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**LABOUR IMMIGRATION POLICIES: LESSONS
FROM THE BRITISH AND FRENCH CASES**

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April 2014

Introduction

One of the main problems with immigration policies in contemporary Europe is that the policies rarely reflect the rhetoric of policymakers. Particularly, though not exclusively, during economic downturns, politicians often make use of hostile language regarding immigration in a play to attract disgruntled voters. However, given that, as we discuss below, labour immigration is a crucial part of the human resource strategies of employers in various sectors of the economy, policymakers are generally not able to restrict it as much as their rhetoric implies. This discursive gap between rhetoric and policy is problematic on two counts. First, it can make policymakers appear inefficient and second, it foments domestic discontent with foreign workers, resulting in intra-ethnic conflict, bullying, harassment and racist attacks. Responsible and intelligent policymakers ought to desist from using anti-immigration rhetoric, even when they are attempting to reduce levels of immigration. Reducing the use of the ‘immigrant card’ by political representatives, i.e. depoliticising immigration, is an urgent first step in reforming labour immigration governance systems across most of Western Europe. In an ideal world, it would be illegal for politicians to use language hostile to foreigners. However, this rhetorical attack on foreigners is not the only problem within labour immigration governance systems in Europe. In fact, many practical dilemmas exist, which can best be dealt with by raising levels of transparency, efficiency and fairness, both in immigration procedural decisions and in broad policy orientations.

In this short policy brief I focus on practical policy problems within labour immigration governance systems, using the cases of the UK and France to illustrate the issues at hand. In order to measure the effectiveness of governance systems, we can attempt to assess whether they are responding to the needs of clients which in the case of labour immigration refers to employers, migrants and the resident labour force. In this arena, different clients’ interests are often in complete opposition, for example employers tend to prefer labour immigration liberalisation while resident workers prefer restricted labour immigration policies. In this sense, responding to clients’ needs in terms of labour immigration is always a delicate balancing act. In this policy brief, I discuss two facets of the question of assessing needs for foreign workers, a key policy issue for labour immigration policymakers: 1) Policies which aim to incentivise the employment of resident workers over foreign workers not yet resident in the country and 2) the utility and feasibility of managed labour immigration, particularly of low-skilled workers, versus the ‘unmanaged’ employment of non-labour migrants.

1. Brief summary of the UK regime

The UK regime aims to bring in foreign skills from outside of the EU, some of which are lacking in the UK, in order to ensure economic growth and international competitiveness.

More particularly, UK governments want to facilitate employers experiencing skills shortages and ensure that the UK is an attractive location for foreign investors by means of having a relatively open policy on skilled worker immigration. While UK labour immigration policy has traditionally been biased towards skilled foreign workers, this basic aim has become more emphasised over the past fifteen years and this position has not wavered greatly during the current economic downturn.

Foreign workers have also long found employment in low-skilled occupations in the UK. However, apart from within the framework of a few quota-based seasonal worker schemes in the agriculture, hospitality and food processing sectors, their entry has not mainly been through formal channels for labour immigration. Indeed, in the post-war period, migrants from the Commonwealth, coming to the UK on the basis of expansive citizenship rights, filled labour (and skills) shortages. Irish migrants have benefitted from free movement, just as nationals of the EU have since the UK acceded to the EEC in 1973. Indeed, the massive movement of central and eastern European nationals to the UK after the 2004 enlargement and their employment in low-skilled work is the most recent example of the sourcing of workers for low-skilled jobs outside the formal labour immigration regime. Other examples of non-labour migrants who have traditionally worked in the UK low-skilled labour market are foreign students and the spouses/partners of labour migrants.

The UK regime is further defined by the following features: it is demand-driven; it is increasingly based on objective criteria; and it uses scientific evidence. Much has been made of the introduction of 'supply-side' schemes within the UK labour migration regime since the early 2000s. In supply-side schemes such as the Highly Skilled Migration Scheme (2002-8) and Tier 1 of the PBS, migrants enter the UK based on their attributes (skills, age etc.) rather than a specific job offer, based on the assumption that such talented individuals will find employment and will contribute to the UK economy. However, these schemes appear in retrospect to be largely pilot projects, which have failed the test of time. In the context of the international economic crisis and the Coalition government's aim of reducing inflows of migrants, Tier 1 general has been closed and a new extremely limited route, 'exceptional talent', opened, which only provided 1,000 entries for 2011-12.

