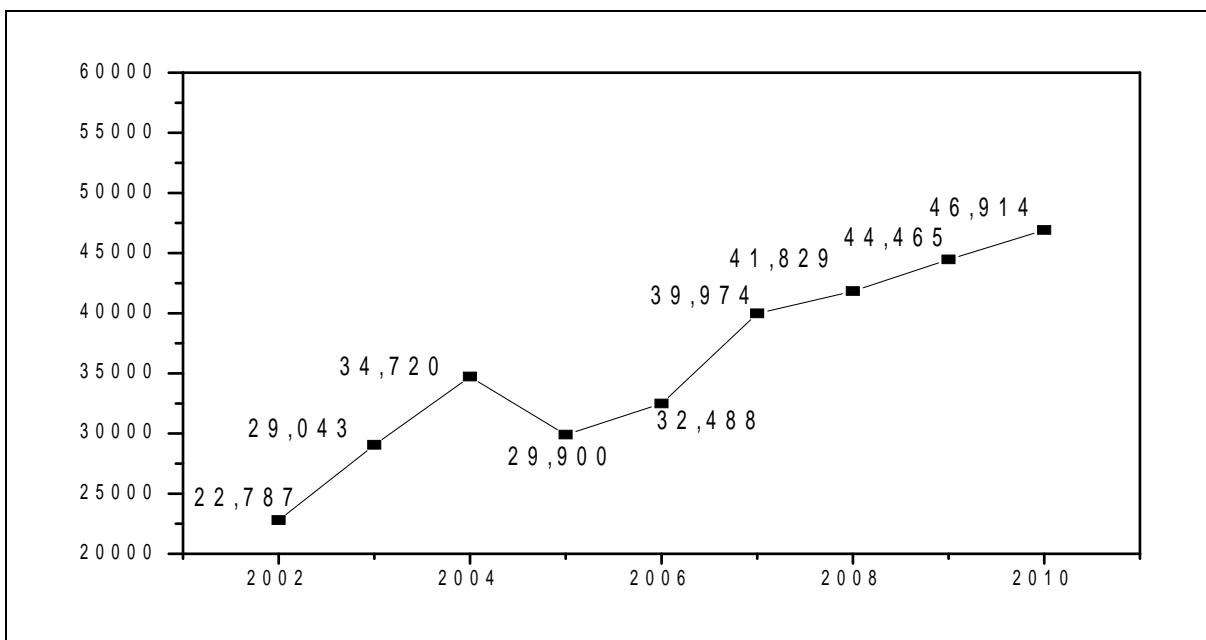
<sup>25</sup> According to the most recent data of the Ministry of Labour and Immigration, the number of permits issued for *arraigo* increased from approximately 7,200 in 2006 to 79,433 at the end of 2009.

amenities of the Spanish lifestyle. Nevertheless, the largest European national group is composed of Romanians, who constituted 883,238 residents in June 2011. Some of them entered Spain after the European Union enabled visa free travel from Romania for visiting purposes in 2002 and benefited from the regularisation of 2005. Romania's entry into the European Union triggered a second increase in the Romanian population, which grew from 211,325 in 2006 to 603,889 regular residents in 2007. In 2009, the Spanish government lifted the employment stop for Romanian and Bulgarian citizens. In the same year, the government reduced the slots of the *contigente* and the occupations included in the Catalogue of Hard-to-Find Occupations. In this respect, the decision to lift the recruitment stop might be interpreted as way to favour intra-EU mobility and circular migration patterns rather than the entry of foreign workers from third-world countries. However, the new regulation had a short life. In July 2011, the Spanish government decided to re-introduce the recruitment stop for Romanian citizens, whereas Bulgarian citizens remained exempt from this decision. Different reasons have been provided for this unexpected return of the so-called *moratoria*. As previously noted, this decision was linked to Spain's desire to avoid isolation in Europe with respect to the treatment of Romanian immigrants. Additionally, the measure also seems to be related to the increasing inflows of Romanian migrants to Spain. Romanian immigrants in Spain increased in number from 751,688 in 2009 to 840,682 in 2010. According to an informal conversation with a member of the Cabinet of the Secretary of State for Immigration, reintroducing the *moratoria* was considered the only possible way to respond politically to this increased inflow during the economic downturn.

### **3.2.2 Foreign Students**

Students do not represent a relevant immigration flow to Spain, even though their numbers have been increasing in the last several years.

