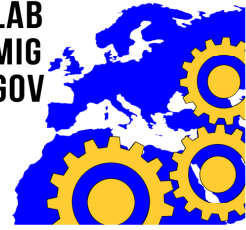


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**“Which labour migration governance for a more dynamic and
inclusive Europe?”**

**Labour migration governance in
contemporary Europe.
The case of Germany**

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Acronyms

AHK	Außenhandelskammer
BA	Bundesagentur für Arbeit (Federal Employment Agency)
CDU	Christlich-Demokratische Union Deutschlands
CSU	Christlich-Soziale Union in Bayern
DIHK	Deutsche Industrie- und Handelskammer
FDP	Freie Demokratische Partei
IZA	(Forschungsinstitut zur Zukunft der Arbeit) Institute for the Study of Labour
SPD	Sozialdemokratische Partei Deutschlands
SVR	Sachverständigenrat Migration und Integration (expert council on migration and integration)
ZAV	Zentrale Auslands- und Fachvermittlung (International Placement Services of the Federal Employment Agency)

Introduction

If a decade ago, the statement that German migration policy reflected the long prevailing *leitmotiv* of not being an immigration country certainly was true, today this statement cannot be upheld anymore. Since the turn of the century, in the discourse of political elites Germany has turned from a non-immigration country into an “integration country”.¹ The integration of migrants has become an important, at times a top issue on the political agenda (Bommes 2008; Bade 2007). Since the year 2005, a number of integration policies and measures have been introduced on all levels of the federal system, and some actors have even come to the conclusion that “regarding migration and integration policies, during the first decade of the new century more has been achieved than in the forty years before” (SVR 2009: 4). In the same time frame, Germany has rediscovered labour migration as a policy field. From the beginning of the 1970s until the year 2000, the country’s policy on labour migration was guided by the principle of recruitment ban. Although since the end of the 1980s channels for labour migration from outside the EU existed, only temporary labour migration was admitted, and the topic did not receive much public attention. Since the turn of the century however, the issue of labour migration has considerably gained importance, and since the year 2000, a number of legal and administrative measures aiming at encouraging labour migration to Germany have been introduced. Within less than a decade, significant changes towards a more liberal labour migration regime have taken place, culminating into a significant liberalization of the German labour migration law in 2012. However, although considerably increasing the possibilities of labour migrants to choose Germany as their destination, a closer look reveals that the recent changes still reflect the traditionally cautious approach of German (labour) migration policy.

How has German labour migration policy evolved, and what factors have encouraged the recent reorientation of labour migration management that combines both new liberal and new restrictive elements? In order to address these questions, this report analyzes the characteristics and recent evolution of the German labour migration management. The analysis is based on a mix of qualitative methods: (1) expert interviews with the following actors: CDU/CSU faction of the German parliament; SPD faction of the German parliament; FDP in the European Parliament; expert council on migration and integration (*Sachverständigenrat Migration und Integration* - SVR); the confederation of German employer associations (*Bundesvereinigung Deutscher Arbeitgeber* - BDA); Ministry of the Interior (Unit of Immigration Law - BMI); Ministry of Interior, Head of Unit of Immigration Law (BMI); Ministry of Labour and Social Affairs, Department of labour market policy and employment of foreigners (BMAS); Ministry of Labour and Social Affairs, Head of Unit of labour market policy and employment of foreigners (BMAS); the Chamber of Commerce of the city of Stuttgart (IHK); journalists of the Berlin-based newspapers *Der Tagesspiegel* and *die tageszeitung*; and with the migration expert Dr. Holger Kolb, SVR.

(2) a qualitative media analysis of articles on labour migration in the national quality newspaper *Süddeutsche Zeitung* (SZ); coverage from 01.01.2010 to 31.12.2011. All articles were analysed that contained the keywords labour migration, (highly)-qualified workers (*Hochqualifizierte/Fachkräfte*), labour shortage

¹Chancellor Angela Merkel in *Der Spiegel*, 20.10.2010.

(*Fachkräftemangel*). The aim of the media analysis was to identify positions of relevant political actors.²

(3) a document analysis of press releases and statements of political parties, employer associations, trade unions, research institutes and expert bodies on migration.

After presenting some data on Germany's current migration profile, the report will outline the main features of the current German labour migration regime, also taking into account debates and new initiatives aiming at increasing the labour market participation of nationals, migrants residing in Germany, and EU citizens. In its final section, the report will analyze the factors that have encouraged recent changes in the labour migration framework, and it will summarize the main characteristics of the current ambivalent "German model" of labour migration management.

1 Germany's current migration profile

Since at least 2005, it is undisputable that Germany is an immigration country. In 2005, the population census for the first time contained data on "persons with a migration background", i.e. persons who have themselves migrated to Germany or who have at least one parent that has immigrated.³ The publication of this data in 2006 showed that 15,3 million people, i.e. 19 per cent of the population had a migration background, a figure almost equal to that of the traditional immigration countries such as Canada and the USA.

The most recent census shows that in 2010, the number of persons with a migration background amounted to 15.7 million, an increase of 43,000 compared to the year 2009. Between 2009 and 2010, the total population has decreased by 189.000 (from 81,9 million to 81,7 million). As a consequence, the share of the population with a migration background has risen slightly, from 19,2 per cent to 19,3 per cent (Statistisches Bundesamt 2011: 7).

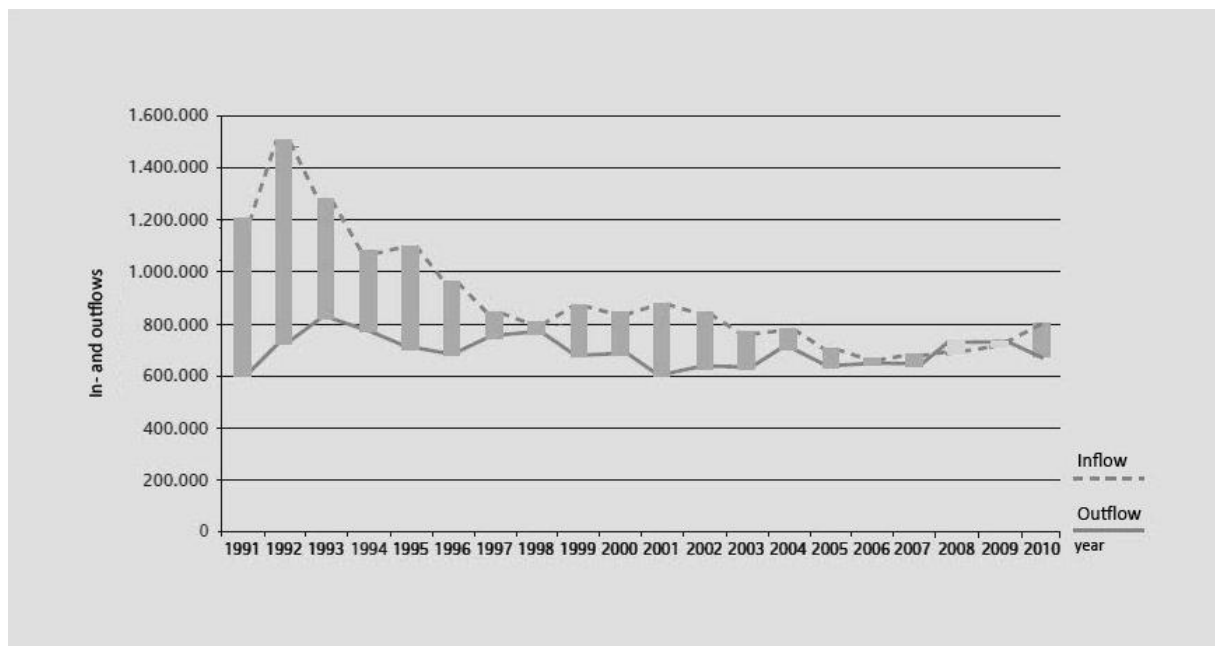
The national profile of migrants in Germany reflects both historical linkages between Germany and several sending countries, and the geographic position of Germany. The largest group of persons with a migration background originates from Turkey (15,8 per cent), followed by Poland (8,3 per cent), the Russian Federation (6,7 per cent) and Italy (4,7 per cent). Kazakhstan, with 4,7 per cent, is the most important single non-European country of origin (ibid.: 8). As in the years before, in 2010 Poland was the main country of origin for new immigrants: in that year, an inflow of 126,000 was registered, as opposed to an outflow of 103,000 Polish citizens.

During the last years, the German migration balance has been - however only slightly - positive.

² In this report, an analysis of the media as political actors in the debate on labour migration could not be carried out. However, it would be worthwhile to analyze the role of the media in current German labour migration politics in future research.

³ The official definition of "persons with a migration background is": "(...) everybody who after 1949 has migrated to the territory of the Federal Republic of Germany, and all foreigners who were born in Germany, and everybody who was born in Germany who has at least one parent that has immigrated has been born as a foreigner in Germany" (Statistisches Bundesamt 2011: 6).

Table 1: Inflows and outflows over Germany's borders from 1991 - 2010



Source: Bundesministerium des Innern/Bundesamt für Migration und Flüchtlinge 2011: 17

While in 2006, inflows amounted only to 662.000 (the lowest immigration figure since reunification) in the following years immigration increased again. Between 2009 and 2010, immigration increased by 11 per cent (to an inflow of 798.000). At the same time, emigration numbers have remained fairly constant. Between 1997 and 2008 the numbers lay between 600.000 and 750.000. In 2010, the number of outflows amounted to 671.000. Between 2005 and 2010, migration balance was positive, between a plus of 78.953 in 2005 and a plus of 127.677 in 2010 (BAMF 2011: 18).

2 A new need for labour migration? The public debate on labour shortages

Since 2005, when Germany's first migration law came into force, a number of legal and administrative measures have been introduced that have gradually opened the German labour market for migrants from outside the European Union. These changes are embedded in a broader public discussion about the extent and the characteristics of the so called *Fachkräftemangel*, a shortage of skilled labour. During the last years, *Fachkräftemangel* has become a topic of growing importance both in the media coverage and in the political sphere. Above all, a general and problematic shortage of labour has been diagnosed by those actors strongly in favour of a more liberalized labour migration regime, i.e. employer associations. However, *Fachkräftemangel* has become a focus of government activities, too, and successive governments of different "political colours" have started initiatives aiming at increasing the active labour population in Germany. In 2009, as part of the coalition government of social-democrats and christian-democrats, the then social-democratic Minister of Labour Olaf Scholz established a commission to address the issue of shortage of labour. Due to a change in government however, the *Allianz zur Beratung der Bundesregierung in Fragen des Arbeitskräftebedarfs* never actually started its work. Still, the Christian-democratic/liberal government that came into

office in 2010 took up the issue, too. In the context of an evaluation of the further demographic development of Germany, and the publication of the government's report on demography, in June 2011 the government published its programme entitled "Securing skilled workers" ("*Fachkräfte sichern. Ziele und Maßnahmen der Bundesregierung*") (interview CDU/CSU faction of the *Bundestag*, 10.02.2012)⁴.

