



Legal migration for work and training:

Mobility options to Europe for those not in need of protection



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At a glance

- Despite the prevailing rhetoric on migration management, policy initiatives to expand legal pathways for work and training within the European Union (EU) as a means to address mixed migration flows have so far not gained significant momentum.
- The potential for legal migration channels to reduce irregular flows should not be overestimated. In addition to migration management goals, the EU and its Member States should consider their existing and future legal migration policies in the light of labour market, foreign policy and development objectives.
- All five EU Member States investigated for this study (France, Germany, Italy, Spain, Sweden) provide legal channels that allow for the admission of low- and middle-skilled foreign workers from third countries although very few channels explicitly target these skills categories – with the important exception of seasonal work.
- Member States remain the central gatekeepers of labour migration into the EU. The study at hand examines a variety of domestic steering mechanisms, which each come with certain advantages and drawbacks. Liberal approaches rely on employer sponsorship and allow the latter to quickly reply to demands, but risk fuelling competition with the domestic workforce or lowering labour market standards. State-run steering tools allow for greater control, but they tend to be slow and resource intensive and to fall short of actual needs.
- Meanwhile, bilateralism is in vogue. Country-specific programmes allow governments to pursue foreign policy and development objectives alongside meeting labour needs. However, targeting the right skills sectors and doing so at a sufficient scale to incentivise cooperation on migration management is highly complex and costly – and it requires employers' buy-in.
- For a more effective outcome, policymakers need to take steps at the domestic level to better assess labour market needs, build the infrastructure to allow employers to hire workers quickly and improve protection for labour migrants.
- When it comes to third countries, the EU and Member State governments should support destination-country employers' capacities for recruitment and matching, further explore schemes for both temporary work and vocational education and training placements, and find ways to share costs sustainably.



Executive summary

While policymakers have long viewed legal migration policies as a way to address labour market needs and demographic pressures, these are now increasingly framed as a way to tackle irregular migration.

The idea is to offer legal alternatives to those who would otherwise migrate irregularly and sometimes apply for asylum even though they do not qualify for protection. As a result, expanding legal migration pathways is a key component of current efforts to address mixed migration flows to Europe. The EU has called on Member States to expand legal migration pathways and has pledged more legal migration opportunities for key countries of origin or transit. Even as the sense of crisis dissipates and the number of irregular arrivals and asylum applications falls to pre-2014 levels, this link between expanding legal migration pathways and a reduction in migration flows is still being made – despite limited evidence to support the connection.

Nevertheless, policymakers have struggled to deliver on this promise of expanding legal migration options, for a number of reasons. While the EU has offered the “carrot” of more legal migration opportunities in its negotiations with third countries on migration management and returns, the leeway for policy action on legal migration has shrunk in the last few years, as the public in many European countries have become increasingly sceptical about immigration and its effects. Another challenge arises from the mismatch between Member States’ legal migration policies, which tend to prioritise admitting highly skilled workers, and the profile of those on the move, many of whom may lack the necessary secondary or post-secondary qualifications.

Assessing what policies are currently in place to admit low- and middle-skilled migrants not in need of protection and how well they are working is thus a first step for policymakers who wish to explore options for expanding legal migration pathways to Europe. This study explores EU and national policies relating to this population and their implementation to date, drawing on case studies from France, Germany, Italy, Spain and Sweden – all countries that have received significant mixed migration flows while contin-

uing to rely on foreign workers to meet certain labour and skills needs.

Employer sponsorship plays a key role in the admission systems of these five Member States, although each country differs with regard to how active a role their government plays in steering legal migration.

Sweden allows employers to identify and select the workers they need, with the government setting requirements in terms of salaries and working conditions but otherwise giving limited input on how employers recruit workers. The other four countries have opted for their governments to take a more hands-on approach, using a combination of labour market tests, shortage occupation lists and quotas to shape the volume and profile of labour migrants. The five countries also differ in terms of the role they afford to third countries. While Sweden has opted for a country-blind approach, the other countries offer some degree of preferential treatment to certain third countries, either through bilateral agreements, time-bound projects offering work placements or training, or a country-specific channel such as Germany’s “Western Balkans Regulation”. Finally, while all five offer channels for tertiary-level education, Germany is distinct in also providing an explicit channel for vocational training, which will be complemented by a job search visa once the new Skilled Worker Immigration Act enters into force.

Each country’s approach to designing and implementing its legal migration policies offers its own advantages and drawbacks.

Sweden’s policy enables employers to swiftly assess and select the workers they need, but it leaves the government with limited influence over the volume or profile of labour migrants, including the ability to determine whether employer demand reflects genuine shortages in these occupations (or simply demand for cheap labour). In comparison, the more hands-on approach applied in France, Germany, Italy and Spain provides a greater degree of control over the volume and profile of legal migrants, but the policy tools applied can be resource intensive, requiring regular updates to remain relevant, and are time-consuming to administer.

Country-specific approaches such as bilateral agreements or programmes allow governments to pursue foreign policy and development objectives alongside meeting labour or skills needs, and they can be used to incentivise cooperation on migration management or returns. But privileging certain countries adds complexity to migration policies for what are ultimately often small numbers of people moving compared to those using regular admission channels – and placing constraints on the supply of workers may not be the most effective way to meet labour or skills needs.

In a context where policy action on migration can be increasingly fraught, this study suggests that policymakers looking to expand legal migration pathways do not need to reinvent the wheel – and can instead make real progress by building on existing initiatives for admitting low- and middle-skilled migrants. The following steps are suggested to allow policymakers to successfully implement selection policies in relation to low- and middle-skilled migrants:

Build capacity to assess labour market needs according to skills level and sector-specific shortcomings.

Assessing and forecasting labour market needs is crucial when it comes to implementing selection systems, but it remains a challenging undertaking, with countries lacking comprehensive data on job vacancies and assessments quickly going out of date. Governments can build this capacity by sharing best practices on methodologies and data sources and by prioritising consultations with other stakeholders, whether by creating advisory bodies or more informal methods of encouraging local input.

Develop the infrastructure to allow employers to hire workers quickly and secure a proper match.

Delays in getting approval to hire foreign workers can deter employers and may even encourage them to recruit from the informal economy instead. To support selection systems and help them produce timely results, governments should identify and tackle bottlenecks in the system and explore ways to speed up selection, such as digitising applications, accelerating pathways for workers in shortage occupations or certifying trusted employers. Governments should also commit to

regularly update their selection policies in line with changing labour market needs.

Improve protections for low- and middle-skilled labour migrants,

with a particular focus on those working in seasonal roles who are especially vulnerable to exploitation. Governments should consider allowing migrant workers to switch employers under certain conditions, invest in workplace inspections and explore ways to work with civil society actors on monitoring and providing resources to workers. Alongside punitive measures for employers that break the rules, governments can also explore options for “rewarding” compliance through certification or faster recruitment processes.

Finally, as the EU launches new legal migration pilot projects as part of its endeavours to pursue greater cooperation on migration with key third countries, the following steps are suggested to achieve the best possible outcomes from country-specific channels:

Improve capacity to recruit workers in countries of origin.

An initial step is to familiarise employers with local labour markets abroad through information sessions, providing recruitment support (e.g. information on how diplomas acquired abroad relate to the degrees awarded in the destination country) or helping establish in-country networks through visits or diaspora connections. Governments can also invest in building the capacity of their counterparts to assess and select workers, either by providing support to develop their institutions or exploring options for creating a transnational matching infrastructure.

Build on national and European pilot projects and scale up initiatives.

Projects offering temporary work or training placements enable governments (or other actors) to match the demand for labour migration in a certain sector with the mobile workforce in participating countries, but they do not typically lead to many people moving. Scaling up initiatives hinges on successfully identifying and responding to demand – and finding a sustainable way to finance these projects by sharing costs among partners.



Ultimately, policymakers will need to lower their expectations in terms of what legal migration policies can actually achieve as part of their response to mixed migration. There is limited evidence to support the idea that legal migration pathways can directly reduce irregular migration. While research points to the myriad motivations driving people's migration decisions, there is also a clear mismatch between available channels and the skills profiles on offer. But

building on existing channels or introducing new ones offers opportunities to meet other EU priorities, such as contributing to economic growth within Europe by meeting labour market demands across the skills spectrum, facilitating diplomacy and in particular bilateral cooperation on migration management issues, and supporting better development outcomes in third countries.

1 Policy frameworks for legal migration: Keys to solving the current conundrum in Europe¹

The EU and its Member States are grappling with a complex web of migration-related challenges. The large-scale, spontaneous arrivals at the EU's external borders since 2015 have profoundly changed the conversation on migration in Europe. While a decade ago the EU's migration policy focused on how to attract skilled foreign workers and maximise the development benefits of migration while substantiating a Common European Asylum System, its focus is now on how to manage "mixed" migration flows.² This includes large numbers of refugees as well as a significant proportion of individuals who turn out not to be entitled to protection but instead migrate for other – mostly socio-economic – reasons, such as seeking employment or education in Europe. Policy responses to the increased migratory pressure in 2015/16 unfolded on a rather ad-hoc basis as a cascade of crisis response steps (see Collett/Le Coz 2018), and the goal of reducing the numbers of arrivals has brought about tendencies towards securitisation (see Hintjens 2019), renationalisation (see Brekke/Staver 2018) and the further ex-

ternalisation of migration control (see Niemann/Zaun 2018). However, recent policy ideas have not exclusively focussed on imposing restrictions: increasingly, legal migration policies are framed not only as a way to meet labour market needs and potentially slow the effects of demographic decline but also as a tool to tackle irregular migration by offering a viable, legal alternative to those who do not qualify for protection.³

While both the number of irregular arrivals and of asylum applications has fallen to "pre-crisis" levels,⁴ the significant inflows from 2015 onwards seem to have had a lasting effect on how policymakers in Europe think and talk about legal migration policies. Efforts to address mixed migration flows repeatedly highlight the need for more legal migration opportunities, particularly at the low- and middle-skilled levels.⁵ However, legal mobility options have not increased for nationals from countries of origin of mixed migration movements towards Europe. On the contrary, Eurostat data show that in the 10-year period between 2008 and 2017, the number of first residence permits for work granted to nationals of the top 20 African countries by asylum applications lodged in the EU has significantly shrunk from a total of more than 104,000 permits issued by the EU-28 in 2008 to less than one third of that sum (33,700) in 2017.⁶

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2 The phenomenon of mixed migration flows (see Angenendt/Kipp/Meier 2017; Carling/Gallagher/Horwood 2015; Sharpe 2018; van Hear 2011) refers to irregular movements in which people with different underlying and sometimes overlapping motives use similar routes and means of travel, thereby blurring the line between asylum seeking and economically motivated migration (Triandafyllidou/Bartolini/Guidi 2019: 3). Current migration realities pose considerable risks at individual level: where both refugees and migrants resort to irregular routes or the services of smugglers, they risk life and limb. An estimated 2,275 people perished trying to cross the Mediterranean in 2018; UNHCR assumes that despite the fact that the number of refugees and migrants making the Mediterranean Sea crossing fell in 2018, the death rate increased (UNHCR 2019: 5). Once in a particular country in an undocumented situation, migrant workers are vulnerable to exploitative and abusive working conditions, as well as producing labour market distortions such as through "wage dumping".

3 See, for example, the Stockholm Programme (2010–14), with its focus on the role of temporary and circular migration in tackling demographic decline (see European Council 2010), compared to the 2018 State of the Union address, which emphasised legal pathways as a way to curb irregular migration (see European Commission 2018).

4 Frontex, the European Border and Coast Guard Agency, registered 149,036 irregular crossings of the EU's external borders in 2018, down from a record 1.8 million in 2015, 511,047 in 2016 and 204,654 in 2017; the number of first asylum applications lodged in the EU Member States in 2018 stood at 586,235, after gradually declining from almost 1.3 million in 2015 (Eurostat 2019a).