**Figure 5: Foreigners with a study visa**



Source: Ministry of Labour and Immigration 2010.

As shown in figure 5, the number of foreigners with study visas more than doubled from 2002 to 2010. Currently, most of them are from Latin America, especially Mexico. The students in Spain are allowed to work only if their labour activities are compatible with the academic timetable and only if the gains obtained are not used to finance their stay in Spain. Furthermore, the full-time labour contract must have a maximum duration of three months. A visa for study purposes can be turned into a residence permit for work purposes after three years and under the conditions established by law.

For these reasons, migration for study purposes cannot be considered *per se* a functional equivalent of labour migration, at least during the first three years of the student's stay. However, an exception is made for medicine students who want to complete their medical training in Spain after passing the corresponding state exam. In this case, they can start their training periods in a Spanish hospital while receiving a regular salary from the Spanish health ministry. From 2006 to 2009, all non-EU foreigners with visas for study purposes were allowed to access a training exam. The only condition imposed by Spanish authorities was that the degree in medicine had to be either obtained in Spain or regularly recognised by the Spanish Ministry of Education. As a consequence of the new regulation, 45 per cent of the "new" residents admitted into the Spanish Health System in 2010 were foreigners (*El País*, 04/05/2010).

According to a delegate of the *Confederación de Sindicatos Médicos* (Confederation of Medical Trade Unions), foreign students were allowed to access the medical training programmes because the "false idea that there is demand for doctors in Spain attracted students with visas for study purposes".<sup>26</sup> In a second interview conducted by the author, the same delegate argued that if there was such demand, it would have been geographically limited to those Autonomous Communities, such as Extremadura, with low population density (CESM, 17/10/2011). In any case, the new

<sup>26</sup> <http://www.rtve.es/noticias/20100413/aumento-extranjeros-optan-mir-desata-polemica-entre-sindicatos-medicos-sanidad/327446.shtml>

regulation raised a widespread debate regarding the foreign students' access to the medical training programmes because the government favoured "the residence of those who probably had no intentions of remaining in Spain after finishing their medical training" (CESM 17/10/2011). Additionally, the representatives of the Spanish Surgeons Association required more guarantees when checking the documents of the foreign students required to have access to the medical training exam because "a medical degree obtained in the Dominican Republic is not the same as a medical degree obtained in Spain".<sup>27</sup>

The CESM finally succeeded in presenting its concerns to the Ministry of Health. Since 2011, the 'specialisation slots' for non-EU nationals who have obtained degrees in other countries are limited by a 10 per cent cap of all available vacancies. Once this percentage is reached, no additional nationals from non-EU countries will be admitted as a resident in a Spanish hospital.

### **3.2.3 Family Migration**

Foreigners with residence permits for work purposes are allowed to work in Spain without passing through the labour market check.<sup>28</sup> The new regulation of 2011 also allows the children of foreign residents to access the labour market as long as they are 16 or older. Unlike traditional immigration countries in Europe, in Spain, the fact that foreigners who have obtained permits for family reasons can access the Spanish labour market is not the object of a widespread political debate. Most likely, this issue is not contentious because the percentage of permits issued for family reasons is still quite low compared with the percentage of permits issued for work purposes. The Spanish Ministry of Labour and Immigration has published data on the residence permits issued for family reasons only since 2007. From other sources, we know that the residence permits issued for family reasons has increased from 7 in 2000 to 97,759 in 2006 (Cebolla, González-Ferrer 2007). In 2010, 230,551 foreigners had a residence permit for family reasons, although we do not know how many of these persons also have work permits. Nonetheless, when combined with the economic crisis and the most recent populist campaigns against immigrants in some Autonomous Communities, the growing number of family migrants might change the public perception of this entry channel in the years to come.

### **3.2.4 Humanitarian Migration**

Asylum seekers in Spain are allowed to access the labour market after six months. They can work in any type of occupation regardless of the national employment situation, and their access to the labour market is not geographically limited.<sup>29</sup> The Spanish regulation seems to be attractive in comparison with other more restrictive European regulations on asylum seekers. However, the relevance of this type of humanitarian migration as a functional equivalent of labour migration is quite