During the last years, the debate on a perceived shortage of qualified workers has been fuelled by a number of studies and expert reports, pointing out a more or less acute lack of qualified workers. Still, the diagnoses of the extent of the problem differ, and reports have sometimes introduced competing figures in the public discussion.

Interest groups have been active in trying to influence the public debate, and several professional associations have pointed out a lack of qualified workers in their respective fields. In 2010, the Association of German Engineers (*Verein Deutscher Ingenieure* - VDI) informed the public that 36,000 positions had to remain vacant due to a shortage of qualified applicants. The federal association of information services, telecommunication and new media (*Bundesverband Informationswirtschaft, Telekommunikation und neue Medien e.V.* (Bitkom)) also stated that 43.000 posts for IT-workers could not be filled. Also on the regional level, numbers on labour shortages were published. In 2011, the president of the Chamber of Commerce of Stuttgart issued a press statement declaring that in 2014, up to 85.000 skilled workers would be lacking in Baden-Württemberg (IHK Region Stuttgart 2011). Also, the Bavarian economic association (*Vereinigung der bayerischen Wirtschaft* - VBW) issued a report stating that in 2015, the Bavarian economy would lack more than 500.000 qualified workers, in 2030 more than one million (SZ 23.07.2011). With regard to the so called MINT⁵ professions, the Cologne Institute for Economic Research (*Institut der Deutschen Wirtschaft Köln*) calculated that in 2020 the shortage would amount to 426.000. It also reported that in 2014 200.000 qualified workers (engineers, technicians, scientists) would be lacking.

Also, several research institutions have published projections on the future development of the German work force, and numbers on the immigration needed to compensate losses due to demographic change. The German Institute for Economic Research (*Deutsches Institut für Wirtschaftsforschung* - DIW) in September 2010 stated that Germany needed a net immigration of 500.000 per year in order to secure its economic force (Newsletter Migration und Bevölkerung Ausgabe 7, August 2010). In February 2011 the Federal Employment Agency (*Bundesagentur für Arbeit* - BA) published a report on labour shortages, advocating the introduction of measures to increase the labour market participation of the elderly, women and migrants already living in Germany. The report came to the conclusion that even if the national potential would be fully exploited there would still be a need for labour migration (Bundesagentur für Arbeit 2011). Therefore, a short-term immigration of 0,4 million to 0,8 million foreign workers would be necessary. Also, the report found that Germany needed to establish a "welcoming culture".

Based on data of the federal statistical office, the SVR elaborated a projection on the future evolution of the German work force. According to this calculation, without any immigration, between 2008 and 2060 the labour force would decrease by 373.000 per year; with a medium-level immigration, it would decrease by 313.000

⁴In the following quoted as CDU/CSU 10.02.2012.

⁵Mathematics, information technology, natural sciences, technology.

and with a high level of immigration (+ 200.000 yearly, starting in the year 2020), by 247.000 (SVR 2011: 44).

Another aspect of the debate on labour shortages is the growing discussion on the emigration of highly-qualified Germans and foreigners from Germany. During the last years, the debate has intensified, and statistics show that the number of Germans who are (at least temporarily) leaving the country has been increasing. For Germans, the most attractive destination country is Switzerland. Especially the group of those between 20 and 39 years old emigrates to the Southern neighbour. In 2008, 35.000 Germans migrated to Switzerland. However, due to the economic crisis, since 2008 the figures have decreased (SVR 2011: 42). Apart from Switzerland, the most important countries of destination are Austria and the USA.

Against this background, there is a broad consensus among state and non-state actors that measures must be taken to increase the work force in Germany. Generally, political parties, employers and trade unions agree that several measures, such as improving the qualification level of youth, increasing the labour market participation of women, elderly, and migrants already living in Germany, and encouraging labour migration from inside and outside the EU must be combined in order to tackle labour shortages. When this catalogue of activities is presented, all actors mention measures regarding the national work force first. However, the positions on how important labour migration is among them vary.

If one conceptualizes the positions of the various actors on a scale ranging from “very open” to “very restrictive”, employer associations and the Liberal Party (FDP) are located at the “very open” end of the spectrum. These actors view labour migration as a central way of addressing labour shortages and are advocating an offer-oriented system, organized as a points-based system. The Green Party (*Bündnis 90/Die Grünen*), although also being in favour of such a system, combines its demands for a skills-based system with a generally progressive position on migration policies, also focusing on a more generous immigration and integration regime for asylum-seekers and refugees.

Somewhere in the middle of the scale is located the Social-Democratic Party. While officially being in favour of a points-based system, too (interview SPD, 10/02/2012), in the recent debate the social-democrats have displayed a rather ambivalent attitude. Thus the SPD has been reluctant to support the demand for a liberalization of channels for labour migration from third states, and has always stressed that new initiatives in the field of labour migration must be paralleled by an intensification of measures to increase the labour market participation of national groups (Newsletter Migration und Bevölkerung, Issue No. 10, December 2010). Labour shortages should be addressed by improving the qualification level of both the employed and the unemployed work force in Germany (SZ, 08.12.2010): ‘In view of the positive economic development, there is talk of a shortage of labour in Germany. However, we must take into account that 3 million people are unemployed’ (Heil et al: Allianz für Fachkräfte. 6.12.2010). Also, the general secretary diagnosed “hysteria” of employer associations on the issue (Newsletter Migration und Bevölkerung. Issue No. 1, 1. January 2011). The position of the SPD can also be exemplified by the following quotation:

First of all we have to take care of those who already live in Germany. We still have three million unemployed (...) we still have 1,5 million youth without a professional qualification. We also have (...) 300.000 to 600.000 people of foreign descent whose qualifications are not recognized. And we have the problems related to the freedom of movement of people from the new accession countries (...) nobody knows what will happen after the first of May [2011]. And

we have a number of tolerated refugees who are lacking a perspective and who should be given the possibility to earn their living in Germany (Veit, SPD, parliamentary debate on a shortage of labour, 21 February 2011⁶).

The majority of the Christian-Democratic Party (CDU) is in favour of reforming the existing instruments in order to transform the existing system into a more open model, but the party is opposed to the paradigm shift that the introduction of a points-system would represent. Single (but influential) voices such as the Christian-democrat minister of labour Ursula von der Leyen, advocate the introduction of a points-based system.

Finally, at the “very restrictive” end of the scale, the socialist *Die Linke* and the conservative Bavarian christian-socialist union (CSU) coexist in a - at first sight surprising - vicinity. Both parties are, albeit with a very different framing, against a liberalization of labour migration policies. In its rhetoric, *Die Linke* criticizes plans to introduce a points-based system as too “economistic” and as “viewing human beings solely under cost-benefit aspects”. The party combines anti-capitalist positions with a nationalist and protectionist attitude:

The shortage of labour is a myth. The demand for qualified workers could be met by unemployed workers (...) However, German companies don't want that because they do not want to pay good money for work. They say: Germany needs qualified workers. We as the left say: Germany has qualified workers. There is no labour shortage in Germany” (*Die Linke*, debate 21 February 2011).

In contrast, the CSU does recognize the existence of labour shortages, but wants to address it by focusing on a further qualification and participation of national groups, and on encouraging intra-EU migration. Also, the CSU embeds its position in a generally critical discourse against non-EU foreigners. In September 2010 its chairman Horst Seehofer stated that “Germany is not an immigration country”. Also, Seehofer explicitly positioned himself against a points-based system and against the introduction of quotas for certain sectors or professions. He demanded that the evaluation procedure of requests for residence permits should not only evaluate the qualification of the potential labour migrant, but also his or her “willingness to integrate” (*Die Welt* 16.10.2010).

In addition to these differences between the political parties, during the last two years the issue of labour migration has led to conflicts both within the government coalition and within the CDU. At the end of 2010 a controversy started between the governing parties CDU/CSU on one side and the FDP on the other side (SZ 08.12.2010). The debate centered on the question whether to lower the minimum income that migrants must earn in order to obtain a permanent settlement permit (*Niederlassungserlaubnis*) (see below, Section 4, for more details). The Liberal Democrat minister of economy Rainer Brüderle demanded a lowering of the required minimum income from 66.000 to 45.000 Euro (SZ 19.10.2010). In addition, he suggested that companies should give a financial incentive (“*Lockprämie*”) to highly qualified migration candidates. At the end of 2010, the FDP presented a concept paper demanding a lowering to 40.000 Euro. The liberal minister of justice criticized the CDU: “The reluctance of the CDU to tackle the issue of labour migration management is not proof of a rational immigration policy” (SZ 12.05.2011).

At the same time, similar demands were made by parts of the CDU. In August 2010 its minister of science and technology Annette Schavan demanded the lowering of the minimum income to 44.000 Euro. However, the 2010 CDU/CSU faction of the

⁶In the following quoted as “debate 21 Febr. 2011”.

Bundestag and the CDU minister of interior opposed this demand (SZ 03.06.2011). Its proposition was to use the existing regulations in a more flexible manner, for example by introducing a new administrative regulation that would make it possible to carry out the priority check only in certain regions or for specific jobs (SZ 09.12.2010).

Among the non-state actors that intervene in the public discussion on labour migration policies, employer associations clearly are the most active. They are in favour of a significantly more liberal labour migration policy, demanding a “modernization” of migration policies and the introduction of a “criteria-based system”. (interview BDA, 17/11/2011). Most recently, in the discourse of actors in favour of a more open labour migration regime, the expression “points-based” has gradually been replaced by the term “criteria-based”. Some actors attribute this rhetorical shift to the fact that although it has been demanded for years, the introduction of a skills-based system has failed and that as a consequence the terms “points-based” has received a negative ‘image’ (interview SVR, 17/11/2011). German trade unions too, albeit for different reasons, have since 2001 demanded the introduction of a skills-based system inspired by the Canadian model.⁷ They consider such a system to be a framework that would facilitate labour migration in a regulated and controlled manner, and that would maintain social and wage standards.