5 See, for example, the Joint Valletta Action Plan of 2015, which identified promoting legal migration and mobility pathways between Africa and Europe as one of its five priority domains, see https://www.consilium.europa.eu/media/21839/action_plan_en.pdf, 27.08.2019.

6 See Eurostat 2019a, 2019c.



Many EU Member States continue to struggle to come up with a strategic approach to migration, in particular as it relates to satisfying acute labour demand in designated occupations (see EMN 2015a)⁷ and as a means to buffer the projected sustained demographic decline in their working-age populations.⁸ While immigration is broadly considered an economic necessity, many governments are grappling with growing political sensitivities around the issue of immigration. Large-scale irregular migration has undermined public confidence in migration systems and in the capacity of governments to maintain control over their external borders. Mounting public rejection of migration and a surge in support for populists running on anti-immigration platforms seem to have reduced the leeway for policy actions on migration.

1.1 Scope and research questions

Against the backdrop of large-scale mixed migration to Europe, proponents have called for expanding legal migration pathways as a panacea, and it has thus become a top policy priority. Yet, little analysis and few concrete proposals exist to demonstrate what new or alternative legal migration channels to Europe could look like in practice. This study seeks to address this gap by taking stock and reviewing the legal and policy frameworks at EU and Member State level that facilitate legal migration for work and training. It critically assesses their design, implementation and impact, and generates ideas and options for developing future legal migration opportunities. The overall goal is to contribute to better informed and concrete policy options for effective legal migration to Europe in the context of mixed migration. With many recent arrivals lacking the education or cre-

entials to qualify for skilled migration programmes or higher education opportunities in Europe, this study focuses on the policies and legal categories open to low- and middle-skilled migrants (see Box 1). The present research focuses on legal migration opportunities for those who are not in need of protection and who seek to migrate to Europe for work or training purposes but who do not have the professional skills or educational qualifications to access highly skilled admission channels such as the EU Blue Card.

This study is mainly informed by five case studies on France, Germany, Italy, Spain and Sweden, as well as on research on policies at EU level. The key research questions underpinning the study in general and the country case studies in particular were the following:

- What legislation, policies and programmes for legal migration in the EU and the aforementioned Member States refer to low- or middle-skilled third-country nationals who do not qualify for international protection, and what was the rationale behind their design?
- How have these policies been applied in practice? What are the strengths and weaknesses of these policies? Have they facilitated the mobility of low- or middle-skilled third-country nationals?
- What lessons can we draw from these policies and practices, and which of these might be useful for other Member States or the EU?

Taking the perspective of the five EU Member States, which all receive significant numbers of regular and irregular migrants (see 1.2 on how the country case studies were selected), the goal was to mirror the institutional and regulatory framework that offers migration and mobility opportunities to the respective target groups, thus also taking into account temporary, circular and seasonal forms of admission,⁹ as well as

7 A recent study found, in regard to Germany, that if the potential labour force was to cover projected labour market needs, an annual net immigration of 146,000 migrants from non-EU countries would be needed between 2018 and 2060 (Fuchs/Kubis/Schneider 2019).

8 With an average of 1.59 live births per woman in the EU in 2017 (ranging from 1.26 in Malta to 1.90 in France), the total fertility rate is stagnating way below the 2.1 live births per woman considered to be the replacement level (Eurostat 2019d). While “replacement migration” (the international migration a country theoretically needs to offset population decline and population ageing) cannot be considered an option, most Member States acknowledge the need, from an economic and demographic perspective, for immigration of third-country nationals to their territories as a means to offset the imbalance.

9 Circular migration is a form of temporary migration (time-limited migration followed by the third-country national returning to their country of origin) with the specificity of its being a “repetition of legal migration by the same person between two or more countries” (see EMN glossary 2019: https://ec.europa.eu/home-affairs/content/temporary-migration_en, 27.08.2019).

Box 1 “Low-skilled” and “middle-skilled” migrants – a definition

For the purposes of this study, the terms “low-skilled” and “middle-skilled” are used to refer to the acquired knowledge and skills of third-country nationals who have not pursued any tertiary education. Thus, the categories within the International Standard Classification of Education (ISCED) and the International Standard Classification of Occupations (ISCO) serve as points of reference. Under these classifications, low-skilled and middle-skilled migrants have education levels corresponding to ISCED levels 1 to 4 (elementary to post-secondary non-tertiary education). In terms of occupations, “low-skilled” refers to ISCO group 9 (elementary occupations), while “middle-skilled” includes ISCO groups 4 to 8, for which low to medium qualifications are required (ILO 2012: 14).

It is also important to note the limitations of this categorisation. Member States continue to conceptualise skills levels differently, and they do not necessarily base their residence titles and legislation on these international classifications (see, e.g., the German discussion about middle-skilled workers; case study DE: 7). Furthermore, focussing on formal credentials should not obscure the reality that even low-skilled jobs require skills and experience (often acquired through on-the-job training), and that third-country nationals in particular often have skills that cannot be easily assessed by certification schemes or recognised by destination-country employers.

programmes for vocational education or other skills training.¹⁰

Caveats and limitations

The study takes stock of the legal migration options for work and training available to low- and middle-skilled third-country nationals in selected EU Member States and within the policy framework of the EU. It analyses the key challenges in setting up and implementing the respective schemes and taking into account the various underlying motives of policymakers. The study does not, however, attempt to contribute to answering the question of whether the availability of legal migration options effectively reduces irregular arrivals or unfounded asylum claims. Ongoing research on this issue primarily takes a structural-quantitative approach by analysing multi-year aggregate data (see 2.2 for a brief discussion). Further empirical research is needed into the question of whether and under what conditions the existence of legal options discourages

individuals from resorting to irregular migration, for instance by looking at a particular country of origin and using a qualitative methodology. Moreover, it was beyond the scope of this study to assess labour market needs – and, specifically, the demand for low- and middle-skilled foreign labour – in the five countries from a detailed and comparative perspective. While recognising the importance of analysing sector- and skills-specific labour market *demands*, the research focused on the availability and performance of *policies* that enable (or hinder) the admission of certain skills categories. Thus, in-depth research on short- and longer-term labour market needs in EU Member States would usefully complement the findings of this study.

1.2 Methodology

The study is based on several methodological strands and follows a legal/political/administrative approach.

10 The following were excluded from the scope of the research: (1) intra-EU mobility (i.e. all policies, legislation, agreements, programmes and initiatives relating to the free movement of EU citizens); (2) highly qualified admission categories (i.e. policies, legislation, agreements, programmes and initiatives relating to the mobility of highly qualified professionals (EU Blue Card candidates), students in secondary or tertiary education, intra-corporate transferees and researchers); (3) protection-related pathways, i.e. asylum and other forms of refugee admission, such as resettlement or private sponsorship schemes (on that topic, see, e.g., Kumin 2015; Newland 2016; Long/Rosengaertner 2016; Fratzke 2017; Beirens/Fratzke 2017; SVR Research Unit 2018).



A country-level analysis was considered essential, as competence on legal migration for work and training rests mainly with the Member States, including the ultimate decision about admission volumes; the countries studied here are France, Germany, Italy, Spain and Sweden (see below regarding how the country case studies were selected). Experts on the respective migration policy regime were commissioned with developing the case studies based on common specifications, including desk research and background interviews on national legislation, policies and programmes on legal migration for work and training as well as expert workshops.¹¹ The analysis takes into account national and European legislation as well as formal or informal agreements and initiatives. These can be the result of bilateral and multilateral endeavours (e.g. Memoranda of Understanding, policy dialogues, cooperation fora, partnerships) or (pilot) programmes and other (financing) schemes (e.g. for vocational training or further education), with a particular focus on interactions between the national and the EU level in the policymaking process. Besides reviewing the available literature and authoritative data sets on the core themes of the study (irregular migration, legal migration policies and labour mobility of third-country nationals to the EU), a number of background interviews were conducted on the existing EU framework on legal migration, relevant aspects of the EU external migration policy and the potential for developing legal migration policies at the EU level.

Country case study selection process

While EU harmonisation of migration-related policies (such as asylum, visas, border management and free movement) has come a long way over the past 20 years, less progress has been made on harmonising selection policies to admit low- and middle-skilled (non-seasonal) migrants. With this in mind, the study

sought to identify several countries that are popular immigrant destinations and which could illustrate the variety of ways in which Member States manage their immigrant selection systems.

France, Germany, Italy, Spain and Sweden have all received significant mixed migration flows over the past four years, while also continuing to rely on foreign workers to meet certain labour and skills needs.¹² Their experiences, whether as frontline states receiving new arrivals or as destination countries tasked with integrating large numbers of migrants and refugees, offer important insights into the political dynamics around migration writ large and channels for low- and middle-skilled migrants in particular. This variation formed the core criterion for selecting the country cases following a “most different system” design (Mills/Durepos/Wiebe 2010). Beyond the usual simplistic distinction between supply- and demand-oriented systems (Chaloff/Lemaitre 2009: 17), the aim was also to properly reflect the complexity of steering mechanisms used.

While all five countries rely on employer demand to select labour migrants, they have adopted different approaches to managing their selection systems. Sweden has opted for a highly liberal, employer-led approach, while the other four countries have opted for the government to play a more active role in managing labour migration flows. In doing so, each country uses an array of policy tools to shape the profile of labour migration, ranging from quotas to shortage occupation lists to labour market tests. Another point of divergence is the role of bilateral relationships, with some countries choosing to offer preferential recruitment from partner countries while others have opted for a more country-blind approach. In turn, the different immigration histories and labour market characteristics of each country also inform their labour migration priorities, with each country creating selection policies to cater to their priority sectors both individually and in

11 For France: Yves Pascouau (European Migration Law) and Christophe Pouly (Sciences Po); for Germany: Jeanette Süß and Jan Schneider (SVR Research Unit); for Italy: Roberta Perna and Ferruccio Pastore (FIERI); for Spain: Kate Hooper (MPI); for Sweden: Bernd Parusel (Swedish Migration Agency). Case studies are listed in the bibliography and will be cited as follows: France: case study FR; Germany: case study DE; Italy: case study IT; Spain: case study ES; Sweden: case study SE. They are available for download at www.svr-migration.de/en/publications/mobility_options_to_europe.

12 The five Member States chosen for this study have been among the top 10 EU destination countries for those in need of international protection in recent years, and all of them have an increasingly diverse population, with between seven and 13 per cent of the population being born in third countries in 2018 (Eurostat 2019e).

conjunction with other policy priorities (such as tackling a sizeable informal economy).

Further factors were taken into account when selecting the countries to be included in this study. First, the level of EU policy influence on national policymaking varies: while, for instance, in some countries, like Spain and France, political frameworks have pushed national policymakers to implement agreements with third countries bilaterally, this has been less pertinent for other types of initiatives, for example Member States' participation in EU Mobility Partnerships. Second, the selected countries represent a mix of economic models and a variety of labour market characteristics, for instance in terms of the relative importance of agriculture, industry and services or the size of the informal labour market, and the effects of the economic crisis starting in 2008 have varied widely. While all five countries depend on foreign labour supply to alleviate shortages, their labour market structure differs widely, and promoting legal migration policy is not always considered politically expedient. The latter aspect is crucial for southern European countries, such as Spain and Italy, as the great relevance of the informal economy incentivises irregular migration. Other cases, such as France and Germany, vary in terms of their (historical/colonial) relationships with third countries, with migration corridors and migrant communities still to a significant degree being influenced by the guest worker era.