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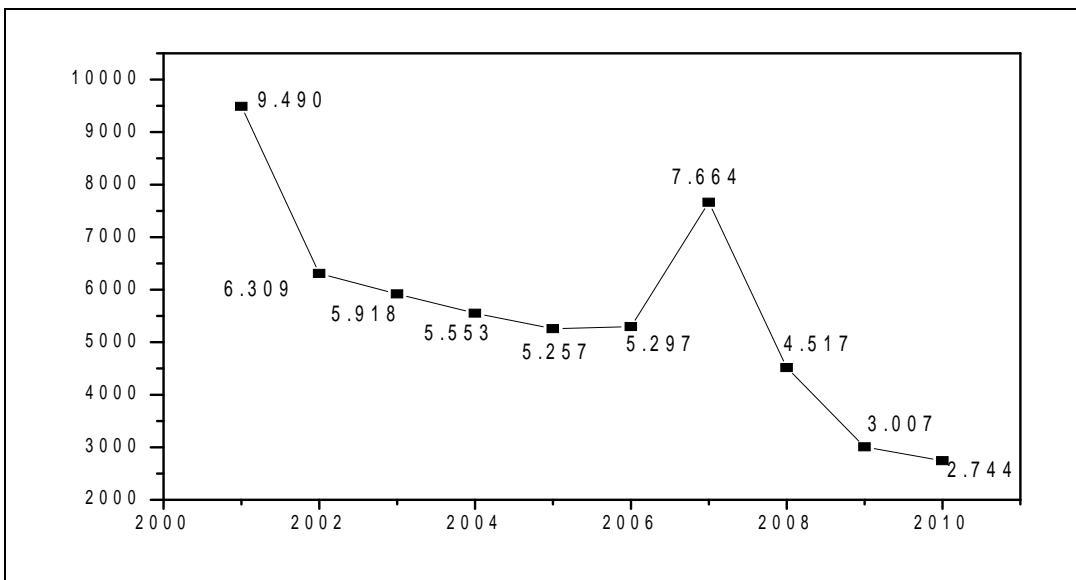
<sup>27</sup> <http://www.rtve.es/noticias/20100413/aumento-extranjeros-optan-mir-desata-polemica-entre-sindicatos-medicos-sanidad/327446.shtml>

<sup>28</sup> The entry of family members is linked to the approval of certain criteria, such as the existence of sufficient financial support and of adequate housing.

<sup>29</sup> In 2009, the Spanish government approved the new Asylum Law n. 12/2009, which also transposes several European directives approved on asylum migration.

limited because of the reduced impact of asylum flows. Spain is one of the EU countries with the lowest number of asylum seekers in the European Union. In fact, the number of asylum applications submitted in Spain never surpassed 10,000, which is fairly below the European average.

**Figure 6: Asylum Requests submitted in Spain**



Source: Ministry of Labour and Immigration 2010.

These figures also explain the low profile of asylum migration in the Spanish immigration debate and why the automatic access of refugees to the Spanish labour market has never been questioned. In fact, it seems that Spain follows a pattern previously outlined by other Southern European countries in which irregular migrants prefer to work in the informal economy until the next regularisation process arrives rather than apply for asylum (Finotelli 2009). In addition, the new regulations have introduced a new category of extraordinary residence permits for humanitarian reasons. Foreigners under humanitarian protection receive renewable residence and work permits that last one year. Data on this category are available only for the years 2008 and 2009 and confirm the extremely low profile of the humanitarian channel in the Spanish migration regime: 2,885 and 3,588 residence permits were issued in 2008 and 2009, respectively, for this purpose.

### **3.2.5 Naturalisation of descendants of Spaniards in exile**

The Spanish legislation on nationality is a multifaceted regime that is deeply influenced by its special historical bonds with Latin American countries. Residence-based citizenship can be acquired by foreign nationals after they have resided in Spain “legally and continuously before the application”. The general rule requires a period of ten years of legal and continuous residence to obtain citizenship. Nevertheless, two years of residence are sufficient if the applicant comes from a South American country, a Central American country, Andorra, the Philippines, Equatorial Guinea or Portugal. Additionally, the legislation also provides an

opportunity to bypass Spain's restrictive entry rules and thereby become a functional equivalent of the government's labour migration policies. In fact, Spanish citizenship can be acquired by option. In such a case, Spanish citizenship is obtainable for the foreigners whose parents were Spanish by origin (and later lost their citizenships) and were born in Spain (not in the former colonies). This last requirement clearly reduces the number of possible applicants. However, the so-called Historical Memory Law (*Ley de Memoria Histórica*) of 2007 helped to prevent discrimination against the children of emigrants because of the birthplaces of their parents. The seventh additional provision of this law grants the right to apply for citizenship to the children of "Spaniards by origin" who were exiled during or after the civil war. The same right applies to the grandchildren of those who have lost or renounced their Spanish citizenships as a consequence of the civil war or those who have left Spain between 1936 and 1955. If granted, the beneficiaries of this provision not only acquire Spanish citizenship but can also retain dual citizenship. The validity of the seventh additional provision of the Historical Memory Law, which is commonly known as the Grandchildren's Law (*Ley de Nietos*) and came into effect on 20 of December 2008, has a time limit. Applications for citizenship had to be made within two years after the law was passed. This deadline was later extended to 31 of December 2011.