Finally, it is interesting to note the recent emergence of two new private actors in the field of labour migration politics, who are not mandated by any official or governmental body but who manage to obtain a high media presence. One is the *Sachverständigenrat Migration und Integration* (SVR), a research institution founded by several private foundations, among them *VolkswagenStiftung* and *Stiftung Mercator*. The SVR publishes a yearly report on migration issues and in many press releases comments on the activities of the government. Also as an initiative of several foundations, in April 2011 the “High-Level Group Labour Needs And Immigration” (*Hochrangige Konsensgruppe Zuwanderung und Fachkräftebedarf*) was founded in Berlin. Its members were former high-ranking politicians like the former minister of integration of Northrhine-Westphalia, Armin Laschet (CDU), and the former federal minister of defense, Peter Struck (SPD). The lack of formal legitimation and of formal access to decision-making processes seems to be compensated by these actors by an intense media strategy. Without being mandated by the government, both the SVR and the *Hochrangige Konsensgruppe* managed to achieve a national visibility and an “image” as expert bodies more or less close to the government. In its member structure - politicians, the social partners, scientists - the high-level group is similar to former advisory bodies in migration policies such as the *Unabhängige Kommission Zuwanderung* and the *Fachkräfteallianz*, that were established as consultative bodies by the government.

Regarding the future management of labour migration, the SVR demands the introduction of a “three pillar model”, consisting of (1) the lowering of the required minimum income of highly-qualified migrants to 40.000 Euro and a less bureaucratic admission process, (2) improved staying options for foreign university graduates (i.e. an extension of the right to stay in Germany after the completion of their studies to two years) and (3) the introduction of a points-based system for the so called MINT-professions (SVR 2011: 22). The recommendations of the *Hochrangige Konsensgruppe* that the group presented in November 2011 range from implementing a less bureaucratic procedure of labour admission to a lowering of the

⁷See for a detailed account Laubenthal 2008.

required minimum income for highly-qualified migrants. Also, the group proposed the institutionalization of a labour market monitoring on a two year basis, resulting in a “positive list” of professions to be recruited without a priority check, also - this being is the most “radical” aspect of the recommendations - including non-academic jobs (Hochrangige Konsensgruppe 2011: 13-16).

The debate that went on between 2010 and 2012 has resulted in some - partly major - changes in the German management of labour migration. In the following, the main characteristics of the German labour migration regime and the recent developments will be outlined.

3 Recent evolution and current state of labour migration policies

3.1 General characteristics of the German law on labour migration

In German law, labour migration is regulated by the paragraphs 18 to 21 of the Residence Law (*Aufenthaltsgesetz*), and by the Ordinance of Employment (*Beschäftigungsverordnung*). The opening paragraph of paragraph 18 Residence Law states as a guiding principle that “the admission of foreign employees is guided by the economic needs of Germany, taking into account the situation on the labour market and the need to effectively tackle unemployment”.

Paragraph 18 (“Employment”) regulates the employment of foreigners and the possibility to obtain a temporary residence permit. Paragraph 19 (“Settlement permit for the highly-qualified”) regulates the access to the labour market of so-called highly-qualified migrants and sets the conditions under which they are entitled to a permanent settlement permit. Paragraph 20 (“Research”) regulates the labour market access of scientists, who can get a temporary residence permit for a research project at an officially recognized research institution. This article is based on the transposition of the so called “EU scientist directive” (EC 2005/71/EG) into German law. Paragraph 21 (“Self-employment”) regulates the conditions of work and residence of self-employed migrants. At the start of their stay in Germany, they obtain a temporary residence permit. After three years it may be transformed into a permanent settlement permit.

In addition to the paragraphs 18 to 21 Residence Act, some channels for labour migration are regulated in the Ordinance of Employment (*Beschäftigungsverordnung*). In some parts, the ordinance complements the so called decree on exceptions to the recruitment ban (“*Anwerbestoppausnahmereverordnung*”) that already during the era of the recruitment ban, before the year 2000, offered some channels for labour migration. Paragraph 28 of the Ordinance of Employment foresees that a residence permit can be granted to managers/executive staff (*leitende Angestellte*) and specialists. Also, paragraph 34 regulates the labour market access of citizens from Andorra, Australia, Israel, Japan, Canada, New Zealand, Monaco, San Marino and the USA. In some cases (USA, Japan) the list is based on friendship agreements with countries, dating back to the 1950s. Nationals of the countries listed above can take up any job regardless of its qualification level, if no German national is available.

Regarding the immigration of close family members, spouses of migrants who benefit from a permanent settlement permit (§ 19) have unrestricted access to the labour market (§ 29 abs. 5. Nr. 1 AufenthG). German language skills are not necessary, and a minimum age is not required. Spouses of migrants with a residence permit issued under § 18 have the same access rights to the labour market as the

partner who first migrated. In this case, spouses must be over 18, and he/she must prove German language skills unless he/she has a university degree or is a citizen of the USA, Canada, Australia or Japan (§30 Abs. 1 Satz 3 Nr. 4 AufenthG).

Between 2006 and 2010, the number of residence permits issued under paragraph 18 (temporary residence permit) has been fairly stable. In 2010, 28,298 migrants were granted a residence permit according to paragraph 18.

Table 2: Number of foreigners who have come to Germany in order to take up an employment under § 18 Residence Law, largest national groups

Nationality	2006		2007		2008		2009		2010	
	Total	% women	Total	% women	Total	% women	Total	% women	Total	% women
India	2,600	12.4	3,226	14.7	3,826	12.4	2,987	13.3	3,404	14.6
United States	2,412	31.9	3,329	32.1	3,455	32.4	2,800	33.6	3,368	35.6
China	2,474	24.5	2,921	26.9	2,406	34.1	2,204	28.5	2,707	27.6
Croatia	1,431	4.8	1,692	5.1	1,588	4.9	1,849	6.0	2,008	6.3
Serbia (incl. former Serbia-Montenegro)	618	9.5	781	6.1	1,084	5.5	1,085	5.0	1,688	4.2
Bosnia-Herzegovina	1,543	2.6	1,468	2.9	1,350	2.9	1,533	2.2	1,621	3.1
Japan	1,468	19.0	1,677	17.5	1,724	18.7	1,258	16.0	1,585	16.2
Russian Federation	1,813	68.2	1,770	68.9	1,701	63.7	1,460	69.2	1,411	67.1
Ukraine	1,478	77.3	1,538	70.1	1,330	65.3	1,191	69.3	1,231	72.9
Turkey	1,256	9.5	1,339	10.9	1,417	14.5	1,029	15.3	912	21.5
Other	12,373	36.5	9,020	45.0	9,260	42.9	7,557	47.2	8,363	48.2
Overall	29,466	31.1	28,761	32.2	29,141	31.0	25,053	31.7	28,298	31.9

Source: Bundesministerium des Innern/Bundesamt für Migration und Flüchtlinge 2011

The numbers of residence permits granted to foreigners according § 28 Employment Ordinance were the following:

Table 3: Residence permit § 28 Ordinance of Employment (managers, etc.)

2009	2010	2011
2212	2060	2230

Source: data provided in the interview with BAMS 09.02.2012

The numbers of residence permits issued to IT specialists peaked in 2008; since then, they have slightly decreased:

Table 4: Residence permits granted to IT experts, based on the decree on exceptions to the recruitment ban

	2007	2008	2009	2010	2011
IT specialists	3.411	3.906	2.465	2.347	2.021

Source: data provided in the interview with BAMS 09.02.2012

Finally, it is interesting to note that the admission channel that the public debate has almost exclusively focused on, paragraph 19 Residence Law, hardly plays a role for the actual labour immigration to Germany. Between 2007 and 2011, much less than a thousand people obtained a permanent settlement permit according to § 19.

Table 5: Number of settlement permits granted under § 19 of the Residence Law

2007	2008	2009	2010	2011
115	106	142	146	159

Source: data provided in the interview with BAMS, 09.02.2012.

Furthermore, when taking into account the two existing channels for highly skilled migrants, paragraph 19 and paragraph 20, the migration balance only shows a surplus by slightly more than fifty persons. In 2009 311 persons came to Germany as highly-qualified migrants (§19) or scientists (§20). However, in the same time frame 251 persons with one of these two residence titles left Germany again (SVR 2011: 40). Also, a certain amount of those highly-qualified who obtained the permanent residence permit were already in Germany when applying for it (interview BMI 1, 17/11/2011).

In 2009, 14,816 foreigners obtained a work permit under paragraph 18 IV (“qualified workers”); 4,745 workers of the same category left Germany. In the category “low-qualified” (paragraph 18 III) 8,405 workers obtained a work permit, while 1,965 left the country. All in all, in 2009, the net migration of workers (§ 18, 19, 20, 21) amounted to 5,925 (Parusel/Schneider 2010: 110-112).

Although weakened by the most recent legal changes, a central feature of the current German labour migration regime is the priority of national workers (and to some extent of the EU work force) over potential workers from third countries. Until the most recent decision on the transposition of the so called EU Blue Card directive into German law (that will be discussed in more details below), the philosophy underlying the German labour migration law can be summarized as follows: “Every university graduate with a degree that is recognised in Germany can work in Germany, if no national is available. That is the German immigration law in one sentence” (interview BMAS 1).

An important instrument of the recruitment process is the so-called priority check (*Vorrangprüfung*) that is carried out on a case-by-case basis for each single

job application. With the exception of the specific recruitment channel for highly-qualified migrants (§ 19), until June 2011 all applicants from outside the EU were subjected to the *Vorrangprüfung*. In this process, the Federal Employment Agency in cooperation with the foreigner's office examines if a national or a EU citizen is available for the job. Only if this is not the case, a citizen from outside the EU can take up a job in Germany. Also, the working conditions of the foreign worker must be equivalent to those of national employees. Workers privileged by the priority check are Germans, EU citizens, Swiss citizens, foreigners with a settlement permit and foreigners with a residence permit that entitles them to an unrestricted access to the labour market. Between 2008 and 2011, figures on the number of applications that are rejected in the context of the priority check varied between approximately by 10 to 12 percent.⁸

3.2 The development of labour migration policies since the year 2000

Until the passing of the first immigration law in 2005, legal channels for labour migration to Germany were limited to channels for temporary labour migration into specific labour market segments. However, despite the official recruitment ban in 1973, a number of exceptions, based on the “decree on exceptions to the recruitment ban” were introduced at the beginning of the 1990s (Laubenthal 2008). These changes took place largely unnoticed by the public and without being debated in the political sphere. This was possible because the new regulations were not introduced through legislative changes but “only” at the administrative ordinance level, in the ordinance of employment. Large categories such as seasonal workers, but also some qualified and highly-qualified workers, could under certain conditions migrate to Germany. In 1999, for instance, 884 qualified workers with a university degree and 756 executive employees of foreign companies were admitted for working purposes (SVR 2011: 64).