Structure of the study

While the study takes a comparative approach by illustrating differences and similarities across EU Member States, this is not done with the aim of "ranking" countries or their performance according to external criteria. Instead, the countries studied served as a source of policies, so that lessons can be learned from good practices, pitfalls and shortcomings, which the study seeks to systematise and assess. Furthermore, based on the conviction that only coordinated policy approaches between the EU and its Member States can solve the conundrum around mixed migration to Europe, the study takes stock of both EU and Member State initiatives on legal migration options for low- and middle-skilled migrants. Thus, Chapter 2 provides an overview of the overarching policy rationales for

legal migration as they apply both in the five countries and to EU policy more broadly. Developments and initiatives at EU level, the EU's role and track record on legal migration, and its cooperation with third countries are the subject of Chapter 3. Delving into the legislation, policies and programmes identified in the five countries, Chapter 4 focuses on policy design options as regards legal migration for work and training, while Chapter 5 outlines the role of bilateral and European partnerships in creating legal migration options. Chapter 6 examines the impact and implementation of existing legislation, policies and programmes in the five countries. Finally, Chapter 7 offers conclusions and a series of policy recommendations both at the level of the EU and its Member States.

2 Policy rationales for legal migration for work and training: France, Germany, Italy, Spain, Sweden – and the European Union

Legal migration is considered part of comprehensive migration governance, as affirmed in numerous regional and global declarations and initiatives including, most recently, the European Agenda on Migration (see Chapter 3) and the Global Compact for Safe, Orderly and Regular Migration (see Box 2). States have a sovereign prerogative – within the limits of international law – to determine foreign nationals' admission to, and stay in, the country. The distinction between lawful and unlawful entry to a country is a natural corollary of this authority and is fundamental to a country's migration system. The ability to regulate who is present and under what conditions forms part of a state's duty to provide security, manage its borders and enforce its laws. It is also critical for the planning and provision of public services, including healthcare, education, housing and infrastructure.

Beyond this basic rationale, policies on legal migration may pursue a number of different goals. Four broad rationales that typically underpin legal migration policy (see also Newland/Riester 2018) are identified in the following. In the countries under consideration, policies on legal migration have evolved differently as



Box 2 Facilitating legal migration: Select references at the EU and international level

The relevance of legal migration channels is frequently emphasised within political frameworks, agendas and policies at the international and EU level, often as a counterpart to commitments to curbing irregular migration.

At the EU level:

- Pillar I (of IV) of the EU's Global Approach to Migration and Mobility (GAMM 2011) refers to "organising and facilitating legal migration and mobility" (COM(2011) 743 final).
- Taking the GAMM as a starting point, the European Agenda on Migration (2015) strives to establish "a new policy on legal migration" as a fourth pillar of the agenda (COM(2015) 240 final).
- Under the Valletta Action Plan (2015) "legal migration and mobility" is one of five priority domains for cooperation between the EU and African countries.
- Under the new Migration Partnership Framework (MPF 2016) "stemming the irregular flows while offering legal migration channels" is listed as one of four immediate priorities (COM(2016) 385 final).

At the global level:

- Promoting legal migration is part of the Sustainable Development Goals of the UN's Agenda 2030. Target 10.7 requires states to "facilitate orderly, safe, and responsible migration and mobility of people, including through implementation of planned and well-managed migration policies".
- Under objective 5 of the Global Compact on Safe, Orderly and Regular Migration, signatories commit to "enhance availability and flexibility of pathways for regular migration" (UNGA A/RES/73/195).

a result of their historical context, economic structures and other country-specific factors that influenced the respective policy rationales, although certain commonalities are also evident.

2.1 Serving domestic labour market needs

Policies on legal migration for work and training are frequently motivated by an assessment or forecast of the skills and workforce required by the domestic labour market. Where those needs cannot be met by the existing labour force, a country may adopt legal migration policies that facilitate the entry of individual workers and/or specific categories of professionals from other countries. Policies may seek to respond to temporary fluctuations as well as structural shifts in the labour market, while considerations of broader demographic trends and economic competitiveness are also relevant. While policies seek to meet labour market needs and the demands of employers, governments are typically also concerned with protecting the

domestic workforce from competition and safeguarding labour market standards.

All five countries considered for this study premise their legal migration policies largely or exclusively on labour market needs. In most countries the legal migration systems privilege high-skilled workers over low- and middle-skilled workers (Cerna/Czaika 2016: 22). Nonetheless, the precise policy emphasis differs depending on the country context: **Sweden's** employer-led, demand-driven admission system does not prioritise specific skills or labour market sectors. The explicit rationale behind introducing this policy in 2008 was to increase labour migration from third countries and to reduce the amount of red tape for employers. The absence of quantitative (e.g. quotas), qualitative (e.g. certain levels of qualifications) or geographical restrictions (e.g. giving preference to nationals of certain third countries) means that, in theory, employers can recruit any number of workers at any skills level and from any country, as long as there is demand for them on the labour market and working conditions are in line with Swedish standards.

By contrast, German and French policies on legal migration for work strongly favour skilled workers and professionals with academic credentials, reflecting the structure of the economy in both countries. **German** policies on legal migration are more concerned with preserving national training and certification standards, maintaining the competitiveness of key sectors of the economy and preventing competition with low-skilled segments of the domestic workforce (see case study DE). The German legal and policy framework for admitting highly qualified professionals with academic credentials is now among the most liberal in the EU, but far fewer options are available to potential migrants with low or medium levels of qualification, even though the new Skilled Worker Immigration Act¹³ broadens labour market access for those with a vocational qualification (see SVR 2018: 41 ff.). In **France**, the recognition that there were labour shortages in several sectors led to the labour market being gradually and selectively opened up to migrants, with priority being given to highly skilled professionals since the early 2000s. In fact, one explicit impetus behind the reforms was a desire to recalibrate family and humanitarian entries and (highly skilled) labour and student migration in favour of the latter (case study FR: 9). Yet in Germany and France, too, social and demographic dynamics have led to shortages in certain sectors, such as in agriculture, hospitality and care work, which has prompted the need for more low- and middle-skilled migrant workers.

In **Italy** and **Spain**, the demands of a large agricultural sector, the domestic services, and hospitality and construction industries have shaped these countries' approaches to foreign labour. The demand for low- and middle-skilled migrants increased as the domestic

workforce sought better working conditions, higher pay or more skilled jobs, against the general backdrop of an ageing native population and low birth rates. Economic upswings and downturns also had a discernible impact on the course taken by Spanish and Italian policy frameworks to flex up or flex down their quota for labour migrants (see Finotelli/Echeverría 2017: 47).

2.2 Reducing irregular migration and safeguarding asylum systems

The opening of legal channels is often driven by the desire to minimise irregular migration. It is assumed that by extending legal migration pathways the use of irregular migration channels, including the assistance of people smugglers, can be reduced or even prevented according to the principle of “communicating vessels” (SVR 2017: 74 ff.; see COM(2015) 453 final). However, the link between the very existence of legal channels and the decline in irregular migration is not straightforward and has been difficult to prove empirically. The EU, not least by expanding the mandate and competences of Frontex (now the European Border and Coast Guard agency), has taken up the task of “combatting” irregular migration primarily through enforcement measures and cooperation with Member States on return,¹⁴ as well as by seeking new legal migration avenues (see Chapter 3). The factors leading to migration, including irregular migration, are wide-ranging and complex, whereas legal channels tend to be narrow and targeted (see Hooper 2019: 4; Collett/Ahad 2017: 25). Thus, legal migration options for work and training do not necessarily match the profile (e.g. skills level) of potential irregular migrants.¹⁵

13 *Fachkräfteeinwanderungsgesetz*, 15 August 2019 (Federal Law Gazette I, p. 1307).

14 Both the European Agenda on Migration (COM(2015) 240 final) and the European Agenda on Security (COM(2015) 185 final) identified the fight against migrant smuggling as a priority. In May 2015, the Commission delivered an additional Action Plan against Migrant Smuggling in a separate Communication (COM(2015) 285 final); in 2016, an Integrated Return Management Application (IRMA) was introduced as a restricted information exchange system for Member States' experts in order to facilitate the planning, organisation and implementation of returns and readmissions (see COM(2017) 200 final: 9; Council of the European Union document 5202/18).

15 For instance, data taken from the IOM displacement tracking matrix suggests that most irregular migrants arriving in Libya and aiming to reach Europe did not undergo tertiary education. Forty-five per cent of interviewed migrants from Morocco, Algeria, Tunisia, Egypt and Sudan completed secondary but only one per cent completed tertiary education (see IOM 2018). Similarly, in a survey of more than 1,000 migrants carried out in Italy's reception centres (two thirds of whom were nationals of West African states and one in five of whom was from the Middle East or Asia), 20.1 per cent had not completed any educational cycle, 29.4 per cent had completed primary school, 24.7 per cent lower secondary school and 15.7 per cent finished higher secondary education; only 3.2 per cent of the sample had a university degree (IOM 2016: 33). Although these figures are not statistically representative and skills and



Similarly, individuals in third countries wishing to migrate may find the available channels inaccessible for financial reasons or because of complex administrative procedures (e.g. visa application requirements). Lastly, the available channels may simply not meet the scale of demand for regular migration options. While it is difficult to prove any relationship between the creation of legal avenues and a reduction in irregular migration,¹⁶ there is more evidence of the inverse relationship: restricting legal channels also curtails flexible and circular mobility patterns, as a result of which migrants may opt to remain in an irregular situation rather than risk losing access altogether (see de Haas et al. 2018: 39–40).¹⁷

Pressure to combat irregular migration was an important rationale behind Italy's legal migration policies. A highly segmented labour market and large informal economy – in particular in agriculture, construction, hospitality and domestic work – have long favoured the irregular entry and employment of migrant workers. In the 1990s, policy development was driven by public concerns over irregular migration from the Western Balkans on the one hand and by pressure from the EU on Italy to secure the EU's external borders with a view to implementing the Schengen Agreement and the Dublin Convention on the other. In response to this, Italian policies have attempted to steer migration into regular channels, including by way of regularisation campaigns and bilateral partnerships with third countries (see Pastore/Villosio 2011: 15).

Similarly, in Spain policies on legal migration for work have been driven by a desire to reduce irregular migration and informal employment. EU accession requirements prompted Spain to introduce its first major immigration law in 1985. In the years that followed,

the country gradually tightened its migration regime, including by revoking visa-free access, making it more complex to obtain or renew work permits, restricting family reunification and placing greater emphasis on border management. At the same time, economic growth created demand for low- and middle-skilled workers, in particular in construction, agriculture, tourism and domestic services. These twin dynamics gave rise to a growing population of undocumented migrants who were unable to renew work permits or overstayed their visa due to fears that the new policies would prevent them from re-entering the country. Many found work in the sizeable informal economy. As a result, Spain conducted a series of regularisation campaigns between 1986 and 2005 before establishing a permanent mechanism for case-by-case regularisation. Spain also reformed its labour migration policies, making it easier for employers to sponsor the workers they need or to even hire groups of workers for temporary work in certain areas (e.g. seasonal agricultural work). A spike in maritime migration across the Strait of Gibraltar in the late 1990s and to the Canary Islands in the early 2000s led to increased cooperation with countries of origin or transit in North and sub-Saharan Africa on questions of migration management.

Large-scale irregular migration is often associated with a surge in asylum applications, a significant share of which turn out to be unfounded and are thus termed an “abuse of the asylum system” in domestic policy discourses (see, e.g., Kirchhoff/Lorenz 2018; Mayblin 2019). The rationale is that the availability of legal migration options for those not in need of protection also helps to safeguard the asylum system for those who are. As the primary country of destination in Europe for people in search of protection in recent years,

educational levels vary greatly depending on nationality, they provide a good indication of the level of education of those who arrive in Europe. Thus, if new channels are to constitute a viable alternative to irregular migration in its current form, they need to be open to low- and middle-skilled third-country nationals.

16 A long-term analysis of mobility policies relating to the US–Mexican border suggests that opening legal channels (in particular through work visas) in fact suppresses irregular migration, provided it is combined with robust border enforcement measures (Clemens/Gough 2018). An econometric analysis of a multi-annual set of data on first residence permits awarded for labour or educational reasons and irregular arrivals at the EU's sea borders found that “an increase in the number of permits issued is [...] negatively associated with irregular crossings, even after controlling for several other variables” (Barslund/Di Salvo/Ludolph 2019: 6).