The UK labour immigration regime thus remains essentially a demand-led one, in which the primary criterion for entry is a job offer. Indeed, it could be said that the system is best described as employer-led, as employer demands appear to hold more weight than local labour market conditions. The most used route of the system is the Intra- Company Transfer (ICT) route in Tier 2; this route is the only one, which does not necessitate an assessment of whether there are suitable candidates in the resident labour force. The shortage occupation route is the least used route of Tier 2 (about 8 per cent of inflows).

The Points Based System (PBS), introduced between 2008-9, represents an attempt to objectify decisions on the entry of non-EU foreign workers. The PBS is made up of 5

Tiers, four of which are for labour immigrants. Tier 1 is a supply-side channel for the highly skilled; Tier two, the most used channel of entry is for skilled workers with a job offer; Tier 3, which is currently suspended, is for low-skilled temporary workers; and Tier 5 is for youth mobility and temporary workers. Migrant workers gain entry if they reach the required threshold of points, which are based on various criteria, depending on the particular route through which the migrant is applying. For example, in the new Tier 2 general, prospective immigrants gain points for a 'graduate' job offer with a licensed 'sponsor' (employer), prospective earnings, English language ability and maintenance funds.

Evidence-based policy has become the byword of UK policymaking since Labour came into office in 1997. Reforms to labour immigration policy, which have been both dramatic and evolutionary, over the past fifteen years, have been based on publicly available research, either carried out by or commissioned by government. The historic opening to labour immigration in the early 2000s, the creation of the PBS and the current re-introduction of restrictions on immigration are all ostensibly based on publicly available scientific evidence. The establishment of the MAC in late 2007 is key to this discussion of the growing importance of evidence-based policy. In general, we can say that the MAC is the 'brain' behind labour immigration policy. In a public process the MAC, which is a small group of economists, responds to government questions regarding how to regulate immigration and intra-EU mobility and most of their recommendations are translated into policy.

2. Brief summary of the French regime

France is an historic country of labour immigration, which is struggling with a plethora of unresolved contradictions and practical problems relating to the incorporation of foreigners and their descendants, while attempting to ensure that the country is moving forward into the 'global knowledge economy' along with its neighbouring competitors. France has had a longstanding unemployment rate of about 10% of the resident working age population, with a particularly large proportion of non-European origins. The French economy is home to very diverse realities including low-skilled and high-skilled industry and services. The latter require highly skilled workers, and immersed in the rhetoric of global human capital competitiveness, they request access to skilled workers of any nationality.

How does the French labour immigration regime respond to this complex reality? The French regime can be described as a demand-led system responding to the needs of a minority of French employers. About 17,000 people 'entered' France via labour immigration channels in 2010 out of a total of nearly 200,000 new immigrants. The system's clients are in the main large international companies and to a lesser extent, farmers. The former mainly request work permits for foreign graduates of French universities – already resident in France - while the latter make use of seasonal work permit

provisions. The significance of students as a source of skills in France was demonstrated by the significant mobilization around the restrictions placed on foreign graduates' access to the labour market in May 2011.

This is not to say that immigration is of little relevance to the French labour market. Indeed, in 2003, about 15% of new entries to the French labour market were foreign workers and since then, levels of immigration have risen considerably. This conundrum is explained by the fact that the vast majority of 'new' migrants participating in the French labour market are non-labour immigrants; largely those entering France on the basis of family relationships, but also students working part-time and workers from new EU member states whose access to the labour market was until recently restricted by transitional arrangements. Furthermore, about 30,000 irregular migrant workers are regularised each year. The majority of immigrants – legally resident and undocumented – work in low-skilled occupations in the services and construction sectors.

The fact that official labour immigration represents a small slice of immigration in general -and of de facto labour immigration - was seized upon by the previous President of the Republic, Nicholas Sarkozy, first in his role as Minister of the Interior in 2003. He argued that in order to better serve the French economy and reduce problems of social integration, the balance between labour and non-labour migrant inflows should be improved. While attempts had been made to facilitate skilled labour immigration by the previous centre-left government in office between 1997 and 2002, Sarkozy put labour immigration firmly and openly on the agenda for the first time in decades.

However, his so-called 'immigration choisie' or selected immigration policy, introduced in 2003, cannot be said to have brought about significant change to the labour immigration regime during the period 2003-2010. While family migration channels were restricted to an extent, the new entry channels introduced for skilled labour migrants – in particular the shortage occupation lists, intra-company transfer permits and supply-side Skills and Talents permit - were of marginal impact in terms of numbers receiving work permits each year. The main change in terms of labour immigration over the past decade was an increase in numbers issued with 'employee' and 'temporary worker' permits – the traditional mode of entry for (non-seasonal) foreign workers. As the procedure for issuing these permits was not reformed during the immigration choisie regime, it appears that the increase in permits was more a reflection of relatively good economic conditions and perhaps – though we have no evidence of this - a less rigid implementation of the Resident Labour Market Test at the local level.