Currently, no precise information is available regarding the number of citizenships granted under the seventh additional provision of the Historical Memory Law.<sup>30</sup> Nonetheless, many Latin American citizens who obtained the Spanish citizenship are expected to move to Spain in search of better life opportunities.

#### 4. FUNCTIONAL ALTERNATIVES TO LABOUR MIGRATION

In 2009, the Spanish government approved the Real Decree n. 1224/2009, which set the rules for the formal recognition of professional competences acquired through labour experience. After the decree was approved, the Employment Services of the Autonomous Communities launched a recognition campaign of the labour experience of natives and foreigners.

The whole process was driven by the public administration and was the result of a national negotiation that involved all of the relevant social parties represented in the General Council for Vocational Training, *Consejo General de la Formación Profesional*. According to a civil servant of the Public Employment Service, the approval of the decree was part of "Strategy Europe 2020", which aimed to create a more qualified labour force in Europe. However, the same person recognised that the approval of this decree also reflected the intention to repair a structural weakness of

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<sup>30</sup> According to the government's estimates, when the seventh provision was passed, the number of potential descendants of exiled Spaniards was approximately half a million in Argentina, Uruguay, Cuba, Chile, Venezuela, Mexico and France. In the case of Cuba, the government estimated that approximately 300,000 Cubans were eligible to apply for Spanish citizenship between 2009 and 2011. According to Cuban sources, by 2009, 20,000 applicants had submitted their documents to the Spanish authorities in Cuba. Because so many people had applied, the Spanish General Consulate in Havana was nicknamed the "Factory of Spaniards" by many locals. The Foreign Ministry has not yet made the figures regarding this category of naturalisation available. According to the Associated Press, in January 2010, the Spanish government announced that it had received 161,463 applications, half of which were said to have been successful. Although the data regarding nationality were not made available, it is known that 95.5 per cent of the applications were submitted and processed in South American countries Cfr <http://cubaout.wordpress.com/2010/01/16/espana-beneficiadas-ya-82000-personas-por-ley-de-nietos/>.

the Spanish labour market, where “60 per cent of the active population do not have pieces of paper proving their professional qualifications.\_(SEPE, 15/12/2011). In this respect, the approval of the decree can also be considered a change in the Spanish “business culture that never cared much about certificates” (SEPE, 15/12/2011).

The interviewed delegate did not believe that a relationship exists between the approval of the decree and the economic crisis after 2008, despite the historical moment in which the decree was approved. In particular, the decree on the recognition of professional experience is not explicitly considered a functional alternative to labour migration. However, it is interesting to note that according to the information obtained from the interviews, the new measure attracted many unemployed foreign workers. Additionally, most of the published calls address low-skilled occupations in the restaurant business or in the construction industry, two sectors particularly affected by the crisis. Hence, both elements suggest that the decree acts as a *de facto* functional alternative to labour migration.

By contrast, employers have been more explicit with respect to the question of functional alternatives to labour migration. For instance, the human resources manager of the restaurant chain interviewed for this report explained that the economic crisis had forced him to change his recruitment strategy in the last two years. Now, his business' new recruitment strategy is based on young people (i.e., mainly students) instead of the external recruitment of foreign workers: “I am a businessman, and my model now lies in young people instead of foreign workers” RESTAURANT, 2/11/2011). He explained this change by referring to how the crisis directly affected his business: “The crisis concentrates customers in determinate periods, and I do not need as many full-time people as I did in the past”(RESTAURANT, 2/11/2011). Consequently, he decided to tap into the large group of unemployed young people and adapt his recruitment strategies to the needs of young people through online recruitment, online work plans and remuneration options for last-minute duties.