3.2.1 Temporary labour migration

Since the beginning of the 1990s, a series of exceptions to the 1973 recruitment ban were introduced as a response to specific labour shortages. Thus a number of labour migration steering instruments have already been existing for two decades, and they have been regulating quite a significant influx of workers, albeit on a temporary basis. As opposed to channels for highly-qualified migration that have become more and more politicized and that are widely debated, the continuous inflow of temporary migrant workers has taken and still takes place largely unnoticed by the public. Since the 1980s, exceptions to the recruitment ban were introduced for au-pairs, specialists of international corporations, scientists and teachers, and nursing staff (Zimmermann 2007: 12). Furthermore, bilateral agreements were established with several Eastern European countries, regulating the temporary immigration of “contract workers” and “seasonal workers”. In 2009, 294,828 migrants from third states worked in temporary labour arrangements in the low-qualified sectors of the German labour market.

⁸(Bundesagentur für Arbeit: Ablehnungen und Versagungen für Drittstaatsangehörige nach Gesetzesgrundlagen).

The recruitment of contract workers⁹ is based on bilateral agreements with several Eastern European countries. The numbers are based on quotas that are established each year, based on the current unemployment rate. An individual labour market check does not take place. An important aspect of contract worker employment is that the social security principle of the country of origin is applied, thus significantly lowering the costs for the German employer (SVR 2011: 83).

From 2000 to 2005, the yearly number of contract workers has continuously decreased, from 46,902 in 2001 to 21,916 in 2005. Between 2007 and 2010, it has remained more or less stable at around 17,000 (17,981 in 2010) (BAMF 2011: 75). The regulations aim at preventing permanent settlement; re-entry to Germany after the end of the contract is only permitted after an equally long stay in the country of origin.

Another form of temporary labour immigration are regulations for seasonal workers. Based on bilateral agreements between the Federal Employment Agency and labour administrations of sending countries, seasonal workers may be employed for a maximum period of six months, mainly working in agriculture and in the hotel and tourism industry (Zimmermann 2007: 12; SVR 2011: 83). In 2011, bilateral agreements existed with Poland, Slovenia, Hungary, Slovakia, Romania, Bulgaria, the Czech Republic and Croatia. After the introduction of free movement for the EU-8 there will only be one bilateral seasonal labour agreement still in effect, i.e. the one with Croatia (interview BMI, 17/11/2011). Seasonal-work employment is formally subject to an individual priority check; in reality however, two administrative regulations have factually abolished the priority check in seasonal work, since workers from the EU 2004 and 2007 accession countries have been exempted from this labour market test.

Since the year 2000, the number of seasonal workers is more or less stable between 286,940 (2001) and 293,711 (2010), with peaks of more than 300,000 in the years from 2002-2006. Poles still make up the largest proportion of seasonal workers, although their number is decreasing (from 80 per cent until 2005 to 60.3 per cent in 2010; 177,010 in absolute numbers). The decrease can be attributed to the fact that many Polish migrants have opted for (more attractive) employment possibilities in EU states that have opened their labour markets for the EU-8 before the end of transition periods (BAMF 2010). Still, in 2011 Poles were the largest group, followed by Romanians who make up one quarter of seasonal workers.

Another form of temporary work is care work in private households. Since 2005, based on an agreement between the Federal Employment Agency and the labour administration of the sending country, foreign household aids can be employed for three years (based on paragraph 21 Ordinance of Employment). Since the introduction of this regulation, the officially registered number of foreign household aids in German household doubled between 2005 and 2008 (from 1,667 to 3,051). In 2009, the number amounted to 1,571 (BAMF 2011). "De facto this is a bilateral recruitment agreement, since three quarters of the migrant workers are Polish" (SVR 2011: 86).

3.2.2 Migration channels for qualified and highly-qualified workers

The introduction of the 2005 immigration law, the "Law for Managing and Containing Immigration and for the Regulation of the Residence and Integration of

⁹Workers that are recruited for a specific project on a temporary basis, often in the building sector.

EU citizens and Foreigners” (*Gesetz zur Steuerung und Begrenzung der Zuwanderung und zur Regelung des Aufenthalts und der Integration von Unionsbürgern*) certainly represented one of the turning points of German migration policy. The part that regulates the entry and stay of foreigners, the Residence Act (*Gesetz über den Aufenthalt, die Erwerbstätigkeit und die Integration von Ausländern im Bundesgebiet*), for the first time established some channels for labour immigration not as an exception but as a regular option. Until the year 2000, a need for labour immigration was scarcely discussed and mostly denied by political elites. This changed with the social-democratic/green government of chancellor Gerhard Schröder that came into office in 1998. In 2000, chancellor Schröder initiated a debate on the need of the German economy for IT experts. This debate resulted in the introduction of the so called Green Card, a special residence permit for IT specialists. Although the actual impact of the Green Card on the labour market remained comparatively low - between 2000 and 2004 18,000 IT experts were recruited under the scheme - it had a strong symbolic function and served as a rhetorical “door opener” for a debate on needs of foreign labour in Germany.

The 2005 immigration law represented a significant change in the handling of labour migration. The law limited types of residence permits from five to two: the temporary residence permit and the permanent settlement permit. One single residence permit has now replaced the former model in which both a residence permit and a work permit had to be obtained. Thus a residence permit for the purpose of employment was introduced, and work permits were abolished.

However, also with the new immigration law the principle of a general recruitment stop was maintained. In its accompanying statement, the Ministry of Interior underlined that the ban on recruiting foreign labour remained in effect for unskilled, semi-skilled and skilled workers. The novelty of the labour migration regulation was the introduction of Paragraph 19 Residence Act. As opposed to regulations according to paragraph 18, migrants who are accessing the German labour market under paragraph 19 are not subject to the priority check. The categories of highly-qualified migrants who could access the German labour market according to paragraph 19, in the original 2005 version of § 19 of the Residence Act were the following: a) scientists/academics with special knowledge; b) teaching personnel or researchers in a leading position and c) specialist and executive employees with special professional skills. Every migrant applying for a settlement permit under § 19 had to earn a salary corresponding to at least twice the earnings ceiling of the statutory health insurance scheme. In 2005 this meant a required yearly minimum salary of 84,600 Euro.¹⁰

Regarding immigration channels for self-employed migrants, a regulation was introduced established by paragraph 21 Residence Law. It states that a foreigner can be granted a residence permit for the exercise of a self-employed occupation if a superior economic interest or a special regional need exists, or if positive effects can be expected for the employment. According to the original 2005 version, in order to get a residence permit self-employed migrants, must create at least ten jobs and invest 1 million Euro.

Since 2005, every two years legal and administrative changes have taken place, further liberalizing the channels for highly-skilled migration. In 2007, the federal government appointed a ministerial working group to elaborate a new legal framework for the recruitment of foreign workers. The work of this group resulted in

¹⁰The income threshold of health insurance was 42,300 Euro in the year 2005.

the “Action Programme of the Federal Government – The contribution of labour migration to securing the necessary pool of qualified workers in Germany” (*Aktionsprogramm der Bundesregierung – Beitrag der Arbeitsmigration zur Sicherung der Fachkräftebasis in Deutschland*). This programme was transposed into the new “Law for the management of labour migration” (*Arbeitsmigrationssteuergesetz*) that came into force on 01.01.2009.

Before, in August 2007, paragraph 21 Residence Law was reformed and the preconditions for self-employment by foreign nationals were lowered to five new jobs and an investment of 500,000 Euro. Also in August 2007, based on a decision taken by the government during a meeting of the governing parties at the castle of Meseberg (the so called Meseberg decision for the labour-market adequate migration management of highly-qualified professionals (*Meseberg-Beschluss zur arbeitsmarktadäquaten Steuerung der Zuwanderung hochqualifizierter Fachkräfte*)), the priority check was abolished for the following groups: graduates of German universities, graduates of German schools outside Germany who hold a degree from a university outside Germany,, relatives of foreigners who have obtained a residence permit as an academic, young foreigners who live in Germany and who start a professional qualification; young “tolerated”¹¹ migrants who start a professional qualification; and university graduates of all EU countries.

The Law for the management of labour migration that came into force on 01.01.2009 lowered the required minimum income for highly-skilled migrants under paragraph 19 from 86,400 to 63,600.¹² Also, the preconditions for the self-employment of foreign nationals were further lowered to an investment of 250,000. In addition, the Ordinance of Employment was reformed. In its paragraph 27, a passage requiring the existence of a “public interest” for the employment of qualified foreign workers was abolished, thus easing the employment of foreign university graduates, also of those who did not fulfil the minimum income requirements of the “Law for the Management of Labour Migration”. However, their employment still remained subject to the priority check.

Despite these changes that took place in quick succession, the debate about (highly-qualified) labour migration and the paragraph 19 did not stop. Rather, as outlined in chapter 3, between 2010 and 2012 a controversy emerged both within the government and between the government and the opposition about the preconditions that should be attached to the granting of a settlement permit to highly-qualified migrants. The debate centred on demands to lower the required minimum income to 40,000 or 48,000 Euro.

In June 2011, on the initiative of the Christian-Democratic Minister of Labour Ursula von der Leyen, the government issued, in combination with the presentation of its concept “securing qualified workers” (*Konzept Fachkräftesicherung*) a so called positive list of professions (*Positivliste*) that will not be subject to the priority check anymore. The list includes mechanical engineers, electronic engineers and doctors. In fact, the existing law would have permitted the same, too: professions could have been exempted from the priority check by applying paragraph 39 (2) Residence Act which states that the Federal Employment Agency of Labour can agree to the issuing

¹¹The so called “Duldung” (“temporary toleration”) is a residence title of asylum seekers whose asylum application has been rejected but whose deportation has been suspended.

¹²Now the salary must at least correspond to the income threshold to the pension insurance scheme. In 2012, the income threshold to the pension insurance scheme was at 67,200 Euro/year in Western Germany and at 57,600 Euro in Eastern Germany.

of a residence permit under paragraph 18 if this appears to be necessary for certain professions or economic sectors.

On 06.11.2011, the government agreed to yet again reform paragraph 19 Residence Law and to lower the required minimum income for university graduate to 48,000 Euro. However, while lowering the access barrier, the residence right attached to paragraph 19 was been weakened: it was planned that if within the first three years of his/her stay the migrant would apply for unemployment benefits, the permanent residence permit would expire. This regulation would have transformed the residence right attached to paragraph 19 into a conditional residence right.