3. Migrant workers vs. resident workers: case of the UK

During economic downturns, governments tend to aim to reduce levels of immigration. However, at the same time, governments must ensure that employers get the workers they

need and thus they do not want to cut off the supply of foreign workers too drastically. Indeed, the conflicting priorities of reducing levels of immigration and ensuring a labour supply for employers make for complex policy-making.

In terms of safeguarding the interests of one client group, the resident labour force, governments are generally supposed to ensure that the latter have a chance to take up the available jobs before employers request non-EU workers. One of the main procedures used in Europe is the Resident Labour Market Test (RLMT), whereby employers have to demonstrate to the state department responsible for issuing work permits for non-EU workers that the vacancy could not be filled by a resident worker. The RLMT is often a publicly certified process with clear criteria and should be perceived as efficient, fair and transparent by all involved. In some countries RLMTs are perceived to be simply a formality rather than a hurdle to bringing in foreign workers. In other states the RLMT is considered to be too opaque and difficult to pass, thus representing a disincentive to request foreign workers. Indeed, the RLMT is generally the most criticised procedure of the French labour immigration regime. Local officials are argued to have too much discretion in decision-making and many employers do not apply for work permits for foreign workers based on the view that the RLMT is difficult to pass. We find the opposite concerns in the UK.

The gap between the employment rate of the low qualified and the average working age population has continued to widen in the UK; only 46 per cent of those without qualifications are in work compared to 86 per cent of people with a degree or equivalent. There is no evidence that there is any relationship between non-EU labour immigration and the employment rate of low skilled workers, indeed, most non-EU labour migrants are employed in skilled jobs and thus would not be directly competing with low qualified resident workers. Nevertheless, the PBS system imposes relatively weak employer obligations in terms of attempts to fill vacancies with resident labour before requesting workers from outside of the EU. Furthermore, it is notable that requirements for the RLMT and Intra Company Transfer (ICT) routes were relaxed with the establishment of the PBS and have not been made more stringent by the current Coalition government, despite its restrictive rhetoric.

Regarding the RLMT, employers are expected to attest that they have advertised the job in the UK for the required amount of time (currently four weeks) in two outlets, JobsCentrePlus and a sector outlet. However, there is no public certification of the process or pre-admission checks and post-admission checks on employers are infrequent. In 2009, the MAC asserted that there might be a case for introducing certification; however, governments have not done so due to the cost it would entail and a political antipathy towards red tape and regulation.

The ICT route, through which about 70 per cent of Tier 2 applications are made, does not

require any form of RLMT. The size of this route can partly be explained by the fact that the UK is the location of a large number of multinational companies; in fact, it is the second largest destination for foreign direct investment after the US. The MAC found that it was, in the main, more expensive to bring in people via the ICT route than hire a local worker. However in 2011, the Public Accounts Committee expressed concern that ICT migrants may be displacing resident workers with IT skills; also because the number was not capped by the government when the cap on Tier 2 labour immigrants was introduced in 2011. In fact, it appears that in this area the government has been responsive to business due to concerns that if policy becomes more restrictive, large multinationals might leave the UK.

The fact that the RLMT in the UK is comparatively easy to pass cannot be said to work in the favour of resident workers, though whether and how much it actually disfavours them is difficult to measure. Public certification of the test would arguably better ensure that resident workers are given the opportunity to apply for jobs before they are offered to workers based abroad. However, it would also probably lengthen the recruitment process, which would be unpopular amongst employers. There is no easy policy prescription here. The introduction of a cap on Tier 2 labour immigrants was politically motivated, which is best illustrated by the exclusion of the largest group of labour immigrants, ICTs, from the cap. The rhetorical emphasis placed on the cap is not reflected in its effect on immigrant numbers. It would be more transparent if the government made it clear that the cap is only on certain categories of labour immigrants within Tier 2. The government could further explain that those categories, which are not restricted by the cap, are deemed especially important for the British economy.

As numbers of migrant workers grew over the past decade, concern about a reduction in opportunities for the resident labour force led to a political emphasis on producing the skills needed by employers within the UK rather than importing them. The restrictions imposed on recruiting non-EU foreign workers since 2010 have given further impulse to efforts to produce skills domestically. Other alternatives, in particular raising wages and improving working conditions in order to attract the resident workforce to sectors such as hospitality and social care, have been less emphasised in the public debate.