## CONCLUSIONS AND OUTLOOK

This report analyses which actors and policies have contributed to and consolidated Spain's transformation into one of the major labour importers of the European Union at the beginning of the 21<sup>st</sup> century. During the first half of Spain's migration history, the need to comply with the European paradigm of 'zero immigration', an unfavourable economic situation and the high unemployment rate of the natives hampered the conception and implementation of active labour admission policies. Irregularity became a structural feature of the Spanish migration regime, and workers were recruited *de facto* for the formal labour market through regularisation processes. This situation was changed at the beginning of the 21<sup>st</sup> century by a new immigration policy whose objective was to combat irregular migration by utilising active labour migration tools. As seen previously, the Spanish regime refined the individual recruitment channel by introducing the Catalogue of Hard-to-Find Occupations. This new instrument allowed foreign workers to avoid the labour market check in certain cases and the government to shorten the cumbersome recruitment procedures. Additionally, the regime accounts for a collective recruitment tool, the so-called *contingente*, which facilitates the recruitment procedures of large businesses. In general, the *contingente* has proven to be a satisfactory recruitment scheme with respect to both stable jobs, which actually represent a minority in the number of slots offered, and temporary workers in the agricultural sector. In this regard, it is possible

to argue that similar to the recruitment schemes in other Western countries (e.g., Canada or Germany), the recruitment schemes for temporary workers in Spain belong to the most oft-mentioned examples of successful labour migration governance. The two main pillars of the Spanish migration regime, individual recruitment through the General Regime and the *contingente*, have been complemented by other instruments, such as the job search visa, which was rarely used, and the Large Companies Unit, in charge for a fast-track recruitment procedure for high-skilled workers. The Unit represents one of the most remarkable innovations. Its creation shows that there is demand for high-skilled workers in Spain, and its maintenance indicates that this demand persists in time of crisis. In this respect, the Unit can be considered another example of how bureaucracies can actively pursue a backstage labour policy that cannot be publicly recognised by the political elites. Finally, the new regime has institutionalised the *arrigo*, an individual form of regularisation, as a tool to keep irregularity under control without executing mass regularisation processes.

This comprehensive reform of admission policies was deeply embedded in an era of economic prosperity in which intensive economic growth was highly dependent on the availability of the labour force. In particular, employers and employers' associations advocated for the entry of more foreign workers to fulfil the structural demand of low- and medium-skilled workers. The government's openness towards a reform of the immigration policy that strengthened active labour governance helped to create a model in which the employers' interests clearly prevailed. The 'philosophy' of the new labour migration governance approach was based on a wide institutional consensus. In fact, the immigration regulation of 2004 strengthened the institutional dialogue by reinforcing the Higher Council of Immigration and creating the Tripartite Labour Commission of Immigration in 2005.<sup>31</sup> In the following years, all policy measures in labour governance matters could rely on a large consensus among the social parties and the institutions involved in the issues. However, most of the stakeholders interviewed for this report agreed that one of the main pillars of the Spanish migration regime was the high degree of consensus among the government, the employers' associations and the trade unions: "The Spanish migration regime is unique, and its uniqueness lies in the consensus among the stakeholders" (SEPE, 28/11/2011).<sup>32</sup>

In addition to the favourable economic situation and the high degree of consensus among stakeholders, several additional factors seem to have contributed between 2004-2008 to a comparatively satisfactory implementation of the Spanish model through the combination of individual recruitment mechanisms, quota regulations and ad hoc regularisations. First, the capacity of the Spanish state bureaucracy, particularly the degree of coordination between the national and autonomic administrative machine through the different employment services, should be mentioned. The way in which the Catalogue and the *contigente* are negotiated between the central and autonomic levels shows a satisfactory degree of multilevel policy coordination. This point was also outlined with respect to the new competence of the Catalan government to issue initial work permits. Second, the effort

<sup>31</sup> It is worth noting that Spanish politics are generally characterized by a certain faith in consensualism, which was considered to be the main pillar of Spain's transition into democracy.

<sup>32</sup> It remains to be seen whether the creation of the Large Companies Unit in 2007 was the only unilateral policy measure taken 'outside' of the institutional consensus, as the trade unions were excluded from the decision.

concentrated on signing bilateral agreements had great relevance to the building of an efficient labour migration regime. For instance, the Spanish government's diplomatic contacts with third countries have proven to be a fundamental step in the correct implementation of the *contigente*. In fact, all of the interviewed stakeholders and business managers have confirmed that good diplomatic relations with third countries are highly relevant to effective labour migration governance, especially if active immigration policies are combined with joint efforts in the struggle against irregular migration. However, the Spanish government's bilateral contacts with African countries have fallen after 2008, whereas the government has exhibited an intention to strengthen its relationship with Latin America, despite the economic crisis. For instance, a common system of foreign credentials recognition was constructed between Spain and some Latin American countries. Furthermore, there are admission rules that indirectly favour the selection of workers from Latin American countries. The language criteria that have been introduced for the medical specialisation in Spain could rapidly turn into a positive discrimination factor favouring Latin American citizens who want to specialise and (probably) settle in Spain.