However, in March 2012 this plan was given up, since paragraph 19.1 will be abolished and will be replaced by the EU Blue card (Blaue Karte EU). In December 2011 the federal cabinet decided on a draft legislation transposing the so called EU Blue Card directive into German law. In March 2012 the federal government of CDU/CSU and FDP announced that it had come to an agreement on the way of transposing the Blue Card directive into German law, and on the further measures that would accompany the introduction of the Blue Card (SZ 29.03.2012). After “resolving its internal differences” (ibid.) between the CDU/CSU and the FDP, the federal government has agreed on a new legal framework that will have far-reaching consequences for the German labour migration regime, since it entails a number of significant changes. According to the draft legislation, the “EU Blue Card” will become a new residence title, replacing paragraph 19 of the Residence Act. The Blue Card can be granted to university graduates from outside the EU who earn more than 44,800 Euro/year.¹³ For the MINT professions, the required minimum income is set at 34,900 Euro. If applicants fulfil these preconditions, they are not subject to the priority check anymore. As opposed to the regulations of paragraph 19 Residence Act, holders of the Blue Card at first only get a temporary residence title. After three years of continuous employment in Germany, it can be transformed into a permanent settlement permit. Blue Card holders with very good German language skills may be granted a permanent settlement permit after two years.

Also, the new labour migration law¹⁴ of which the Blue Card regulations are part will give university graduates (from every country in the world) the possibility to obtain a six-month visa for a job search in Germany. The only precondition is that they can prove that they have the financial means to sustain themselves during their stay in Germany. This new legal provision is accompanied by a ‘sunset clause’, i.e. it will be in place for three years and will then expire, if it is not renewed by the government.

The law project also abolishes the regulation of paragraph 19 Residence Act that self-employed foreigners must invest 250,000 Euro and create 5 jobs in order to obtain a settlement permit in Germany. Furthermore, the draft legislation also entails a change for foreign students. From now on, foreign university graduates may take up any job during the “search year” in which they are entitled to look for an employment in Germany (and not only if it is considered to be corresponding to their degree of qualification). After being employed for two years, they can be granted a permanent settlement permit. Finally, foreigners who have been doing their

¹³ The EU Blue Card directive foresees that workers eligible for the Blue Card must earn a salary that is at least 1,5 times as high as the national average gross income. In the German case, the national pension's scheme income threshold has been chosen as the basis for this calculation.

¹⁴ Gesetzentwurf der Bundesregierung: Entwurf eines Gesetzes zur Umsetzung der Hochqualifiziertenrichtlinie der Europäischen Union. Drucksache 17/8682, 15.02.2012.

vocational training in Germany may take up employment in Germany after their training.

3.2.3 The administration of labour migration

The introduction of the new Residence Act in 2005 entailed a certain degree of reduction of bureaucracy in the administration of labour migration. It introduced the principle of “one-stop-shop” into German labour migration management. Whereas before, both a residence permit and work permit had to be applied for, now the work permit has been replaced by a residence permit incorporating a work permit. In order to decide about the granting of a residence permit, regional branches of the Federal Employment Agency and the aliens’ office cooperate, with the former consulting the latter. Since 2008, the Federal Employment Agency offers an electronic consultation mode. Approximately 25 per cent of aliens’ offices use this possibility.

The procedure for applying for a residence permit is the following: The visa application is transmitted to the aliens’ office. In case the application requires approval, the aliens’ office consults the BA. At the BA, the specialized unit International Placement Services (ZAV) is responsible for handling the application. If a priority check needs to be carried out, it is done by the local branch of the BA.

Reacting to the decrease in applications due to the opening to the EU-8, the ZAV has centralized its offices at four locations. However, it has also established four new sector-specific teams that since January 2012 support companies in recruiting workers (ZAV 12/2011).

In 2011, the Council for the Review of Legal Norms (*Normenkontrollrat*), a body established by the federal government, carried out a study about the current administrative practice for residence permit applications. The project was carried out in cooperation with the federal states of Hesse, Saxony, Baden-Württemberg and Rheinland-Pfalz, international companies such as SAP, Bayer, BASF and Volkswagen, and a number of local aliens’ offices. In its report “optimizing the admission system of qualified workers” (*Einreiseoptimierung. Bericht über die Optimierung des Verfahrens zur Einreise von Fach- und Führungskräften aus Drittstaaten*), the Council recommended the introduction of a fully electronic application procedure that would save 14 days of processing time and a suspension of the priority check for specific jobs and branches. Most importantly, it suggested to abolish the participation of the foreigners’ offices in the admission process (Normenkontrollrat 2011). In the new model, embassies would evaluate the preconditions for granting a visa while the federal employment agency would in parallel evaluate the preconditions for accessing the labour market. The employer would directly address its demand to the federal employment agency. In order to introduce this new model, a legal reform would be necessary. In the new model, the foreigners’ offices (that are in the competence of the federal states) would not be part of the application process anymore: “The crucial question is whether the federal states will agree to that” (interview BMI 1, 17/11/2011). The proposition¹⁵ still being debated by the federal government and the federal states. This new procedure would significantly decrease the element of migration control in the application procedure. It is interesting to note that in 2001 the European Commission, with the directive KOM 2001 386, proposed the introduction of the very same model of one-stop-shop. However the directive was withdrawn by the European Commission, not least because of the strong opposition of Germany.

¹⁵ In April 2012.

The propositions of the *Normenkontrollrat* address a common complaint by companies, i.e. that the recruitment process and especially the priority check, takes too long (interview BDA, 17/11/2011). In contrast, the Ministry of Labour points out that the German application procedure, from applying for a visa to (in case the application for a residence permit is successful) being granted a residence permit, in average takes 66 days, thus being much shorter than the procedure in classical immigration countries such as Canada (interview BMAS 1, 18/11/2011). The BA however states that the process will only take that long if complications arise, i.e. if for example necessary documents by the employer or the employee or not provided on time. According to the BA, the priority check in average takes two weeks.¹⁶ Also, in December 2011 the BA issued an instruction to its local offices that the priority check should take place within 48 hours.

3.3 Labour migration in a federal state: the role of the regional level

3.3.1 The *Länder* as actors in migration policies

The German regions (*Bundesländer*/federal states) play a structural role in labour migration policies because of the attribution of competences in the German federal political-institutional system. The *Bundesländer* are represented in the second chamber of the parliament (*Bundesrat*). All bills adopted by the Parliament are passed to the *Bundesrat*, which must approve (and can prevent) the passing of those laws that have an impact on the *Länder*.

During the last years, some federal states have demanded a further opening of immigration channels for the highly-qualified. The most recent example has been the so called "*Sachsen-Initiative*". The federal state of Saxony commissioned a study on the future of labour migration by the research institute *Institut der Zukunft der Arbeit* (IZA). The study recommended the introduction of a system with a yearly quota for immigration, combined with a points system that would take into account qualification, language skills and professional experience. In April 2011 the federal state of Saxony brought an initiative based on the IZA report to the *Bundesrat*. Although governed by the CDU, the proposition of Saxony was contrary to the position of the federal government and of the CDU on the federal level at that time.

During the last years, the representation of the *Länder* has always taken a more progressive stance on labour migration than the federal government and has advocated a further opening of the German labour migration regime. The *Bundesrat* has continuously demanded the lowering of the minimum income for the highly-qualified. Most recently, in its note on the federal government's Blue Card legislative project, the *Bundesrat* suggested to allow labour immigration of migrants who are not university graduates but who have a comparable five years professional experience. Such a regulation would have been possible under the EU Blue Card directive. This proposition was however not taken up by the federal government. The *Bundesrat* also suggested to introduce a skills-based labour immigration channel, namely the introduction of a "job search visa". This suggestion has become part of the federal government's legislative project.

The (differing) activities of the German *Länder* in the field of labour migration, and the tension that sometimes arises between the federal and the regional level reflect regional demographic differences, different regional historical migration patterns and differences in the labour market situation. Saxony is an exemplary case

¹⁶Information obtained by the BA, in a phone conversation on 29.03.2012.

of an Eastern German federal state where since the reunification the population has rapidly decreased. Also, the Eastern German *Länder* have generally a bigger problem of recruiting foreign worker than the federal states in Southern Germany. Still, in Southern Germany too, small and middle-range companies outside the cities have difficulties to recruit workers (interview IHK Stuttgart, 13/01/2012). Within this context, regional migration patterns and historically grown networks also play a role in shaping regional labour migration policies and needs. While in the western federal states there is a tradition of intra-EU labour migration, i.e. a traditional migration and migration networks of Italian or Spanish workers exists that encourages new migration from these countries, in the Eastern German *Länder* often have historical migration ties with Eastern (European) countries who until recently have not been in the EU, or who still are not EU members. Finally, a general explanation for federal states' activities in demanding a more open labour migration regime is that the governments of the federal states are more directly confronted with the demands of the companies in their region than the federal government.

3.3.2 The impact of the federal system on labour migration policies

The impact of the federal distribution of competences on labour migration policies is criticized by a number of state and non-state actors. The biggest criticism refers to the inconsistency in the application procedures for labour migrants, due to the diverging approaches and activities of regional institutions (foreigners' offices and the local BA offices) The granting of a residence permit may depend on the politics of an individual employment agency:

You may be confronted with a BA office that acknowledges that there is a need for labour migration, but you may also be confronted with a BA office that [within the context of the priority check regulation] keeps sending you candidates from the pool of SGB II [the lowest social welfare level] recipients (interview BDA, 17/11/2011).

The federal system is also criticized by the Ministry of Labour: "The specific impact of German federalism on the management of labour migration shows in the 'jungle' of the manifold different regulations in the various *Länder*" (interview BMAS 2, 9/02/2012).

In a survey carried out by the German Chamber of Commerce (DIHK), every second German chamber of foreign trade (AHK), and two thirds of the AHKs outside the EU, viewed "complicated laws and application procedures" as an obstacle to recruiting qualified candidates for the German labour market. AHKs in countries as diverse as China, India and even in the EU country Finland found that legal regulations were interpreted very differently by single federal states and local actors. As the AHK Colombia summarized: "Legal regulations are confused" (DIHK: Deutschland nur mässig attraktiv – Ergebnisse einer AHK-Umfrage). In its 2009 evaluation, the SVR also came to the conclusion that "even for experts, German immigration law is a dense jungle of exceptional regulations, specific rules and implementation regulations" (SVR 2009: 11).

4 Recent initiatives to address labour shortages: European and national 'solutions'

Within the current debates on labour shortages, attempts to increase the work force by encouraging the labour market participation of EU citizens and German nationals also play a role. During the last years, several initiatives have taken place in the field of intra-EU migration and regarding the resident migrant population in Germany.