In producing the shortage occupation list the MAC is charged with ascertaining when it is 'sensible' to open up to migrant workers. The approach to the concept of 'sensible' is to consider each occupation with reference to whether employers have explored feasible alternatives to employing immigrants such as training resident workers, raising wages and working conditions or changing production processes. It is underlined that not all options are feasible at all times and that the economic and regulatory environment can make certain responses to labour shortages difficult; for example public budgets can limit wage increases. However, despite this in-depth labour market analysis, only a handful of occupations are kept off the list if they have already been deemed skilled and in shortage.

New qualifications were designed for ethnic catering at the end of Labour's period in office in order to attempt to fill chef skill shortages – which accounted for a large proportion of inflows through the shortage occupation route - with resident workers. This policy has been further strengthened since all but the most highly qualified chefs have been taken off the shortage list in 2011.

The policy of upskilling the resident population in order to increase the UK's international human capital competitiveness and reduce dependency on foreign workers is likely to remain on the agenda during the economic recovery. The UK has traditionally under-invested in education and training compared to other Western European economies and the current relative economic strength of Germany, a country with a strong tradition of vocational training, will undoubtedly reinforce the competitive motivation behind UK skills policy. Complete self-sufficiency in skills is of course unlikely, however, the UK has succeeded in reducing demand for some non-EEA skills, for example, doctors and nurses. This policy has been understandably unpopular in countries, such as India, which have a history of exporting skills to the UK. However, the UK has been partly motivated to reduce numbers of highly skilled labour migrants due to concern over brain drain and its impact on developing countries. Of particular concern has been the mass emigration of sub-Saharan African health workers, which has led to the introduction of 'ethical codes of practice' for health worker recruitment.

The current Coalition government has put more emphasis on encouraging the recruitment of UK workers in low-skilled/status occupations. For example, pilot schemes have been introduced in the agricultural sector; training in agricultural techniques is provided and UK job seekers are persuaded to take up low skilled jobs as well. These pilot schemes were introduced in anticipation of the closing of the Seasonal Agricultural Workers Scheme¹ on the 31st of December 2013. While Romanians and Bulgarians can still work in agriculture, the British government would like to encourage more UK residents to work in this sector. Furthermore, more generally, the Department of Work and Pensions aims to encourage UK people to take up jobs in sectors such as care, catering and agriculture, where there are large concentrations of migrant workers. The government maintains that employers should be able to get low skilled workers from within the resident labour market, there should be more training of resident workers and migrants should be the 'last port of call'.

However, it can be difficult to get employers to take the current policy of substituting immigrants with resident workers seriously. Employers argue that unlike migrant workers, British school leavers do not have the required skills and are unreliable, for example, they change jobs all the time. Furthermore, although there has been an increasing governmental emphasis on training up resident workers in skills which are in shortage, thereby reducing demand for migrant workers, this is a relatively marginal policy. Most of the government

¹ The Seasonal Agricultural Workers Scheme (SAWS) allowed fruit and vegetable growers to employ migrant workers (latterly from Bulgaria and Romania) as seasonal workers for up to six months at a time.

attempts to reduce immigration have been carried out by directly restricting inward migration rather than by attempting to impact demand for migrant workers via the training system.

4. Managed labour immigration vs. non-labour migrant workers: case of France

The previous French centre-right governments in office between 2002 and 2012 aimed to increase levels of labour immigration at the expense of non-labour immigration. In 2007, Sarkozy declared the aim was for labour immigration to represent 50% of total inflows. The other qualitative objective was to facilitate the immigration of labour and skills required by the French economy.

The quantitative objective (of 50% labour immigration and 50% non-labour immigration) was not reached by the end of Sarkozy's term as President of the Republic in 2012. Levels of non-EU economic immigration have fluctuated between 12,126 and 21,792 between 2006 and 2012 and economic immigration represented less than 9% of immigration flows in 2012. In 2010, 17,819 residence permits were issued for economic purposes out of a total of 188,387 residence permits. That same year, 82,235 residence permits were issued for family motives. The inherent problem in Sarkozy's policy was that though labour immigration can be increased, it is not possible to significantly reduce levels of family immigration, as the latter is a non-discretionary, rights-based movement.

'Immigration Choisie' originated from two main concerns: labour shortages and the size of family immigration (and its conflation with integration problems). However, the basic idea that family migrants and other non-labour migrants need to be substituted with labour immigrants as the latter better serve France's economic needs is arguably flawed. While family migrants and other non-labour migrants do not perhaps respond to demand for highly skilled foreign workers, they appear to fill many gaps in the labour market for low-skilled workers. For example, in 2006, the five occupations in which the employment of foreign workers was most significant were skilled manual workers in large-scale construction, domestic workers, unskilled metal workers, skilled manual workers in public works and concrete, and guards.