Overall, the new Spanish labour migration regime represents a praiseworthy example of efficient labour migration governance in Southern Europe. The Spanish experiment has shown that feasible labour migration governance is a cross-sectoral policy that involves other types of policies, such as foreign policy or labour market policy, and different types of actors. The outcomes of this governance system during the prodigious decade of immigration contradicted the views of many European and non-European observers, who argued that the main feature of Southern European immigration policy was its incapacity to curtail illegal migration and organise legal entries (Freeman 1995). However, the generalised euphoria during the prodigious decade often hampered an in-depth reflection of the model's weaknesses. A senior advisor of the Public Employment Service explained, "The regime was not publicly debated. It was not a source of tensions because it coincided with a period of economic boom" (SEPE, 28/11/2011). The current high unemployment rate among foreigners has become proof of Spain's failure to select the appropriate number and type of foreign workers requested: "The system has failed because it was excessively focused on the need for employment and on the employers' needs. Employers were happy because they could simply pay the minimum salary established by the collective agreements" (SEPE, 28/11/2011). In addition, the short-term perspective of the Spanish model was criticised: "Was it a good idea to bring immigrants into a country for one year, with the obligation to renew their residence permits, with this Damocle's sword on their heads? Was it really solidarity or was it exploitation? (SEPE, 28/11/2011).

Are these assessments correct? Has the Spanish regime failed? Certainly, labour migration governance in Spain was too dependent on the evolution of the labour market and on the contingent need for the labour force in specific sectors. There has also been too much focus on the short term-perspective. Moreover, there has been a certain degree of inaccuracy in estimating the real needs of the Spanish labour market. Several stakeholders and interviewed persons have referred to the poor estimation capacity (or will) of the governments or the tendency to estimate based on "sensations" (CESM, 17/10/2011). As noted previously, the booming economy, the withdrawal of rigid estimation criteria and the high degree of consensus among the government, the employers and the trade unions favoured a flexible interpretation of the *contingente* and a generous elaboration of the Catalogue. In this respect, one of the state officials compared the Spanish recruitment system with a

“gum” that allowed a high degree of flexibility for any type of recruitment. However, it must be noted that this same characteristic has also allowed the Spanish government to restrict entries through the *contingente* and the Catalogue after 2008 without making significant legislative changes, which would have perhaps attracted too much public attention.

It is also worth noting that little attention has been devoted to the human capital factor. In fact, most of the occupations offered in Spain were low-skilled occupations in the construction and service industries. Although this selection approach has great advantages if employers need a rapid supply of labour, this approach can also turn into a heavy burden in times of economic crisis and decreased consumption. In fact, not all of the immigrants who came to Spain during the economic boom and who are currently unemployed can find alternative occupations. Many of them lack the necessary educational levels to ‘recycle’ themselves in times of crisis because they need to be completely re-trained for certain types of medium-skilled occupations. For instance, those ad hoc policies that were meant to help immigrants to convert from employment to self-employment have largely been unsuccessful, partly because the immigrants lack the human capital needed to take advantage of these regulations. In addition, the system of foreign credentials recognition is still bureaucratised, and many migrants who might have acquired the necessary qualifications to perform a certain type of medium-skilled job must have their credentials recognised before starting their own businesses. Furthermore, the obligation to renew the residence permits two times before obtaining a long-term resident status has certainly increased the precariousness of the most recent wave of immigrants. Some of them might lose their residence permits, whereas others might find some work in the informal economy. The risk of falling back into irregularity is likely to be higher for some national groups, such as the Moroccans and Pakistanis who have lower educational levels and were mostly employed in the construction sector.