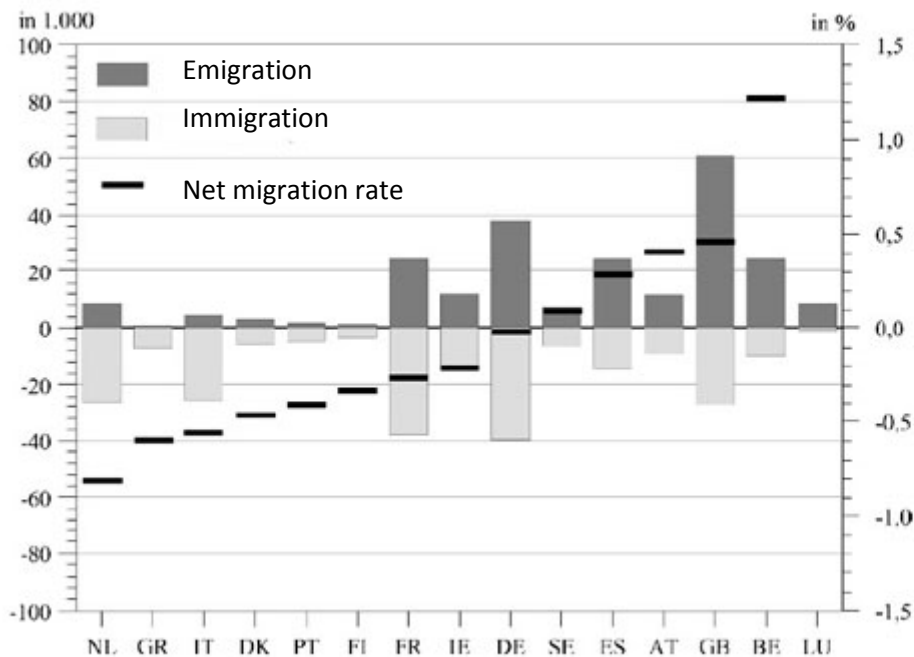
4.1 Migration among "old" EU Member States and the recruitment of workers from the southern EU countries

Of the 3.4 million immigrants that came to Germany between 2005 and 2010, 49 per cent originated from the EU-27. In 2010, the per centage of inflows to Germany from the EU made up 57,9 per cent of the total migration. In 2010, regarding the fourteen "old" EU member states, an outflow of 145,013 and an inflow of 156,055 was counted. Regarding the 2004 and 2007 accession countries, the EU-12, an outflow of 221,530 was paralleled by an inflow of 303,193.

In a study on the emigration of the highly-qualified, Ette and Sauer (2010) have analyzed the characteristics of the migration balance of university graduates among the EU-15. The figures of the EU-LFS show that in the years 2005 - 2009 approximately 45,000 Germans between 25 and 64 years with a university degree (International Standard Qualification Level 5 and 6) had left Germany and had lived for five years or less in one of the other EU-15 states. However, this is paralleled by an immigration of highly-qualified foreigners to Germany. Between 2005 and 2009, approximately 48,000 migrants from the EU-15 with the same educational level permanently lived in Germany. This results in an average positive migration balance of plus 3,000 academics per year (Ette/Sauer 2010: 14).

However, a closer look at the qualification level of the migrants shows that in the group corresponding to the ISCO classification of executives and scientists, 40,000 emigrated from Germany while 38,500 immigrated to Germany. This means a slightly negative migration balance for the group of highly-qualified workers (Ette/Sauer 2010: 17).

Table 3: Emigration, Immigration and net migration rate of “scientists” and “managers” (ISCO 1 and 2) between the EU-15-Members, annual average numbers of the years 2005-2009, in 1000 and per cent



Source: Ette/Sauer 2010: 15.

Ette and Sauer (2010) come to the conclusion that “(...) there are significant differences between the EU member states regarding their position in the “competition for the brightest minds. In this competition, Germany could almost not at all benefit from intra-EU migration” (ibid.).

An issue that has recently received a significant amount of media coverage has been the recruitment activities by German state and non-state actors in southern EU member states, especially in Spain. In 2011, the body responsible for the organization of the recruitment of foreign workers at the BA, the ZAV, the German embassy and German chamber of commerce have carried out several initiatives to recruit Spanish engineers, IT specialists and doctors. The ZAV estimated that 17,000 Spaniards would principally be interested in working in Germany. Recruitment initiatives also took place in Portugal and Greece. As the biggest obstacle to the recruitment of highly-qualified workers from the Mediterranean countries, the ZAV viewed (the lack of) German language skills. Furthermore, the spokesperson of the ZAV stated that “many of the highly qualified only learn English in school and then they migrate to the English-speaking countries. In these countries, they are also being offered a ‘package’ for the family, consisting of language courses, accommodation and a place in kindergarten. Germany can learn from these examples” (Der Stern 18.07.2011).

4.2 The 2004 and 2007 EU accession countries

In 2004, Germany had opted to restrict the free movement of citizens of the EU-8. However, on 1 November 2007 the government decided to ease the immigration of engineers from the twelve new EU member states (including both the 2004 and 2007 waves of enlargement), abolishing the priority check for this group. In

2009, the priority check was abolished for all university graduates of the EU -10. On 1 May 2011, the transition period for workers from the EU-8 ended, and citizens of the eight 2004 accession countries were granted unrestricted access to the German labour market. Between April and November 2011, the unrestricted access has led to an increase of 62,000 employees from the EU-8.

However, there is a divergence between new employments and immigration figures. The number of EU-8 employees is higher than the immigration figures for this group (56,000 between May and November 2011). This reflects that migrants that were already in Germany, possibly not working, being self-employed or working irregularly, now officially registered: "the increase at the beginning [in May 2011] was more of a regularization of workers already in the country rather than 'real' immigration" (interview BDA, 17/11/2011).

For citizens of the 2007 accession countries Romania and Bulgaria, the federal government decided at the end of 2011 to prolong the restriction of free movement until 2013. Citizens of the two countries still need to apply for a work permit. The government justified its decision with " (...) economic, labour-market related and societal reasons. Otherwise there might be negative effects on the long-term unemployed and on unemployed persons with a low level of qualification".¹⁷ However, starting on 1 January 2012, qualified workers, seasonal workers and persons starting their professional qualification in Germany do not have to apply for a work permit anymore. Furthermore, the priority check was abolished for Bulgarians and Romanians who take up a job in a recognized apprenticeship trade.

Regarding the immigration of highly-qualified migrants from Eastern Europe, the study by Ette and Sauer (2010) comes to the conclusion that the numbers of highly-qualified migrant from the new EU-12 in the EU-15 countries are considerably lower than those of highly-qualified migrants from within the EU-15. More importantly, figures on high-skilled inflows reflect the general presence of highly-qualified workers in the EU countries: those countries, such as Great Britain, that have attracted a comparatively high amount of highly-qualified migrants from the EU-15, also have witnessed (in comparison to the other EU 15 countries) a high inflow of highly-qualified migrants from Eastern Europe.

¹⁷www.bundesregierung.de/nn_1264/Content/DE/Artikel/2011/12/2011-12-07-arbeitnehmer-freizuegigkeit-weiter-bechraenkt-fuer-rum-und-bul.html

Table 6: Immigration rates of highly qualified migrants from old and new EU-member countries by target country, average number of the years 2005-2009

	Immigration rate of graduates		Immigration rate of scientists and managers	
	EU-15	EU-12	EU-15	EU-12
Austria (AT)	2.3	0.6	1.9	0.4
Belgium (BE)	2.0	0.3	2.0	0.4
Germany (DE)	0.5	0.3	0.6	0.2
Denmark (DK)	0.3	0.1	0.5	0.1
Spain (ES)	0.7	0.7	0.7	0.1
Finland (FI)	0.1	0.0	0.2	0.0
France (FR)	0.5	0.1	0.5	0.0
Greece (GR)	0.1	0.1	0.1	0.0
Ireland (IE)	3.2	4.1	2.2	1.1
Italy (IT)	0.3	0.3	0.1	0.0
Luxembourg (LU)	35.3	5.3	28.8	4.6
Netherlands (NL)	0.4	0.1	0.4	0.1
Portugal (PT)	0.3	0.2	0.2	0.0
Sweden (SE)	0.9	0.2	0.7	0.1
Great Britain (GB)	0.7	0.5	0.8	0.3
Average	0.7	0.4	0.7	0.2

Source: European Union Labour Force Survey, own calculation, In: Ette/Sauer 2010: 20.

Ette and Sauer (2010) come to the conclusion that “Germany has lost its attractiveness for its European neighbours (...) A few years after Germany has declared itself as an immigration country, it has in fact lost its status as an immigration country” (Ette/Sauer 2010: 22/23).

4.3 The access of foreign students studying at German universities to the German labour market

Since 1990, the number of foreign students coming on a yearly basis to Germany for educational purposes has risen from 86,450 (winter term 1993/1994) to 184,960 (winter term 2010/2011) (BAMF 2010: 61). The number of those who graduate at a German university has also constantly risen and in 2009 amounted to slightly more than 27,000: 33.5 per cent of them originate from the EU, 55.4 from Europe including Turkey.

While before the immigration law of 2005 students had to leave the country upon the completion of their studies, since 2005 they may remain in Germany for one year after their graduation in order to find a job. Also, in 2007 the priority check for

foreign students was abolished. With the enforcement of the German EU Blue card proposition, foreign students will be allowed to take up any job and not only one corresponding to their qualification level.

4.4 The law for the recognition of foreign qualifications (2011)

A special evaluation of the microcensus 2008, commissioned by the federal ministry of science, found that 2.9 million of persons with a migration background in Germany had obtained their professional qualification outside Germany. However, in many cases foreign qualifications are not recognized. As reasons for this, actors such as SVR have identified the absence of bilateral agreements, bureaucratic inflexibility or competitive attitudes by professional organizations (SVR 2009: 2/3). As a result, “engineers and nuclear scientists who had worked in soviet research institutes became taxi drivers, teachers became caretakers and cleaners (...)” (SVR 2009: 3).

In 2011, the federal government introduced a new law aiming at encouraging the recognition of foreign qualifications. On 29 September 2011 the so called recognition law (“*Anerkennungsgesetz*”), containing the federal *Berufsqualifikationsfeststellungsgesetz*, the “law to evaluate the professional qualification”, was passed by the Bundestag and on 4 November it was approved by the *Bundesrat*. The law grants a legal entitlement to workers who have a qualification in one of the 350 apprenticeship professions of the dual system to have their qualification checked, and to have its equivalence to a German qualification evaluated. With the new law, migrants are legally entitled to an evaluation of their professional qualification. Within three months, a decision must be taken if the qualification is equivalent to a German one. The federal government estimates that 300,000 migrants would benefit from the possibility of having their qualification recognized.

However, the federal distribution of competences is problematic because qualification standards for many professions are regulated (differently) by the various *Länder*. Also, several actors such as the opposition parties and the SVR have criticized the new law for not offering an entitlement to further qualification.