17 Theoretical and empirical work by migration scholars has analysed the impact of mobility restrictions by, for example, introducing or lifting visa obligations on the circularity or permanence of migration movements (Czaika/de Haas 2017) as well as the impact of asylum restrictions on the increase in the number of irregular migrants – in fact suggesting that tightened asylum policies are followed by a significant “deflection into irregularity” (Czaika/Hobolth 2016).

Germany has felt a particular pressure to preserve the integrity and functionality of its asylum system. In the context of the refugee arrivals in 2014/15, Germany saw a steep rise in the number of asylum applications by individuals from Western Balkan countries. Recognition rates for this group were, however, very low. Concerns over large numbers of unfounded asylum claims and their effects on an already overstretched asylum system led to six Western Balkan countries¹⁸ being declared safe countries of origin and to the adoption of a special “compensating” regulation. This regulation, which is applicable to labour migrants from the Western Balkans and is known as the “Western Balkans Regulation”, seeks to reroute irregular migration and unfounded asylum applications into a regular channel based on an employment contract, thus opening up an unprecedented legal mobility option to low-skilled migrant workers from those six countries (see Box 6).

2.3 Contributing to foreign policy goals and international cooperation

Facilitating the entry of the citizens of another country can, quite simply, be an instrument of international diplomacy aimed at intensifying relations and exchange between countries or affirming historical and cultural ties. More specifically, international cooperation efforts and negotiations on migration and adjacent policy fields can offer a rationale for legal migration policy: in development cooperation, the case for legal migration is sometimes made on the basis of the expected benefits for countries of origin, such as remittances or skills transfer. In the EU context, legal migration serves as a bargaining chip: rather than being an end in itself, offering legal access such as through visa facilitation is used to incentivise cooperation and achieve concessions in other areas, such as returns (see ESI 2018, 2019) – which in the long run may reduce future irregular migration. This is particularly relevant in asymmetric migration scenarios in which one party has a greater interest in gaining legal access to the other country than vice versa, as is often the case between EU Member States and third countries (see Weinar 2017: 90–91).

Foreign policy rationales have played into French, Italian and Spanish policies on legal migration in particular. All three countries have important historical and sometimes linguistic ties to countries of origin. **France** has concluded a number of bilateral migration agreements with partner countries, especially in francophone Africa. **Italy** maintains labour migration as well as migration management agreements with a number of countries, in particular in North Africa and Asia. **Spain** has negotiated migration management agreements mainly with countries in North and sub-Saharan Africa. Foreign and development policy rationales have also featured in some of Germany’s bilateral cooperation programmes that have facilitated the admission of third-country nationals for work and training purposes. By contrast, **Sweden** maintains a “country-blind” approach to legal migration, meaning it has not engaged in partnerships or bilateral agreements to facilitate legal migration with specific third countries.

2.4 Protecting migrants’ rights

The protection of the human and labour rights of migrants offers a further rationale for legal migration policies. Travelling on irregular routes exposes migrants to the risk of abuse, including at the hands of people smugglers and human traffickers. Similarly, undocumented stays or work can lead to exploitation and limited access to basic services such as healthcare and education for children. Conversely, it is argued that legal migration equips migrants with the information, rights and effective protections that allow for a safe and productive migration experience.

There is little to indicate that human rights have figured explicitly as rationales for the policies adopted in the five countries analysed within this study. Nonetheless, a human rights rationale is sometimes present at a discursive level, in particular in bilateral initiatives, pilot programmes, and regional and inter-regional dialogues on migration management. Questions of vulnerability and protection have played a greater role at the level of EU policymaking, for instance in providing

18 Albania, Bosnia-Herzegovina, Kosovo, North Macedonia, Montenegro and Serbia.



the impetus for setting common standards for groups such as seasonal workers (see 3.1).

2.5 Other factors and variables

In addition to these four more explicit rationales, why and how certain policies come about is also shaped by other underlying factors. They include a country's institutional architecture and decision-making structure, such as which ministry is responsible for migration, or the role of the EU in providing impetus for policy development. In addition, the impact of – more or less predictable – events and exogenous shocks can be considerable. For instance, the 2007/08 economic crisis had repercussions for legal migration policies in **Italy** and **Spain** and led to a reduction in quotas and other admission options for low- and middle-skilled migrants. Similarly, the sharp rise in irregular arrivals and people in search of protection in 2015 dominated the policy and political agenda in the EU as a whole and in **Italy**, **Germany** and **Sweden** in particular, leading to a range of policy changes.

Moreover, public perceptions are another crucial factor for explaining policy developments and trajectories in EU Member States and at EU level. The intense public debate and growing populist backlash against migration in recent years has clearly narrowed governments' leeway for expanding legal migration opportunities. The politicisation of migration issues is also evident in **Italy**, where periodic attempts to reform legal migration policies were significantly influenced by the political composition of changing governments and their pro- or anti-migration outlook. In general, perceptions that the government has "lost control" over migration and that migration and asylum systems are dysfunctional or "unfair" can undermine public support for migration as a whole (see MIDEM 2018; Georgiou/Zaborowski 2017). More research is needed to establish whether the converse also holds true, namely that societies are more open to migration when the government is seen to be in control and migration takes place in orderly and regular ways – thus potentially serving as an argument in favour of more proactive legal migration policies (see ODI 2017).

3 The EU's role in legal migration policy and external migration management

Although EU institutions have long aspired to a common migration policy (see Luedtke 2018), Member States have been reticent to hand over powers to the EU, especially in the field of legal migration for work or training. As a result, the EU has taken more of a piecemeal approach and has tried to gradually harmonise its Member States' immigration policies. Meanwhile, its powers in the external dimension remain loosely defined. The EU has competence on external migration policy that relates to tackling irregular migration and activities linked to development cooperation with third countries, but there is significant overlap between EU and Member State activities, and the EU does not necessarily have the levers and resources at its disposal to incentivise cooperation with third countries when it comes to migration issues. Overall, the EU's rhetorical commitment to including legal migration as a crucial element within a comprehensive migration policy – as affirmed in numerous policy documents and initiatives – stands in contrast to its actual competence in regard to designing and implementing legal migration channels (see SVR Research Unit 2019). Legal migration for highly skilled third-country nationals has been one of the EU's top priorities, with the EU Blue Card as its flagship instrument. However, less progress has been made in coordinating legal channels for low- and middle-skilled workers beyond certain categories, such as seasonal work (see SVR 2018: 25).

This chapter outlines the EU's internal competence on legal migration within the EU (3.1) and on external migration policy in its cooperation efforts with countries of origin and transit (3.2). It explores how EU institutions have tried to expand their competence over the past two decades and how negotiations with Member States have unfolded and resulted in a more gradual approach to EU action on legal migration both within and outside Europe. Finally, past and current initiatives by the EU and its Member States will be assessed by asking whether they delivered on the legal migration component within their broader migration policy (3.3).

3.1 The EU's competence on labour migration within Europe

Although the EU and its Member States share competence on labour migration (Article 2(2) of the Treaty on the Functioning of the EU (TFEU)), this has been a fraught area of EU harmonisation (see Bendel 2011). The EU has the competence to set conditions of entry and residence for third-country nationals and to define their rights in Member States (see Box 3). Nevertheless, the latter have been reluctant to cede authority on issues such as admission to their labour markets that relate so closely to their national employment and economic policies. Member States have the final say on which third-country nationals enter their territory and the numbers admitted for work.¹⁹

Following the signing of the Amsterdam Treaty of 1997, the EU called for the development of common migration, asylum and border policies, and this call was then echoed at a special meeting of the European Council in Tampere in 1999. The summit identified several concrete steps for the European Commission to take, including the development of a Common European Asylum System, partnerships with countries of origin, protecting the rights of all legal migrants and the management of migration flows (including a common visa policy, tackling illegal immigration, and cooperation on border management and returns) (European Parliament 1999). This was followed by a comprehensive proposal by the Commission in 2001 on developing coordinated migration policies for the employment and self-employment of third-country nationals in Europe. The proposal called for the harmonisation of Member States' rules by creating a combined work and residence permit with a single application procedure, setting out common definitions, criteria and procedures, and it proposed an open mechanism as a means for Member States to coordinate their national policies (COM(2001) 386).

Sectoral and gradual approach to harmonisation

Nevertheless, this ambitious proposal failed to gain traction and was ultimately withdrawn in 2005 (COM(2005) 462). While there was consensus on the merits of greater coordination on migration policies for third-country nationals (e.g. to avoid competition among Member States), Member States in northern and western Europe were concerned about losing their ability to safeguard their national labour markets or social security systems and, for example, being able to tailor labour migration pathways to their economic needs (Bertozzi 2007: 6–7).

Following the withdrawal of the 2001 proposal, a Green Paper introduced by the Commission in 2005 identified several possible paths forward on legal migration (COM(2004) 811), namely

- reviving the ideas in the 2001 proposal and pursuing a “horizontal” approach to harmonising the conditions for the entry and residence of third-country nationals or
- putting aside efforts to develop a common framework and instead developing sectoral legislation focused on specific groups of migrant workers or
- creating a fast-track procedure for migrants who could meet labour or skills shortages.

Ultimately, the EU chose the second option: a more piecemeal approach to legal migration focusing on harmonisation in specific sectors. An accompanying public consultation on the Green Paper identified specific categories of migrant workers that could benefit from EU harmonisation. The Commission then launched a policy plan on legal migration in December 2005 that included four sectoral directives on highly skilled workers, seasonal workers, intra-corporate transferees and remunerated trainees, as well as a general Framework Directive²⁰ setting out the rights of migrant workers within the EU. The entry into force of the Lisbon Treaty (in 2009) has also made it easier technically (if not politically) to reach decisions on legal migration issues,

19 Denmark, Ireland and the United Kingdom all have the right to opt out of common EU rules on immigration, visa and asylum policies.

20 Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.



Box 3 The EU's competence on legal migration

Under Article 79(2) of the Treaty on the Functioning of the European Union (TFEU), the EU has competence for

- the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;
- the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States;
- illegal immigration and unauthorised residence, including removal and repatriation of persons residing without authorisation;
- combating trafficking in persons, in particular women and children.

Article 79(1) sets out further objectives, stating that the “Union shall develop a common immigration policy aimed at ensuring, at all stages, the efficient management of migration flows, fair treatment of third-country nationals residing legally in Member States, and the prevention of, and enhanced measures to combat, illegal immigration and trafficking in human beings”.

However, Article 79(5) stipulates that Member States retain the right to determine the numbers of third-country nationals entering their territory to seek work. In practice, this gives them the final say on both how many migrants are admitted to look for work and to make final decisions on visa applications, as well as on determining the conditions under which residence and work permits are granted where no EU-wide rules have been adopted.

by requiring a qualified majority (Article 79(2) of the TFEU) instead of unanimous support from all Member States. The Directives identified in the 2005 policy plan were adopted between 2009 and 2016, with the EU opting to cover trainees (both remunerated and unremunerated) under a broader 2016 Directive that set the conditions of entry and residence for third-country nationals entering for research, study, training, volunteering, exchanges or other educational projects, or au pairing (Directive (EU) 2016/801).