In sum, the short-term perspective of the Spanish labour migration governance regime and its focus on contingent labour demand became a clear disadvantage when the economic situation changed for the worse. However, the reasons for the dysfunctional outcomes of the Spanish labour migration regime cannot only be found in the characteristics of the labour migration regime itself. Rather, these reasons have much to do with the same characteristics of the Spanish production system. As shown previously, labour migration governance depends not only on well-designed admission policies but also on the structural conditions characterising a given country. In this respect, one of the main characteristics of the Spanish economy is its elasticity and the close dependence between employment and GDP. Thus, there is a higher potential to both create and destroy a large number of occupations in a short period of time in the Spanish economy than in other economies. This feature has affected both foreigners and natives. In other words, the reasons for the failure of the Spanish migration model paradoxically appear to be the same as those that have caused its spectacular outcomes.

Moreover, the economic structure and the type of employment requested by a certain country might also affect the estimation capacity. The small size of most Spanish businesses and the types of sectors in which they are active might represent an additional obstacle. Small- and medium-sized enterprises and families have more difficulties than larger firms in recruiting foreign workers through the official recruitment schemes (Pastore 2008). This factor would not be of major importance if the Spanish production system were not composed primarily of small firms, as some

51 per cent of the firms on the Central Register of Companies do not have more than one registered employee. In addition, 53 per cent of the registered firms are active in the food and restaurant business (mainly small restaurants) as well as transport and personal services. This ‘molecular’ production structure not only hinders official recruitment schemes but clearly favours informal employment strategies. Two special cases in this respect are the agriculture and domestic service sectors.<sup>33</sup> Additionally, the productivity and the level of demand in the agricultural sector also depend on more general external factors, such as climate, which cannot be forecasted exactly and may affect the flexibility of these recruitment schemes. In this case, employers may see more advantages in recruiting foreign workers who are already in the territory, even if this recruitment process occurs outside of the legal channels provided by the state. This case is also true for the domestic sector, where ‘trust’ is an additional determinant of employment because trust is directly connected to a worker’s entry into an employer’s private domain. Thus, it is difficult to manage these employment relationships through impersonal and remote recruitment mechanisms. Finally, the importance of the informal economy to the structure of the Spanish labour market should be mentioned. Informal employment is particularly attractive for occupations that require a higher degree of flexibility and that are located in sectors that are particularly difficult to control. Examples of these activities include domestic service or the renovation of interiors, which are more protected from controls because of their ‘private’ character.

In sum, several exogenous and endogenous factors might hamper the functioning of the Spanish migration regime in the long term. Currently, it is still too early to say how long the current crisis will last and what its effects on immigration regulation will be. However, it would be a mistake to face the crisis with the short-term perspective that was used to exploit the economic boom. Certainly, labour migration governance has acquired a secondary role after 2008. Spain urgently needs to undergo structural changes to increase its technology level and to diversify its economic structure, which was too focused on construction and services for a long time. If these changes are to occur, they will be the outcome of a long and costly process, which probably represents the only way to revitalise the country. In this case, more effort and thought should be devoted to make policies that respond more effectively to the needs of a more diversified and demanding economy. In this respect, reinforcing the human capital element by introducing an effective job search visa based on individual selection criteria could help to achieve this objective. Moreover, the political and business elites should invest more effort in rendering the country attractive to high-skilled workers by avoiding measures (e.g., those described for the Large Companies Unit) that might favour salary dumping and the under-employment of high-skilled workers. Less bureaucracy in the validation of professional and academic qualifications would certainly facilitate this process. However, this process also requires a deep change in the Spanish business mentality, as under-employment and salary dumping are quite frequent among natives. There is also a need to regulate the formal entry and employment of foreign care workers and domestic workers. The demand for these types of workers will probably grow as a consequence of the demographic evolution and the reduction in related services in the conservative Spanish welfare regime. Finally, the struggle against irregular migration and informal employment must not be abandoned. Otherwise, they may become consolidated as functional equivalents to formal

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<sup>33</sup> The manufacturing sector probably represents the only employment sector in which estimates can be made with a certain degree of reliability.

admission policies. The most advisable (and probably the most difficult) step would be to increase the efficiency of labour market controls, even though doing so requires an intervention in the complex relationship between State and Society (Sciortino 1999). At the same time, it would also be advisable to maintain individual regularisation mechanisms that are able to correct for irregularities on an individual basis.