4.5 The access of refugees to the labour market

Whereas accepted asylum-seekers and refugees recognized according to the Geneva convention have unrestricted access to the labour market, until the last reform of the migration law on 1 January 2009, tolerated refugees¹⁸ only had conditional access to the labour market, i.e. they could take up an employment only after a one-year stay in Germany. Also, their employment was subjected to the priority check. In 2009, their access to the labour market was liberalized. Since the 2009 reform, “tolerated” refugees who have lived in Germany for more than four year can take up an employment without being subjected to the priority check. According to paragraph 18 Residence Law, they can be granted a residence permit that contains a work permit. After working for two years in a job that corresponds to their professional qualification, they can take up any employment in Germany. However, studies on their labour market participation have found that in 2010, of the 61,048 tolerated refugees entitled to take up employment, only 6,627, i.e. slightly more than ten per cent were officially employed, overwhelmingly working in the low-skilled

¹⁸See footnote 13.

sector (Lukas 2011). Generally, in Germany, 16.7 per cent of Germans, but 35.2 per cent of foreigners work in the low skilled sector.

5 Developments and characteristics of German labour migration policies: assessment and discussion

5.1 Recent changes: towards a more open labour migration regime

The German management of labour migration has, in quite a short time frame, undergone significant changes. In 2005, for the first time migration channels were introduced that established labour migration to Germany not as an exception, but as a regular option. However, these channels were highly-selective and exclusive, focusing on highly-qualified migrants and setting very high access barriers for permanent labour migration to Germany. Since then, several reforms have taken place. While the 'German model' in its rhetoric still exclusively focuses on highly-qualified immigration, the actual definition of highly-qualified has considerably changed during the last years. Within the last years, the required minimum income has been lowered almost by half. Furthermore, the so-called positive list of professions established in June 2011 has introduced an element of sector-specific privilege to the German labour migration regime. The latest decision of the government (in November-December 2011) to significantly lower the required minimum income for the highly-qualified to 48,000 Euros (paragraph 19 Residence Act), and finally the decision on the introduction of the Blue Card with a required minimum income of 44,800 Euro in general and for workers in the MINT professions to 34,900 Euro, considerably liberalizes the German labour migration regime. However, the provision in the EU Blue Card directive that states that non-academic workers who have a five year professional experience equivalent to a university degree are eligible for the Blue Card, was rejected by the German government. Also, the German EU Blue Card will not contain a permanent residence right from the beginning (as its predecessor, paragraph 19 Residence law, did). Blue Card holders will for the first three years only be granted a temporary residence right. Thus, the significant liberalization of immigration channels for the highly qualified comes at the cost of denying highly qualified migrants an unconditional residence right. Most importantly, the most interesting - and to many observers surprising - new development in German labour migration policy is the introduction of the possibility to obtain a six-months visa for a job search in Germany. This introduces a skills-based element into the hitherto exclusively demand-oriented German labour migration regime.

Also, a liberalization has taken place regarding the labour market access for foreign students, and, with the introduction of the law for the recognition of foreign qualifications, an albeit "careful" step to facilitate the labour market access of the resident migrant population in Germany has been taken. Also in the field of the administration of labour migration, a trend towards a more open labour migration regime can be witnessed. The initiative by the *Normenkontrollrat* and several German federal states to "optimize" the conditions of entry will be decided upon by the second chamber of the German parliament. If the *Länder* agree to it, foreigners' offices will not be involved in the decision-making process anymore. This would mean that in the field of the administration of labour migration, a significant shift of competences, from the policy field of the interior to the labour market policy field, would take place, and elements of migration control would become less important in the management of labour migration.

In sum, the current “package” addressing labour shortages with measures related to migration consists of instruments that aim at encouraging labour migration from outside the EU, at easing the labour market access of foreign students and at increasing the labour market participation of the migrant resident population. Taking into account the recent changes, the long prevailing (and certainly accurate) notion that the German labour migration regime is particularly restrictive cannot be upheld anymore.

5.2 The negotiation of the new framework for labour migration: motors and obstacles

The new dynamic in German labour migration policies can be attributed to several reasons. An important argument of those actors with a restrictive position was the “fear” of a mass immigration after the opening towards the EU-8. While it is disputable if the horror scenarios of mass immigration from the east were actually believed by conservative elites, the issue of immigration from Eastern Europe certainly played a role in view of electoral considerations. Consequently, the change towards a less restrictive model was encouraged by the low immigration level after the establishment of the full freedom of movement for the EU-8 (interview BDA, 17/11/2011; interview BMI 2, 2/04/2012):

“The first May 2011 certainly demystified the issue (...) In fact everybody knows that Germany is not a country where qualified foreigners are queuing up and where we just have to open the borders and masses will stream in. And one has seen that now at the opening for the EU-8. The low immigration figures from the new EU member states have brought a new dynamic into the debate, making it easier for the government to adopt a more liberal approach, since fears of being “overrun” have not been justified” (interview BMAS 2, 9/02/2012).

Also, the favourable economic situation and the comparatively low unemployment figures served as a window of opportunity for change: “The labour market situation has considerably changed during the last two years. We have much less unemployed people. And the need for migration depends on the labour market” (interview CDU/CSU, 10/02/2012).

Furthermore, during the last years a consensual discourse has emerged, widely acknowledging Germany’s need for labour migration. The recent changes have been encouraged by a discursive shift in which certain rhetorical figures have become accepted as “being true”. Thus, strongly supported by business interests, it has become common knowledge that measures must be taken against the so called *Fachkräftemangel*, that Germany is part of a fierce “global competition for the brightest minds”, and that the country is lacking a “welcoming culture”. These rhetorical figures are used by almost all relevant actors, no matter what their positions on the actual instruments that should be established: “The competition for the brightest minds is intensifying (...) Especially regarding the establishment of a welcoming culture, many things need to be done. Where can the accompanying spouse work, where are schools for the children, these are important questions for migrants. (...). At the universities, for scientists, these issues are already well-taken care of, but in the economic sector, much remains to be done” (interview BMI 1, 17/11/2011). “German companies are part of a global competition for the brightest minds. (...) It is clear that we need qualified workers in order to secure our welfare in the global competition” (Bundesministerium für Arbeit und Soziales, 2010): “If you have a look at the EU, the competition for the brightest minds is in full process, and we are already lagging behind because we have lost the first immigration waves from the EU 8, others have

been faster.” (interview BDA, 17/11/2011). The Green party, too, demands a “welcoming culture instead of racism” (SZ 20.10.2010).

All actors view the establishment of a welcoming culture as a central task of future. However, views on who can and should create this welcoming culture differ. State actors regard the creation of a welcoming culture as a task of companies, whereas economic actors expect the state to contribute to a welcoming culture by passing liberal labour migration regulations, and by better communicating them.

It is interesting to note that also in conservative circles opposed to a further liberalization of labour migration, there is a certain worry that Germany is not attractive to foreign qualified workers. This leads to partly contradictory discourses, at the same time stating that Germany has one of the most liberal (albeit not properly communicated) labour migration regimes and deploring the lack of interest of foreigners to migrate to Germany (interview BMAS 1, 18/11/2011; interview CDU/CSU, 10/02/2012).

Germany has one of the most liberal labour migration regimes. It is just not communicated properly (...) The focus on this instrument [the positive list] may be a bit too demand-oriented. One also has to ask oneself who actually wants to come to Germany (...) we don't know if, even if we did not have the priority check, more people would want to come (...) language remains the biggest problem (...). We introduce restrictions in our labour migration laws, but that is always based on the hypothesis that many people actually want to come to Germany and that we only need a few. but that's only a hypothesis. Maybe we need many and only a few want to come (interview BMAS 1, 18/11/2011).

However, there appears to be a consensus, from rather restriction-oriented CDU members to the classical pro-liberalization actors such as employer associations, that because of its language Germany is not among the most attractive countries for high potentials from around the world: “We have the disadvantage that our language is not one that is taught in foreign countries, not only in countries outside the EU but also within Europe (...). You can see that also now where the economic crisis has hit Spain so hard, and the German labour market situation is good, one could think that many young well-qualified Spaniards would like to come to Germany, but it often fails because of the language skills” (interview BDA, 17/11/2011). Also the CDU/CSU views the German language as one of the biggest obstacles for highly-qualified immigration (interview CDU/CSU, 10/02/2012).

On some issues, there seems to be a consensus among actors with generally different positions that reforms are needed. On the issue of foreign students, both think tanks as the SVR, and employer associations but also the Ministry of Interior have a very similar discourse, using the same “cost-benefit argument” and arguing that it is only rational to allow foreign students to stay in Germany in order to find a job:

Our position is, if we have young people who have graduated here, who have a certain link to the country, a cultural link, too, they know the language, they have studied in our country with support of the German tax payer cost-intensively, they must be given a perspective in the country (interview BDA, 17/11/2011).

We expensively qualify young people and then we hand them over to the US or the Swiss labour market (interview SVR, 17/11/2011).

Before [*the reform on the “search year” for foreign graduates*] our philosophy was that these students were to be seen in the context of development policies, that we would qualify these young people without any costs for them and that then

they would return to their home countries. However in fact they would not return there. They would go to other industrialized countries (interview BMI 1, 17/11/2011).

Against the background of a broad and almost consensual discourse on a need for labour migration, several actors have been particularly active in advocating a more liberal labour migration regime. On the government level one of them is the Liberal Party (FDP), who has continuously demanded the lowering of the minimum income level for highly-qualified migrants and the introduction of a points-based system: "Who do we want to invite to Germany? Who can be a motor for our society? We need a welcoming culture (...), a culture that makes it easy for the highly-qualified and qualified foreign migrants to decide to come to Germany. Currently Germany is losing in the competition for the brightest minds" (Wolff, FDP, debate 21.01.2011). Maybe even more important, because they hold more power within the government, are the positions of those wings of the Christian Democratic party that both the Minister of Labour and the Minister of Science represent. Both of them have, against the opposition of their own party faction in the *Bundestag*, demanded the introduction of the points-based system and the lowering of the minimum income level. Especially the Minister of Labour Ursula von der Leyen belongs to the so called "modernizers" in the CDU who make the CDU to a certain extent attractive also to not traditionally conservative voters. She has played this role already in her former position of Minister of Family.