Seasonal Workers Directive

The harmonised EU approach to seasonal workers is especially pertinent to this study, which focuses on low- and middle-skilled labour migration (see Hooper/Le Coz, 2019). The Commission proposed the Seasonal Workers Directive as a way to meet seasonal labour needs in Member States and reduce barriers to entry for low-skilled workers, protect the rights of seasonal workers and curb irregular migration by setting out common rules (COM/2010/379). Negotiations on this Directive only began after the Lisbon Treaty came into force (thus removing the need for unanimous decisions on migration and asylum) and lasted

three and a half years. The Commission was focused on harmonising standards and creating common rules, the European Parliament wanted to protect workers' rights, while Member States were keen to safeguard their right to determine admissions and minimise additional requirements in this process (see Fudge/Olson 2014: 447–448). Efforts by the Commission to encourage circular migration through a multi-year seasonal permit received pushback from Member States, which were concerned this would restrict their ability to regulate the number of migrant workers admitted to the country each year. The proposed rules on multi-year admission were eventually softened, leaving Member States with the discretion to decide whether and how to favour repeat hires (see Fudge/Olsson 2014: 456–457). And while the Directive calls for the equal treatment of seasonal workers, they are nonetheless barred from family reunification, unemployment benefits, and education and vocational training (see Zoetewij-Turhan 2017).

The Directive was finally adopted in 2014 and, for the first time, it defines common rules for the admission, residence and rights of seasonal workers from third countries. These terms include restricting their

Box 4 Negotiations on the EU Blue Card system

The challenging negotiations on the EU's Blue Card Directive²¹ for highly skilled non-EU migrants illustrate some of the tensions between the EU and Member States when it comes to the governance of labour migration. The Blue Card Directive was introduced in 2009 as an EU-wide admission channel for highly skilled migrants, with permits being issued to migrants with a skilled job offer that pays a competitive salary (usually 1.5 times the average gross annual salary for that occupation). But the loosely defined requirements meant that each Member State (excluding Denmark, Ireland and the United Kingdom) developed their own Blue Card systems with slightly different conditions (e.g. on the length of the permits issued) (see Desiderio 2016). Crucially, the Blue Card system does not replace national admission channels but operates alongside them, resulting in limited uptake and raising questions about the added value of this EU-wide migration channel.

In 2016, the European Commission proposed reforms to the Blue Card system that would roll the different national programmes into one EU-wide Blue Card system and, crucially, require Member States to abolish competing national channels to admit highly skilled migrants who would qualify for a Blue Card (COM(2016)378 final). Further, the proposal provides for admission criteria to be extended to cover skilled migrants without academic certificates but with relevant work experience.²² The proposed reforms have yet to secure agreement from Member States in the Council (COM(2018) 635 final). Alongside their historical reluctance to cede authority to the EU on these issues, Member States have been reluctant to replace their tried and tested approaches to selecting highly skilled migrants with an EU-wide system (see Desiderio 2016).

stay to between five and nine months per year, barring them from bringing in family members, allowing seasonal workers to switch employers and encouraging the rehiring of workers who meet the terms of their residence and work permits.²³ Member States nevertheless remain responsible for determining the volume of admissions and thus for assessing demand for seasonal work in any given year. They also have a degree of flexibility to decide how best to incorporate these common rules into the design of their programmes (see, by comparison, the debate around the Blue Card Directive discussed in Box 4) – for example how long to admit seasonal workers for and whether to favour repeat hires by offering a preferential hiring process (as in Spain, e.g.) or by issuing multi-year residence permits (as in France, e.g.).

However, even by pursuing a more sectoral, “piecemeal” approach (instead of broad horizontal harmonisation), the Member States’ and the EU’s policy rationales do not always align. Member States remain keen to retain maximum national control over legal migration policy, and one ongoing challenge is that the added value of EU-level harmonisation is not always evident. The EU’s legal migration fitness check, completed in 2019, recommended steps to simplify procedures and continue to monitor and enforce the implementation of existing Directives (SWD(2019) 1056 final). But beyond the Seasonal Workers Directive and efforts to harmonise admission procedures more generally, the admission of low- and middle-skilled workers will continue to be handled by national schemes for the foreseeable future.

21 Directive 2009/50/EC of the Council of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

22 In a reply to a parliamentary interpellation, the German government stated that although it was not in principle against recognising (at least five years of) practical skills as being equivalent to a university diploma, there are no criteria and no infrastructure for assessing whether their practical skills meet German standards (see Bundestag Printed Paper 19/750: 3).

23 Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers.



3.2 The EU's external competence on legal migration

As with the internal dimension, EU external policies on legal migration consist of a complex web of strategies and instruments that requires close coordination with Member States. But the EU's external competence on legal migration remains subject to debate. While the EU has competence over (legally binding) agreements in the fields of readmission, visa facilitation and association (Article 216(1) of the TFEU), its other external competence is implicit and is linked to delivering on the EU's internal competence on migration as set out in the Treaties.²⁴ For example, the goal of "develop[ing] a common immigration policy aimed at entering, at all stages, an efficient management of migration flows" (Article 79(1) of the TFEU) could include external action such as international agreements with third countries (García Andrade 2013: 265–266). Negotiating visa facilitation agreements is the most tangible aspect of the legal migration component within the EU's external migration policy. However, facilitated mobility is only applicable to short-term Schengen visas and specific categories of third-country nationals, such as researchers, students and diplomats (see Trauner/Kruse 2008: 17; for an analysis of how different third countries fared in negotiations on visa facilitation with the EU, see Laube 2019). Consequently, most legal migration and mobility options can only be offered by Member States, which are in charge of issuing national visas for training or employment purposes.

Due to these limitations, the EU largely relies on political dialogues and "soft", or non-binding, policy tools to pursue a common external migration policy, such as Mobility Partnerships (MPs) or the Migration Partnership Framework (MPF) detailed below. In 2015, as in 2011 and 2005, an increase in irregular arrivals at European borders gave renewed impetus to developing a common external migration policy and strengthening partnerships with countries of origin and transit. The latest initiative, the MPF, was launched in 2016. Like previous attempts, it involved using legal migration pathways as a bargaining chip to reach agree-

ments on return and readmission or increased border management with third countries. This is a sensitive area, as these are activities that occur at the point of intersection between migration policy and foreign policy, two areas in which Member States are reluctant to share competence (see Reslow 2013: 223). In practice, the EU's activities in relation to migration issues often form part of their development cooperation or neighbourhood assistance agreements. For instance, the EU manages the Emergency Trust Fund for Africa (EUTF), but Member States sit on the board of this fund and indirectly manage some of its budget via national development agencies' implementing projects (on the competing behaviour of these agencies, see Koch/Weber/Werenfels 2018: 13).

Over the past decade, the Commission, the European External Action Service (EEAS) and Member States have consistently promoted stronger partnerships with third countries, and especially in key countries of origin and transit in Europe's immediate neighbourhood and in sub-Saharan Africa. In doing so, the EU has deployed a range of tools to support Member States in engaging with third countries, ranging from legal instruments (e.g. visa facilitation, readmission agreements and Directives) to political dialogues (e.g. the Rabat Process, the Khartoum Process, MPs) to non-binding statements, declarations and initiatives (e.g. the Valletta Action Plan) and operational support (e.g. through EU agencies or projects under the EUTF). These tools are used separately or in combination, for example through the EU's MPs or the "compacts" concluded as part of the MPF. Most of these instruments have not, however, delivered much in the way of concrete mobility or migration options for work and training.

3.3 The EU's efforts to expand legal migration to date

In 2011 the Commission's Global Approach to Migration and Mobility (GAMM) (COM(2011) 743 final) added a mobility component to the three pillars of what was previously the Global Approach to Migration

²⁴ For instance, the competence to conclude EU Readmission Agreements is made explicit in the Treaties (Article 79(3) of the TFEU), while visa facilitation is not explicitly mentioned (see García Andrade 2013: 265).

(GAM).²⁵ The goal was to better link it to other EU foreign policy and development tools, including mobility and visa policy (e.g. the common EU short-term visa policy and Member States' national policies on long stays). The rationale behind the GAMM was to offer "more for more" based on the principle that increased cooperation on migration management would be rewarded with visa liberalisation and other advantages for third countries (see Strik 2017: 310).

At the same time, EU institutions started promoting the concept of MPs at the EU level (COM(2007) 248 final), while Member States were already relying on these approaches at a bilateral level (see Chapter 5). MPs offer a blueprint for deeper cooperation between the EU, Member States and third countries. They cover two levels: (1) high-level dialogues to foster or reinvigorate the implementation of readmission agreements and (2) operational cooperation with concrete projects to foster goodwill and improve institutional capacities and conditions in the third countries. These MPs are tailored to each partner and are dependent on the nature of relations between the EU and a specific partner, the migration situation in that country and the third country's level of interest in cooperating on irregular migration. A few years later, in 2011, the Commission developed a new policy instrument, the Common Agenda on Migration and Mobility (CAMM), that followed similar principles but targeted countries with which cooperation on migration was limited.²⁶

Limited outcome and lack of added value for Member States and third countries

MPs and CAMMs have not, however, resulted in the creation of effective legal migration pathways, and questions remain about their actual benefits compared to traditional bilateral agreements between Member States and third countries. The EU tried to revive them as an instrument for cooperating with Arab states in

the aftermath of the Arab Spring (den Hertog/Tittel-Mosser 2017). It also promoted circular migration as the core of the MPs and presented them as the best possible win-win situation: MPs would, supposedly, with one fell swoop meet Europe's labour market needs, contribute to local development in countries of origin and prevent brain drain (COM(2011) 303 final).

Nevertheless, in recent years several studies have shown how, despite the rhetoric around comprehensive approaches and circular migration, legal migration projects have been limited in scope and number (Reslow 2013; Gracia Andrade/Martin/Mananashvili 2015; den Hertog/Tittel-Mosser 2017). Under the MPs agreed with Moldova, Morocco and Cape Verde, for instance, most projects focused on irregular migration and reintegrating returnees and not on creating legal channels (see den Hertog/Tittel-Mosser 2017: 89). Finally, even though the Commission has attempted to coordinate approaches, MPs have been criticised for being the aggregate of Member States' initiatives, of projects they wanted to launch or of projects they were already involved in. And when MPs included legal migration projects, they primarily dealt with disseminating information about existing legal migration options and the risk of irregular migration (Reslow 2013).

One main weakness of the MPs and CAMMs is that they are entirely dependent on Member States' goodwill. They are not legally binding and are a political framework that Member States can choose to opt into or not, as they see fit. Thus, MPs are reliant on Member States opting into every stage – from negotiations to offering visas and implementation – and leading discussions with partner countries. In particular, a number of Member States have insisted that these MPs should not be too active in the field of legal migration, as this forms part of Member States' national competence (see SVR Research Unit 2019: 5).

25 Council of the European Union: Global Approach to Migration. Attachment 1 to the Presidency Conclusions of the Brussels European Council on 15/16 December 2005. Doc. 15914/1/05 REV 1, Brussels, 30 January 2006.

26 There are two main differences between MPs and CAMMs: (1) establishing an MP includes the negotiation of visa facilitation and readmission agreements, whereas a CAMM would not and (2) an MP is mainly agreed with neighborhood countries. The EU has signed nine MPs, with Armenia, Azerbaijan, Belarus, Cape Verde, Georgia, Jordan, Morocco, the Republic of Moldova and Tunisia, and three CAMMs with Ethiopia, India and Nigeria. In general, CAMMs are agreed with countries with which cooperation is little developed. See European Commission, Global Approach to Migration and Mobility, https://ec.europa.eu/home-affairs/what-we-do/policies/international-affairs/global-approach-to-migration_en, 27.08.2019; and European Council, Joint Declaration on a Common Agenda on Migration and Mobility between India and the European Union and its Member States, 2016, <https://www.consilium.europa.eu/media/23674/20160329-joint-declaration-camm.pdf>, 27.08.2019.