Last but not least, an efficient labour migration policy also requires political elites who are willing to assess the real impact of immigration on a domestic labour market in not only the short and medium term but also in the long term. However, the deep crisis into which Spain has fallen has relegated labour migration governance to a secondary position. Little attention has been paid by the media and policymakers to this topic. The new government majority represented by the *Partido Popular* has provided few indications on the future of immigration regulation in Spain. During the electoral campaign, the candidate of the *Partido Popular* for Catalonia presented a proposal to mix the current quota system of the *contingente* with a point system that awards the professional qualifications and experience level of the applicant. In any case, an integration contract would require the applicant to respect the cultural and civic values of the Spanish and to learn the official languages (*El País*, 14/11/2011): “We are an open country. Immigrants have contributed to our economic growth, but everything has a limit, and our society is in a deep crisis. With five million foreigners, it cannot receive more immigrants....The new system will privilege the more skilled migrants who are necessary to our economy.” More recent declarations made after the November 2011 elections advanced the intention to limit the regularisation of individuals for social reasons (*arraigo social*). Furthermore, the parliamentary delegate of the *Partido Popular* has declared his intention to maintain a strict relationship between immigration and employment that favours circular migration patterns for the migrants, who would return to their countries of origin after their labour contracts have expired (*El País*, 24/11/2011). Hence, it does not seem that there is any intention to break the close relationship between the demand for labour and immigration that has characterised the Spanish regime to date. In addition, the proposal to establish a link between selection mechanisms and integration commitments would be dysfunctional to an efficient micro-matching between labour demand and labour supply. In fact, in such a case, labour migration policies would be driven by other types of concerns that have little to do with the principal logics of foreign workers’ selection mechanisms such as skills or contingent labour market needs. The few declarations made by the new ruling party about the future of immigration policy are confused, contradictory and clearly marked by electoral slogans designed to sell the party’s candidates. One of the first decisions taken by the new Spanish Prime Minister was to change the name of the Ministry of Labour and Immigration into the Ministry of Employment and Social Security in which immigration issues have a secondary importance. Hence, immigration does not seem to belong to the priorities of the current government. However, time will show whether the Spanish labour immigration model at the beginning of the century was the isolated outcome of an extraordinary economic boom or whether it was the first step towards a long-lasting and more efficient model of labour migration governance.

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*El País*, 13/07/2000

*El País*, 22/07/2000

*El País*, 12/05/2004

*El País*, 14/11/2011

*El País*, 24/11/2011

## Annex 1. List of interviewees

No.	Organization /Institution	Department	Day and Place of the Interview	Quoted as
1	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 3/06/2011	MTIN, 3/06/2011
2	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 5/10/2011	MTIN, 5/10/2011
3	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Commission for the Collective Negotiation	Madrid, 11/10/2011	MTIN, 11/10/2011
4	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	General Directorate of Immigration	Madrid, 17/11/2011 (telephonic interview)	MTIN, 17/11/2011
5	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Unidad de Grandes Empresas / Large Companies Unit	Madrid, 12/07/2011	UGE, 12/07/2011
6	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Servicio Publico de Empleo / Public Employment Service	Madrid, 14/11/2011 (telephonic conversation)	SEPE1, 14/11/2011
7	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Servicio Publico de Empleo	Madrid, 28/11/2011	SEPE1 28/11/2011
	Ministerio de Trabajo e Inmigración / Ministry of Labour and Immigration	Servicio Publico de Empleo	Madrid, 15/12/2011	SEPE2, 15/12/2011
8	Ministerio de Educación / Ministry of Education	Instituto Nacional de las Cualificaciones	Madrid, 24/11/2011	INCUAL, 24/11/2011
8	Generalitat de Catalunya / Government of Catalonia	Catalan Service for the Management of Initial Work Permits	Barcelona 7/07/2011	GEN1 7/07/2011
9	Generalitat de Catalunya / Government of Catalonia	Catalan Secretary of Immigration	Barcelona, 22/06/2011	GEN2 22/06/2011
10	Unión General de Trabajadores (UGT)	Immigration Section	Madrid, 27/05/2011	UGT 27/05/2011
11	Confederación Española de Sindicatos Médicos (CESM)	Department of Research	Madrid, 17/10/2011	CESM 17/10/2011
12	CECOT	Fundación CECOT Persona y Treball / CECOT Foundation People and Work	Tarrasa, 21/06/2011	CECOT, 21/06/2011
13	COAG	Sección Asuntos Laborales / Department for Labour Relations	Madrid, 11/12/2007	COAG, 11/12/2007
14	MANPOWER	Fundación Manpower	Barcelona, 22/06/2011	
15	Restaurant Chain	Human Resources department	Madrid, 2/11/2011	REST 2/11/2011
16	Renewable Energy Business	Human Resources deaprtment	Madrid, 6/10/2011	ENERGY 6/10/2011