Regarding obstacles to change, it is certainly fair to say that the two conservative parties, the CSU and parts of the CDU, are the main obstacles to a paradigm shift and to the introduction of a full offer-based model. In the parliamentary debate on the shortage of labour and a proposal by the Green party on the introduction of a point-based system, the CDU/CSU was the only faction that opposed this proposition. While the CSU generally is opposed to a more open migration regime, the position of the CDU is characterized by cleavages between politicians of the fields of the Interior and labour market policies, and cleavages between the employee-friendly and employer-friendly wings of the CDU. Regarding the CDU/CSU faction of the Bundestag, especially the politicians of Interior have clearly positioned themselves against more than a very cautious liberalization of the labour migration regime. In the parliamentary debate on the "*Fachkräftemangel*" this was exemplified by the statement of the CDU/CSU spokesperson of the interior who claimed that Germany did not need more immigration but more integration. "The best way to address the labour shortage is the qualification and the labour market participation of the unemployed (Wolfgang Bosbach, 21.01.2011). Bosbach interpreted a points-based system as a way to encourage more immigration from development countries. Also, two other CDU politicians of the interior opposed a change in labour migration regulation:

We have three millions unemployed in Germany. That is the problem. We have 20 million unemployed in the EU take we first must take care of. Therefore one cannot just open the borders (...). The priority check is a good and important instrument" (Hans-Peter Uhl, CDU, debate 21.01.2011).

The rather restrictively oriented forces in the CDU/CSU embed their positions on labour migration into current debates on the integration of migrants in Germany. Thus the conservative position is in favour of migration from the "culturally closer" EU countries, because of the existing "integration problems" in Germany:

Why don't we qualify those who are already here, especially because with young people who share our culture, we will have much less integration problems? (Ole Schröder, secretary of state in the ministry of Interior, debate 21.01.2011).

There will be less integration problems with migrants from the EU. One aspect is the language (...) But there also is a historically grown, common culture in the EU. People from Scandinavia to Sicily are probably more similar to each other than migrants from North Africa or Asia (...) we want to make Germany more attractive for foreign graduates of German universities, because they are integrated, they speak German, and we have invested in those people (interview CDU/CSU, 10/02/2012).

In the current debate on integration, the resident migrant population is overwhelmingly depicted as a problematic group with a certain unwillingness to integrate, a low labour market performance and important language deficiencies. Against this background, embedding the issue of current labour migration into the issue on integration serves to strengthen a restrictive position on labour migration policies.

Among the interlocutors of this report who are in favour of a further opening of the labour migration regime there is a consensus that the CSU, conservative politicians of the field of the Interior and the Ministry of Interior are the main obstacles to a liberalization of labour migration policies (interview SVR, 17/11/2011): "It is fatal that the responsibility for these issues lies with the Ministry of the Interior" (interview TS, 9/02/2012). Also, there is the view that at the civil servant level in the Ministry conservative positions dominate, sometimes being more conservative than the minister himself (interview TS, 9/02/2012; interview TAZ, 10/02/2012; interview FDP, 22/02/2012).

Generally, actors opposed to a significant change in labour migration policies argue that the debate about existing and coming labour shortages is to some extent dramatized, and pushed by the employer associations. Thus the CDU/CSU *Bundestag* faction views the shortage as limited to specific sectors and regions (interview CDU/CSU, 10/02/2012). It also stresses that labour migration is only one, and a secondary measure against the shortage of labour (ibid.). A common rhetorical element is the defence of the status quo by stating that the existing labour migration regulations are good and effective, but not well-known by the public: "Germany is a very immigration-friendly country, with very liberal regulations, that unfortunately are not properly communicated (...) every university graduate from the whole world in principle has access to the German labour market" (interview BMAS 1). The same discourse is to be found in the CDU/CSU faction:

Already before the Blue Card, Germany had a very liberal labour migration policy. This is just not communicated. Every university graduate can take up a job in Germany. Yes, there is the priority check, but in over ninety per cent of the cases its result is positive. And the fact that there are rejections only illustrates that it does make sense to have this priority check (interview CDU/CSU, 10/02/2012).

The settlement permit is linked to a number of important privileges, and that is why a high minimum income level is justified (interview BMI 1, 17/11/2011).

The central element of the restrictionist attitude is summarized in the following quotation:

The permanent settlement permit means that if the day after you got it you become unemployed, you can work as a taxi driver. Then you can kill the person who gave it to you, and you can still stay. It is as if you meet somebody and you

marry him on the same day, in a country that does not have a divorce law. I would not do that (interview BMAS 1, 18/11/2011).

Also, it is interesting to note that the recent debate has largely concentrated on a labour migration steering instrument that plays a very limited role for the actual labour immigration. There is a 'mismatch' between the public debate and the actual impact of §19 Residence Act. The minimum income has become the symbol of labour migration policy in the political debate. The focus and heated discussion on a lowering of required minimum income obscures the fact that the immigration numbers according to paragraph 19 are extremely low; as a migration channel, the highly mediated § 19 is negligible.

The most far-reaching recent change, the Blue Card reform, can be viewed as a compromise between the positions of the FDP and the modernizer-wing of the CDU on the one side and the positions of CDU politicians of the Interior and above all the Bavarian CSU on the other side. Both pro-liberalization actors and political observers share the views that the CSU and the CDU are the main obstacles to the introduction of an offer-oriented system (SVR 17.11.2011; SPD 10.02.2012; TS 09.02.2012; taz10.02.2012): "A points-based system is just not feasible with our current coalition partner" (FDP 22.02.2012). However, it must be noted that with the new regulation regarding the possibility of entering Germany with a six month visa in order to find a job, the demands of those actors favouring a points-based system are at least partly met.

Also, it is not clear which model the Social-Democratic party would favour if it were in office. The SPD is opposed to the planned lowering of the minimum income in the government's Blue Card legislative project, especially against the lowering of the minimum income to 34,900 Euro for professions with labour shortages:

I would expect the employers to concentrate more on using the pool of national workers that already exists. (...) Of course professions with a labour shortage exist, but the position of the SPD faction is, with view to the national population, to first use the instruments of the residence law that already exist. We should shorten the application procedure and flexibilize the priority check ("*Genehmigungsfiktion*") (SPD 10.02.2012).

It is interesting to note that this is exactly is the same position that was formulated in 2010 by the Bundestag faction of the CDU/CSU and its spokesperson of the Interior (SZ 21.10.2010). Also, the SPD is reluctant to introduce a new labour migration steering instrument before it is clear how the posting of workers directive will be used, and whether it will be instrumentalized to circumvent existing labour agreements (interview SPD, 10/02/2012). The SPD seems to be oscillating between a progressive stance and the need to hold up traditional social-democratic positions and to protect the interests of German workers and employees. While the introduction of Blue Card was welcomed by employer associations, it was criticized by the trade unions, arguing that the new law was too limited, and demanding the introduction of a points-based system. (DGB 07.12.2011). Not surprisingly, the SPD positions parallels that of the trade unions: While the party officially is in favour of the introduction of a points-based system, the lowering of the minimum income for the highly-qualified is rhetorically qualified as a "single measure" that is not comprehensive enough (interview SPD, 10/02/2012), and a liberalization of labour migration channels is thus factually rejected.

6 Conclusion: An ambivalent opening: The characteristics of the German model

During the year 2011, the German model of labour migration has undergone significant changes. The abolishment of the priority check for certain professions and income groups is an important step towards a more open system. If the Blue card legislative project passes the German *Bundestag* (probably in May 2012), migrants with a university degree earning more than 44,800 Euro and MINT professionals earning more than 34,900 Euro will be able to work in Germany without any further prerequisites. These new and considerably lowered required minimum income requirements significantly increase the possibility of labour migration to Germany. In the German case, “highly-qualified” now actually means migrants with a salary that is only slightly higher than the national average gross salary. However, this liberalization comes at a price. Under the predecessor of the Blue card, paragraph 19 Residence law, labour migrants obtained a permanent settlement permit. The Blue Card only entails a temporary residence permit that can be transformed into a permanent residence permit after three years; if the migrant has very good German language skills, this period can be shortened to two years. Apparently, the trend towards an exclusionist culturalization of migration policy, as it can be witnessed in citizenship law and in the legal provisions on family reunification, does not stop at labour migration regulations for the highly-qualified – although it is highly disputable if an IT expert’s, scientist’s or top manager’s professional qualities depend on his or her language skills, or if for this group the kind of integration problems can be anticipated that make such an incentive to learn the language necessary.

The conditional elements that have been introduced “through the backdoor” into the at first sight far-reaching reform of the German labour migration framework (the sunset clause on the job search visa, the temporary character of the Blue Card residence permit, language requirements) must be interpreted as a concession to the (restrictive) position of the CSU and parts of the CDU. Already, the CSU has protested against the plans for the EU Blue card. In her reaction to the presentation of the Blue Card decision by the federal government, the CSU Bavarian minister of labour and social affairs has qualified the Blue Card legislative project as a “wrong signal” (Der Stern 01.04.2012).¹⁹

Still, the Blue Card legislative project introduces a skills-based, offer-oriented labour migration instrument into the up until now exclusively demand-oriented German legal framework. It is part of a new dynamic in the field of labour migration and of a larger process of opening Germany for academic labour migration, by reforming both the law and the administration of labour migration. Despite some restrictionist rhetoric, worries that, while Germany is debating about opening its door a little further, the needed migrants are settling in the USA, Canada or Switzerland, seem to be shared by many conservatives, left-winged and liberal actors alike, and have ultimately led to a significant revision of the existing labour migration framework. An accurate evaluation of the current state of German labour migration management is that the German labour migration regime is not restrictive anymore, and that its steering mechanisms are similar to those in other European countries (interview Kolb). It will be interesting to see how Germany will continue to negotiate its needs for labour migration and its traditionally cautious approach to immigration in the future.

¹⁹ <http://www.stern.de/news2/aktuell/csu-attackiert-regierungsbeschluss-zur-einfuehrung-einer-bluecard-1807991.html>

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Annex: List of Interviewees

Number	Organisation/Institution	Date	Quoted as
1	CDU/CSU faction of the <i>Bundestag</i> , 10.02.2012	10.02.2012	Interview CDU/CSU
2	SPD faction of the <i>Bundestag</i>	10.02.2012	Interview SPD
3	Federal Employer Association (BDA)	17.11.2011	Interview BDA
4	Chamber of Commerce Stuttgart (IHK Stuttgart)	13.01.2012	Interview IHK
5	Liberal Party (FDP) in the European Parliament	22.02.2012	Interview FDP
6	Sachverständigenrat Migration und Integration (SVR)	17.11.2011	Interview SVR
7	Bundesministerium des Innern (BMI)	17.11.2011	Interview BMI 1
8	BMAS (BMAS 1).	18.11.2011	Interview BMAS 1
9	BMAS (BMAS 2).	09.02.2012	Interview BMAS 2
10	Die tageszeitung	10.02.2012	Interview TAZ
11	Der Tagesspiegel	09.02.2012	Interview TS
12	Dr. Holger Kolb	21.02.2012	Interview Kolb
13	Bundesministerium des Innern (BMI)	02.04.2012	Interview BMI 2