Finally, Member States have not always seen the added value of pursuing an MP versus entering into an agreement at the bilateral level, especially when they already have bilateral labour agreements with third countries. For example, the EU hoped that France would drive negotiations with Senegal, but Paris was never particularly interested in supporting an MP with Senegal because its interests were better served through bilateral relations and benefits it could negotiate directly with Dakar. Ultimately, France saw no added value in supporting the process and it remained passive in work at the EU level with Senegal while the EU failed to agree an MP with the country (Chou/Gibert 2012). In turn, third countries have sometimes preferred to pursue bilateral rather than EU-level agreements as they offer more leverage to negotiate interesting deals with individual Member States, more aid or access to visas for work or training. For example, attempts have been made over many years to engage with Morocco, but Rabat has consistently refused to sign a readmissions agreement with the EU because it is already cooperating with several Member States bilaterally on readmissions (see Martin 2012).

In short, MPs, along with the GAM and the GAMM, allow the EU to play a coordinating and steering role, but they have also shown that the EU still needs to prove its added value in this area, especially since many Member States insist that legal migration and foreign policies should remain areas of national sovereignty. The European Agenda on Migration and the MPF, discussed below, tried to address these limitations and demonstrate what a common EU approach could bring to the table.

Shifting the focus towards reducing irregular migration: The European Agenda on Migration and the Migration Partnership Framework

As the GAMM was running out of steam, the Commission launched a new comprehensive approach: the European Agenda on Migration. Adopted in May 2015, it is made up of four main pillars that echoed the GAMM's objectives: (1) reducing the incentives for irregular migration; (2) saving lives and securing bor-

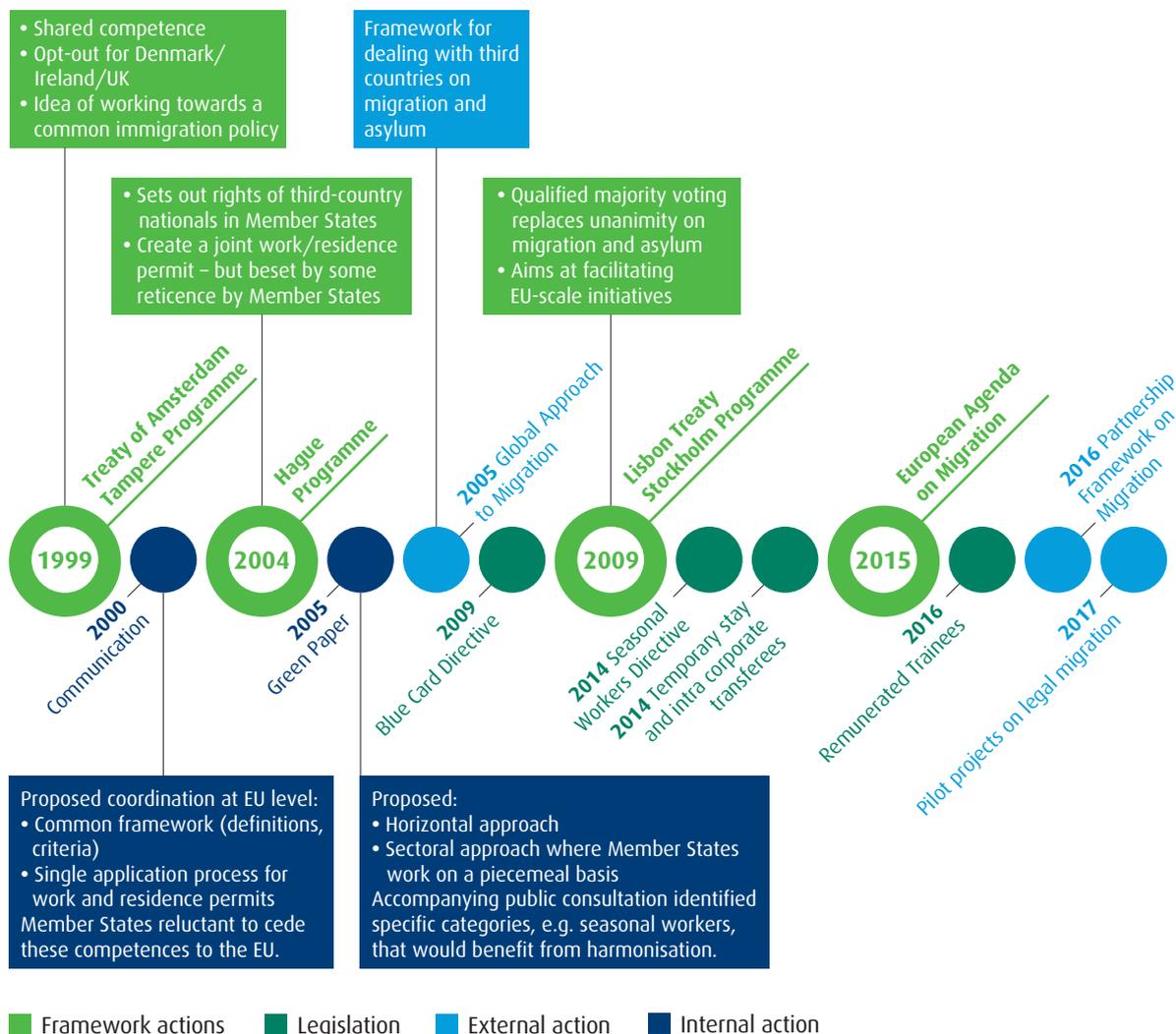
ders; (3) a strong asylum policy; and (4) a new policy on legal migration. One of the main priorities of the EU's legal migration policy has been to attract highly skilled migrants, such as researchers, business people and potential students, which also reflects Member States' economic priorities (including avoiding competition with local low-skilled workers). In any event, the legal migration dimension of the Agenda did not receive much attention, especially as irregular migration to Europe increased in the course of the summer of 2015 and Member States prioritised strengthening border management and supporting asylum systems over establishing new or wider avenues for legal migration. It was only in September 2017 that the Commission once again took the lead on legal migration, proposing to launch migration pilot projects with countries of origin and transit in Africa that will be detailed in 5.2.

In June 2016, at the same time as it introduced the European Agenda on Migration, the EU also launched the MPF (COM(2016) 385 final) in an attempt to further the work of GAMM, fully integrate migration into the EU's foreign policy and strengthen relationships with several key countries of origin or transit in Africa (Ethiopia, Mali, Niger, Nigeria and Senegal). The MPF does not differ much from previous initiatives, given its non-binding nature, but it has benefited from greater momentum as it leveraged more funding (including via the EUTF; see Collett/Ahad 2017: 9), increased support via the Common Security and Defence Policy and greater involvement on the part of EU agencies in partner countries, in particular the European Border Coast Guard and EUROPOL.²⁷ Still, two years on, the results have been mixed, at best, especially in terms of partnerships between the EU and partner countries on legal migration. Member States remain in the lead when it comes to engaging with third countries – and some countries like France and Spain have been reluctant to share their long-established diplomatic capital with the rest of the EU.

In conclusion, while the competence of the EU on legal migration is limited, EU institutions have been increasingly active in promoting the basic coordination

²⁷ The EEAS has also been more active in negotiations with third countries, and its staff managed to develop a more coordinated approach than before with other Directorate-Generals and Member States.

Figure 1 Milestones in EU migration policy (as relevant to the study)



Source: SVR Research Unit/MPI Europe/KALUZA+SCHMID Studio

and harmonisation of legal migration policies (for an overview, see Fig. 1) and working out partnership agreements with third countries that include provisions on facilitating legal access to the EU, although there has been little focus on low- and middle-skilled migration. MPs and other migration cooperation frameworks have failed to effectively create legal migration pathways for third-country nationals, although there are established frameworks within which Member States can expand legal migration options if they see fit. Further progress on expanding legal migration pathways will hinge on deeper coordination between the EU and its Member States and on the EU making the case for the added value of these efforts.

4 Designing legal migration systems: Approaches, instruments and admission channels open to low- and middle-skilled third-country nationals

All of the five EU Member States investigated for this study (France, Germany, Italy, Spain, Sweden) provide legal channels that allow for the admission of low- and middle-skilled foreign workers from third countries, which are the focus of this chapter. Nevertheless, very few channels explicitly target these skills categories – with the important exception of seasonal work. The country case studies also show that the role



of vocational training²⁸ varies within labour migration channels: either the existing institutional framework is underdeveloped or existing channels are barely used (see Box 5).

Varying levels of governmental control over recruiting migrant labour

In defining their approach to migrant selection, policymakers must create a balance between at least two core priorities: on the one hand, creating a responsive system that can recruit foreign workers, including the low- and middle-skilled, to meet labour needs quickly and, on the other hand, putting in place the appropriate mechanisms to protect the domestic workforce. Measures to ensure a level playing field with local workers are especially important given rising public scepticism about migration and recent spikes in support for political parties running on anti-immigrant platforms in all of the countries studied. Governments are under pressure to ensure employers undertake genuine efforts to recruit local workers to fill vacant positions by scrutinising whether the supply of local workers could be improved by raising pay or better working conditions – and preventing “wage dumping”. At the same time, and acknowledging the current political discourse, selection systems need to be designed in step with policies to help vulnerable workers of all kinds join the labour market, including recently arrived refugees and migrants and the long-term unemployed. In balancing these different goals, policymakers must decide which role the government and employers should play in recruitment decisions and the degree to which governments should accommodate employers’ reported needs.

The legal migration channels for work that are open to low- and middle-skilled migrants tend to be highly demand-driven. This means a job offer is required for all of the work channels examined in the five countries studied here, with the exception of short-term job search visas in some instances. The role of the gov-

ernment in managing these labour migration systems varies significantly among the countries analysed. **Sweden** is the one example among the case studies of a government that takes a hands-off, *employer-led approach* to managing labour migration flows, granting companies broad discretion to hire labour migrants from third countries for any profession and at any skills level, provided that the job offer is in line with Swedish collective agreements for that occupation (see 4.1).²⁹ This market-led approach leaves the government with relatively little leeway to control the scale or profile of admissions. By contrast, while the other four countries studied also rely on demand-driven approaches, their governments have assumed a more hands-on, *state-led approach* to managing labour migration flows and shaping the profile of who is allowed to enter and on what terms. Like most high-income countries, they rely on a range of measures to influence the recruitment of foreign workers, including labour market tests (4.2.1), shortage occupation lists (4.2.2), quotas (4.2.3), short-term admissions (4.2.4) and selection based on cooperation with third countries (4.2.5). Each of these approaches has its own advantages and trade-offs, as illustrated by the five countries studied here. These approaches are usually not used in isolation but in combination (Fig. 2).

4.1 Employer-led approaches: The Swedish example

An employer-led approach to steering migration allows the direct recruitment of the workers employers want, at any skills level and with limited government involvement (see Chaloff/Lemaître 2009). The logic of this strategy is that employers are better placed to assess their needs and hire staff to fill these gaps, and that letting them drive the process should lead to more successful labour market outcomes. Based on this demand-driven logic, the state does not cap numbers of employer-sponsored

28 This encompasses vocational or technical training and related forms of education that target individuals with limited educational qualifications.

29 In cases where no formal collective agreement is reached with the relevant trade union, terms of employment and salary need to be in line with what is customary for the relevant occupation or industry.