French employers are not clamouring for more workers, which can be taken to mean that the economy does not 'need' much larger supplies of foreign workers. France has smaller numbers of multinational corporations than the UK for example and they tend to recruit from within Europe. This reduces demand for ICTs, which are the largest category of labour migrants recruited in the UK. Furthermore, levels of migration from the Eastern European EU member states have remained insignificant, with inflows of less than 7,000 workers per year between 2006 and 2010.

Indeed, French firms do not appear to have a great appetite for skilled migrant workers.

Just over 18,000 individuals were issued with first permits for economic purposes in 2011 and not all of them were highly skilled. It appears that the French education and training system is providing the skills required by French firms. Employers of small and medium sized firms are interested in having quick access to the skills they need, at a good price and are often cautious about hiring foreigners. The problem of qualifications recognition is also cited as reducing employers' interest in hiring skilled foreign workers.

However, there are (at least) two schools of thought on labour needs. There is the school which tends to see the supply of jobs as stable and limited and which sees labour immigration as a way of filling gaps when there are insufficient numbers of resident workers with the requisite skills. The other school of thought argues that increasing the labour supply can have knock-on effects in terms of employment creation. It is also argued that if there were more possibilities to recruit abroad, French employers would probably do so.

Indeed, employers generally support liberalisation of the labour immigration regime in a discrete manner. There is an overwhelming preference for a more open system amongst employers and trade unions. However, there is concern that employers will be accused of being lax about immigration if they publicly demand an opening.

The French labour immigration regime is one based on in-country recruitment. Indeed, in 2012 half of the non-EU citizens issued with permits for professional motives were already present in France either as students or irregular migrants. The French system is usefully compared with that of the UK, where a majority are recruited when they are still abroad. What explains this difference and what does this tell us about the feasibility of 'immigration choisie' or 'managed migration' in general? The most important factors are the skills of the migrant workers and the openness of the labour market to skills acquired abroad, as well as the size and organisation of firms.

It is clearly easier to manage skilled labour immigration as opposed to low-skilled labour immigration from abroad as the former workers can be recruited based on their CVs, without face-to-face contact. Low-skilled workers, for example building labourers or cleaners, are unlikely to be recruited from abroad based on analysis of their qualifications and work experience. Furthermore, employers prefer to hire domestic care workers whom they have met face to face, due to the close contact and trust involved in the job. As most of the demand for migrant labour in France appears to be in low-skilled occupations and the majority of these workers are family migrants and thus are working in an unmanaged, unregulated manner, the question must be posed: is it possible or beneficial to try to manage these inflows?

Even skilled jobs are more easily filled if the employer has had face-to-face contact with a candidate and if the candidate speaks the language and above all, has been trained in the country where the job is. The latter is particularly the case in economies like France and

Germany, where there is relative closure to vocational education and training acquired outside of their national systems. This explains why the majority of migrants issued with work permits are recent graduates from French Universities or were at least resident in France for some time.

The UK case differs as there are higher numbers of skilled migrants entering each year. The UK's liberal market economy has a more open recruitment culture, which puts more emphasis on general rather than specific skills, resulting in shortages of workers with specific vocational skills. Furthermore, the majority of those recruited abroad are ICTs, which is a reflection of the larger number of multinational companies based in the UK. However, as noted above, UK labour migration policy has traditionally sourced low-skilled foreign workers outside of the formal labour migration policy arena. In fact, like France today, since the 1960s, the UK's low skilled foreign labour needs have largely been met by non-labour immigrants; Irish and EU nationals, as well as non-EU family, student and undocumented immigrants.

More in general, the low-skilled occupations in which migrant workers are employed across Western Europe today are more likely to be in small- and medium-sized firms, unlike in the post-war period of mass recruitment when migrants often worked in large-scale industry. This makes organised recruitment from abroad far more difficult today. The firms employing migrants are small and less organised in terms of forecasting labour needs as well as working in unison with other firms in order to manage the recruitment of migrants from another country. It is simpler to hire somebody already present in the country, who can be interviewed face-to-face. In France, nearly all foreign workers who are recruited abroad, including seasonal workers, are recruited on an individual nominative basis; most employers already know the worker they are recruiting. Anonymous and group recruitments are a rarity.

Despite demand for low-skilled foreign workers in France, no solution has been found since the closure to labour immigration in 1974. However, part of the French economy's low-skilled labour needs is satisfied by family migrants and other unregulated indirect labour migrants. Indeed, these indirect labour migrants have provided this labour and have saved governments from the political risks of opening up to labour migrants again.