Box 5 Legal migration options for training purposes

All five countries studied issue student visas for higher education, but there is limited uptake of channels for non-academic vocational education and training. In part, this may reflect limited demand, either on the part of migrants, employers or even training institutions (that may not prioritise recruiting third-country nationals for their courses). Employers may also be reluctant to invest in training foreign nationals without a guarantee that they will be able to stay in the country after they graduate. Another important issue is cost, which can be a key obstacle to migration for training purposes in the low- and middle-skilled sector. Migrants may struggle to meet the cost of training or required preparatory measures (e.g. language courses) themselves, and as foreign nationals they tend to have limited access to scholarships or grants to cover these expenses. The following regulations, while not exhaustive, have been identified as potentially relevant to third-country nationals in search of vocational training opportunities in Europe:

- In **France**, only those with a valid residence title can access vocational training opportunities and apprenticeship schemes (see case study FR: 27).³⁰ For instance, third-country nationals who are granted a residence permit for family reasons or for study purposes can take up vocational training (*apprentissage*) in a French company.³¹ Further training options for third-country nationals are provided by Young Professional Programmes, which are linked to bilateral agreements with a limited number of countries. These programmes allow young professionals (aged between 18 and 35 or 40) from those countries to gain work experience with a French employer in a range of sectors such as healthcare, agriculture and industry, as well as in artisanal and social occupations.
- In **Germany** third-country nationals can access vocational training (*berufliche oder schulische Ausbildung*)³² if approved by the Federal Employment Agency (*Bundesagentur für Arbeit*) after the labour market test has been passed to ensure that no local trainee is available and after training conditions and remuneration have been verified. Candidates must be able to cover their living expenses (approx. 800 euros a month) for the duration of their training (two to three years), and are required to have at least basic (level A2 of the Common European Framework of Reference for Languages) or sometimes even intermediate level (B1) German. These requirements seem to constitute a significant hurdle, as the rather low number of admissions suggests: a little under 3,600 migrants were granted a residence permit for initial vocational training in 2018 (compared to approx. 36,400 first residence permits for study purposes, including pre-session courses; see BAMF 2019: 16; SVR 2019b: 25–27).³³ Matching third-country nationals willing to undergo training and employers with vacant training positions is difficult, not least due to the language barriers and Germany's very specific vocational education and training structure. The new Skilled Worker Immigration Act (that comes into force on 1 March 2020 and significantly amends the Residence Act, the main legal basis for labour migration to Germany) introduces a six-month search visa for trainees under 25 who hold a higher education entrance qualification, which can then be converted into a residence permit if they secure an apprenticeship.³⁴

30 Article L. 5221-5 of the Labour Code.

31 For an overview of conditions that need to be fulfilled to be able to take up an apprenticeship in France, see <https://www.cidj.com/etudes-formations-alternance/alternance/apprentissage-acces-aux-jeunes-etrangers>, 27.08.2019.

32 Sections 16b (1) and 17 (1) of the Residence Act. There are two types of vocational training in the German system: school-based training, which is generally unpaid or poorly paid, and employer-based training, which is normally paid. The new Skilled Worker Immigration Act conflates these two provisions into one (section 16a of the amended Residence Act).

33 However, this number does not include residence permits for school-based training which are currently not counted in the official statistics. This will change once the new Skilled Worker Immigration Act enters into force, as it conflates the old provisions on vocational training into one.

34 Section 17 (1) of the amended Residence Act. Nevertheless, use of this regulation will strongly depend on other legal preconditions, such as whether someone has a secured livelihood, the right language ability (level B2) and a general educational background (see SVR 2019a: 5).



- In **Italy** access to vocational training with employers or public training institutions is envisaged by way of an entry visa for study purposes.³⁵ It is, in theory, open to third-country nationals with intermediate skills levels or some degree of prior training. Entries for training purposes are subject to a numerical cap laid down in an inter-ministerial decree. Overall, this channel remains underused, with a total of only 4,524 slots being granted between 2014 and 2016, well below the ceiling of 15,000.³⁶ Further, Italy also links admission in the context of partnerships with third countries to pre-departure language and professional training. In special programmes organised by regional and local authorities in collaboration with employers' organisations, trade unions and other stakeholders, prospective migrants receive Italian language and job-specific training in their country of origin before being placed with employers in Italy. The implementation of such programmes in Moldova, Sri Lanka and Egypt has yielded mixed results: while the pre-departure component of the programmes allows for tailored training, it also creates long delays for employers.
- **Spain** has a residence permit for study purposes that covers full-time studies leading to a degree or certificate, research or training, student mobility programmes, unpaid internships in a company or recognised vocational training centre, and volunteering.³⁷ Applicants are required to demonstrate that they can cover the costs of their stay and return to their home country.³⁸ Employers can apply for a work permit for the duration of their stay (usually one year, except for programmes leading to a degree). Spain has also signed agreements with Australia, Canada, Japan and New Zealand to allow young professionals (aged 18 to 30 or 35) to work, study or travel for up to a year.³⁹
- In **Sweden** a residence permit for "other studies" can be issued for training purposes outside recognised higher education institutions, such as upper secondary schools (which in Sweden also offer a vocational track), vocational schools and religious schools. Applicants need to be able to cover their living expenses for the duration of the course. This admission track remains quite limited, at between 500 to 600 admissions a year (Swedish Migration Agency 2019b), compared to several thousand for university or doctoral studies. The main beneficiaries of a residence permit for "other studies" are nationals of the United States, Iraq, Japan, Iran and China. For some other nationalities the rejection rate for the "other studies" permit is remarkably high, including for Albania, Cameroon and Pakistan (case study SE). However, admissions to this entry channel remain very low. Thus, vocational training as an entry channel is a rather marginal phenomenon in Sweden and, according to experts interviewed for the Swedish case study, this is unlikely to change. This entry channel is not very well known and so far there have not been any proposals to expand it (case study SE).

35 Article 27f of the 1998 Act.

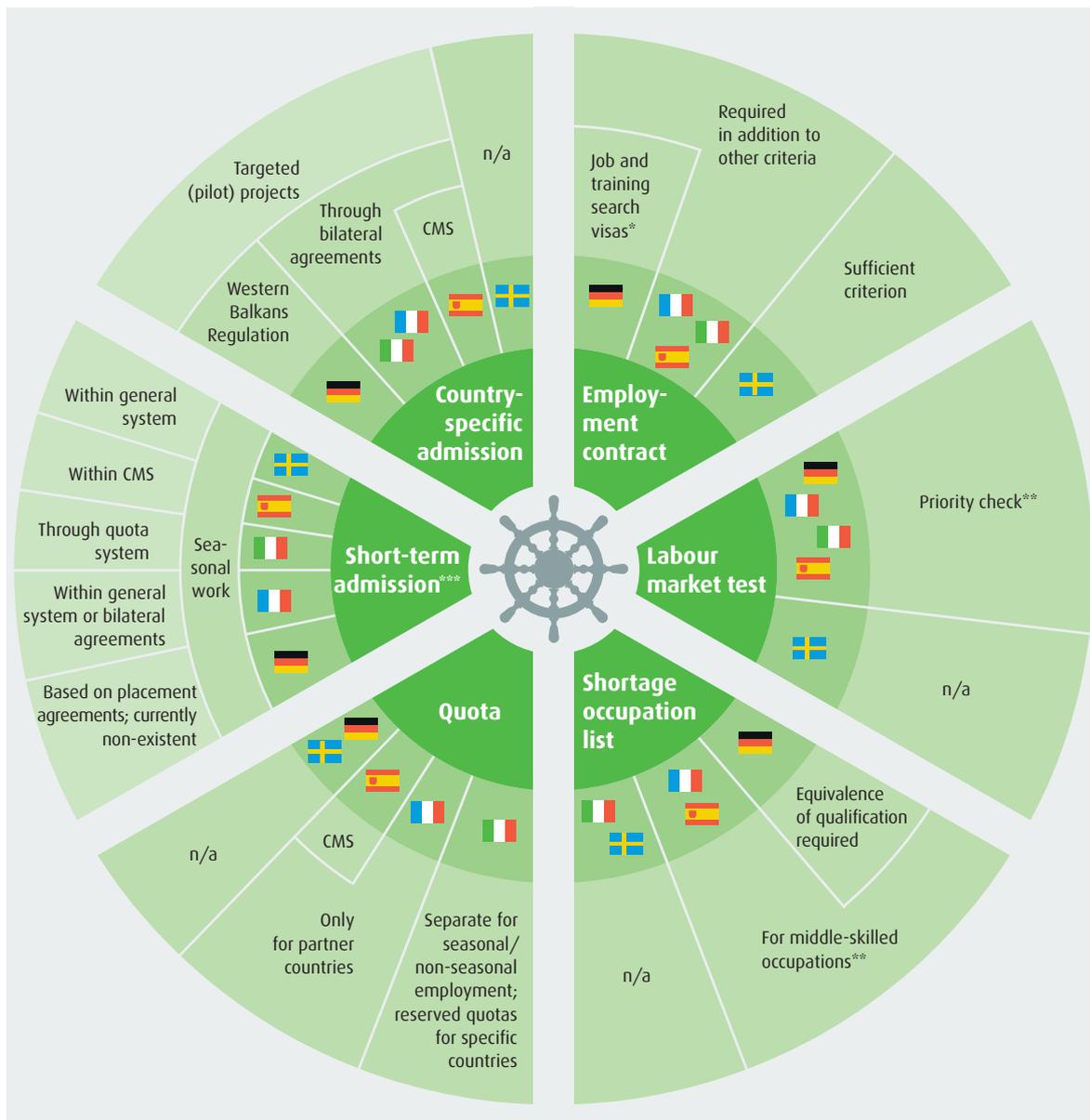
36 Ministry of Labour and Social Policies, Decree of 24 July 2017, www.gazzettaufficiale.it/eli/id/2017/09/09/17A06259/sg, 27.08.2019.

37 See Article 25bis (f) of Organic Law 4/2000. Given that official Spanish statistics do not provide a breakdown of the type of studies that third-country nationals are pursuing, it is impossible to trace back the number of admissions to this type of labour migration.

38 For an overview of the conditions, see http://extranjeros.mitramiss.gob.es/es/InformacionInteres/FolletosInformativos/archivos/triptico_estudiantes_eng.pdf, 27.08.2019.

39 For an overview of these agreements, see Spain's Ministry of Foreign Affairs and Cooperation 2018: Convenios internacionales: http://www.mitramiss.gob.es/movilidadinternacional/es/menu_principal/aunclit/convenios/index.htm, 27.08.2019.

Figure 2 Steering mechanisms for labour migration of low- and middle-skilled third-country nationals



NB: CMS = Collective Management System; n/a = not applicable. * To be introduced as of March 2020 under the Skilled Worker Immigration Act. ** For Germany, to be waived as of March 2020 under the Skilled Worker Immigration Act. *** Irrespective of temporary admission for periods of more than nine months.

Source: SVR Research Unit/MPI Europe

labour migrants, nor does it specify the profile of the labour migrant. Visas or residence permits are issued based on a concrete job offer or signed employment contract. This system was not designed specifically with low- and middle-skilled workers in mind, but it is open to them as long as there is corresponding demand on the destination country's labour market.

Sweden is a classic example of a country applying such an approach and it is thus considered to have the most open labour migration system of all the OECD countries (see OECD 2011). Germany also has a time-limited, employer-led channel for nationals from the Western Balkans (see Box 6) that operates alongside its regular channels, in which the state plays a more active role when it comes to selection.



Under the Swedish model, the role of the state is restricted to ensuring some basic guarantees in terms of salary and working conditions, with little input on how and where employers should recruit workers. But the state's limited control over the scale or profile of labour migration may also explain why this approach has not been adopted more widely.

To better understand the advantages and disadvantages of this employer-led, more hands-off approach it is worth examining its impact in Sweden following the 2008 reforms of what was formerly a fairly regulated system. The new law lifted most quantitative, qualitative and geographical restrictions to labour migration, including any rigid labour market test,⁴⁰ and merged previous admission schemes under one single framework. Thus, the government allowed employers to recruit foreign workers as they wished, at whichever skills level they needed, with only a few mandatory guidelines, such as respecting Swedish collective agreements (see Government Offices of Sweden 2008).

Prior to 2008, there were three main types of residence and work permits for labour migrants from third countries being issued in Sweden: (1) work permits to cover temporary labour shortages, which were limited to a specific occupation and employer and were only valid for 18 months (although they could be extended); (2) work permits for an "international exchange", which were limited to a specific occupation and employer and usually related to work in international firms or in culture, education, research or sports; (3) work permits for seasonal work, including berry picking. Following criticism from the private sector (including the Confederation of Swedish Enterprises) that the framework was too cumbersome and did not reflect emerging economic and demographic conditions, policymakers decided to reform this system (see Skodo 2018).⁴¹

By design, the new system allows for more flexibility and should better reflect market forces. The rationale is that companies are better placed than government agencies to evaluate their needs and select foreign workers in a timely fashion (see Government Offices of Sweden/Ministry of Justice 2017). As the economy evolves and new sectors emerge, the main assumption is that the government has neither the tools nor the flexibility to adapt to these changes in real time. Among the perceived benefits of this approach are the fact that only migrants with a guaranteed job in Sweden get a work permit for the duration of their contract, setting them up for immediate labour market integration upon arrival. Another is that the system can adapt to periods of economic growth or downturn (and essentially self-correct), with employers able to quickly adjust their demand for foreign workers. For companies, the draw of this system also lies in the absence of geographical restrictions, which allows employers to recruit foreign workers from anywhere and potentially tap into their existing overseas networks or business interests, that is if the company already has a presence abroad, for instance. For employers, especially smaller ones that do not have pre-existing international networks, the downside is that there is no institutional infrastructure or mechanism that could facilitate matching job vacancies with suitable and interested foreign workers.

The obvious drawback to this approach is that governments have little say over the number (or profile) of foreign workers they admit each year. In Germany, this lack of control has fuelled some criticism of the Western Balkans Regulation since it was introduced in 2015. Policymakers and civil servants in the domestic policy and security policy fields in particular were sceptical about opening up a migration channel without skill requirements, which has turned out to be one of the most popular channels to access the

40 In order to satisfy the EU's principle of "Community preference", employers have to advertise a vacancy through the national Employment Agency (*Arbetsförmedlingen*) and the EU job portal (EURES). However, no strict labour market test is performed, as employers are not obliged to provide evidence that they were unable to find a suitable candidate in Sweden or the EU; they can immediately recruit a third-country national (case study SE). Thus, the priority check is reduced to a mere formality (see SVR 2015: 37).

41 First, the centre-left government established a special parliamentary committee of enquiry in 2004 to draw up recommendations on potential reforms to the labour migration system. The committee delivered its report in 2006. In 2008, the new centre-right coalition government introduced legislation to reform the system, but instead of consolidating existing systems it decided to abolish all labour market tests and to create a strictly employer-led system to cover all labour migration.

Box 6 Selective liberalisation: How Germany applied the Swedish model to the Western Balkans

Like the Swedish approach, Germany's temporary Western Balkans Regulation represents a low-threshold, employer-led legal channel to Germany for work purposes. It applies to nationals from Albania, Bosnia-Herzegovina, Kosovo, Montenegro, North Macedonia and Serbia (section 26 (2) of the Employment Ordinance). It thus provides an important exemption to the general German admission system that – besides a specific job offer – normally requires proof of a university degree and a salary above a certain threshold (for an EU Blue Card) or a vocational qualification equivalent to German standards in specific (shortage) occupations (although the shortage occupations criterion will be waived under the new Skilled Worker Immigration Act, see 4.2.2, Box 7). In contrast to the Swedish model, the provision, adopted in 2015 and valid for a period of five years (2015–2020), aims to reroute irregular migration and unfounded asylum applications into a regular channel (on the link to migration control, see 5.1). Under this framework, labour migrants have to demonstrate neither language ability nor formal skill sets or qualifications in order to be granted a visa for work purposes. The key prerequisite⁴² is a valid job offer from a German employer and subsequent approval by the Federal Employment Agency, which includes a priority check and an examination of the working conditions set out in the employment contract. However, this does not necessarily mean that a full labour market check is carried out in most cases: provided that the employer's documentation is complete, approval is deemed to have been granted unless the Employment Agency actively objects within a period of two weeks (section 36 (2) of the Employment Ordinance).⁴³

The share of unskilled workers in Germany's total labour migration flows has increased significantly as a result of the introduction of the Western Balkans Regulation. Of those who migrated to Germany for employment purposes for the first time in 2018, almost as many received a *residence permit* for unqualified employment (approx. 17,000) as did for qualified work (approx. 17,400; BAMF 2019: 18). In 2018, the Federal Employment Agency granted its *approval of employment* in 46,118 cases to nationals from the six countries covered by the new regulation. Nearly 60 per cent referred to occupations only requiring lower skills (26,412), whereas about 40 per cent referred to skilled work (18,642).⁴⁴ However, less than half of those cases were effectively *issued a visa* in the same year (21,078) (Bundestag Printed Paper 19/8229: 3), indicate a number of other impediments.⁴⁵

42 With the entry into force of the Skilled Worker Immigration Act on 1 March 2020 an additional requirement will be introduced: from that date onwards, labour migrants over the age of 45 will either have to meet a minimum income threshold or furnish proof of sufficient retirement provision (section 18 (2) no. 5 of the amended Residence Act).

43 In addition to the aforementioned admission criteria, former recipients of any asylum seeker welfare benefits within the previous 24 months cannot be admitted through this migration channel. Those who filed an asylum application between January and the end of October 2015 and left the country before the cut-off date on 24 October 2015 are exempt from the latter condition. These specific conditions reveal that the provision was clearly intended to reroute migrants from irregular into regular migration channels. Thus, where the two other criteria are likewise met (valid employment contract and approval by the Federal Employment Agency), these former asylum applicants are legally permitted to re-enter Germany (as of January 2016, when the regulation came into effect).

44 The term "skilled worker" refers to the degree of complexity of the work or activity performed, as defined by the International Standard Classification of Education (ISCED), and not to the migrant's skills level, normally a prerequisite under German immigration law (see Box 7).

45 Among other things, not meeting the required conditions, providing false information about the employment contract, receiving asylum seeker welfare benefits, entry bans or the lack of financial security resulting from potentially too low wages have all been grounds for rejecting applications (see Bundestag Printed Paper 18/11124: 3).



German labour market (see Box 6).⁴⁶ While Sweden's system has received less political pushback, it has not been without its issues. Because the government is less involved overall, enforcing the rights of migrants becomes more difficult. Still, a number of adjustments have been made since the policy was adopted (see 6.1.4) and these have helped sustain support for the system. A decade later, Swedish legislation in fact represents a rare case of political consensus in the field of migration. Labour migration and the recruitment of low- and middle-skilled workers abroad was not one of the main focuses of debate during the general election campaign in September 2018, despite migration and asylum policies in general being one of the most divisive issues.

4.2 State-led approaches: Levers for shaping labour migration flows in France, Germany, Italy and Spain

Rather than adopt a very liberal employer-led approach similar to Sweden's system, the other countries studied have opted to retain more oversight over the selection process. This allows them to use a variety of policy tools to ensure that employers are only recruiting foreign workers when they cannot recruit locally or from other Member States.

4.2.1 Favouring the local workforce through labour market tests

Most high-income countries (including Germany, Italy, France and Spain) use labour market tests to verify that employers cannot fill a vacancy with a local worker. This is a means of maintaining control over the

process of recruiting foreign workers. These tests also protect the domestic labour force from undue competition in terms of salary or working conditions.⁴⁷ The labour market tests are normally used in combination with other steering mechanisms outlined below.⁴⁸

Labour market tests require employers to publicly advertise each job opening, including job requirements, qualifications needed and sometimes the salary, to verify that no local workers can meet the demand. Employers usually have to post this advertisement with national, regional or local employment services and the EU's job mobility portal (EURES). They may also have to use other channels such as local newspapers and specialised websites, and they may be required to pay for these in a number of countries.⁴⁹ Jobs are listed for a few days or up to several months, depending on government requirements.⁵⁰ The government oversees employers' local recruitment efforts – and sometimes imposes additional requirements, for instance by asking them to justify why they did not select local candidates or by assessing how widely they have recruited locally – and the authorities also conduct their own assessment of the local labour market, as is the case in France (see OECD 2017).

Some countries created ways to bypass the labour market test, as, for example, Italy did for admissions within its quota system. In addition, in France, the labour market test does not apply to all occupations (see 4.2.2). For the ones that do, employers need to demonstrate that they have not been able to recruit locally after posting an advertisement with the public Employment Agency. The company has to collect all the applications and justify why each was unsuccessful. Then the local foreign workforce service (*Service de la Main d'Oeuvre Etrangère*, SMOE), which is affiliated to

46 According to a number of domestic policy actors who were interviewed for the German case study.

47 The EU defines labour market tests as a "mechanism that aims to ensure that migrant workers are only admitted after employers have unsuccessfully searched for national workers, EU citizens (in EU Member States this also means EEA workers) or legally residing third-country nationals with access to the labour market according to national legislation" (see https://ec.europa.eu/immigration/blue-card/france_en, 27.08.2019).

48 For instance, a shortage list in France and quotas in Italy.

49 See, for example, the requirements for labour market tests in the United Kingdom: <https://workpermit.com/immigration/uk-tier-2-resident-labour-market-test>, 27.08.2019, or in Australia: <https://immi.homeaffairs.gov.au/visas/employing-and-sponsoring-someone/sponsoring-workers/nominating-a-position/labour-market-testing>, 27.08.2019.

50 To be efficient, the tests need to be advertised in sources that job seekers actually use and need to give candidates enough time to apply (see Ruhs 2014).

the Ministry of Labour, reviews the documentation and runs a test based on a statistical analysis of the nature of the job and the economic conditions in the region in which the company operates, including indicators such as the so-called flow rate (the share of job seekers who found a job in relation to the total number of job seekers), the number of registered vacancies and the level of job satisfaction. Based on these results, the SMOE and local government representative (*Préfet*) may then allow the company to hire a foreign worker (see OECD 2017: 239).

The French system is more demanding than the labour market tests conducted by Germany's Federal Employment Agency and under Spain's General Regime (*Régimen General*). In **Spain**, an employer seeking to recruit a foreign worker is required to first advertise the position through the local public employment office for 25 days before notifying that office of the outcome of the recruitment process (case study ES: 16). In the case of a negative outcome, the office will certify that there are no local workers qualified to perform the duties required by the job, subject to final review by the Secretary of State for Migration. In **Germany**, for most occupations, employers need to get the consent of the Federal Employment Agency, which runs the labour market test.⁵¹ The test comprises two elements: First, a priority check to rule out that domestic applicants or nationals of other EU Member States or recognised refugees are available for the job. This criterion is, however, waived under the new Skilled Worker Immigration Act for most categories, including (non-academic) skilled workers with a diploma equivalent to German qualifications (see Box 7).⁵² Second, the employment contract is examined to verify that the wage and working conditions are in line with col-

lective agreements (where applicable), the minimum wage in the respective sector or the standard local wage (see BA 2017: 17).

To complement labour market tests, governments may also ensure that the potential migrant has the appropriate skills and experience to perform the job so as to verify that employers are not hiring overqualified workers. This is the case in **France**, where, since 2016, the SMOE has been required to check that the foreign candidate has suitable qualifications and experience for the job. Based on its assessment, the SMOE can refuse to issue a work permit (see OECD 2017: 239).

Conducting labour market tests is time and resource intensive and can make the procedures very complex for employers. As a result, most countries do not use them for all labour migration flows. Instead, they often create various exempted categories and/or use labour market tests complementary to shortage occupation lists (4.2.2), quotas (4.2.3) or other specific considerations.

Labour market tests can be applied to low- and middle-skilled migration to protect the domestic workforce in the relevant sectors, especially since competition for jobs and the risk of downward pressure on wages can be particularly pronounced (see Ruhs 2014). Seasonal work is an exception in the low- and middle-skilled sector: as the needs of the market are often pressing and time sensitive, seasonal workers may pass the labour market test more easily, for example through the Collective Management System in Spain or in France, where the test for seasonal workers is more accommodating (see OECD 2017: 271). Exemptions are typically made for highly skilled categories as well.⁵³

51 Under the current Employment Ordinance, this approval is not required for highly qualified migrants, such as researchers, those on international exchange programmes or those entitled to an EU Blue Card.

52 After Germany began liberalising its immigration law in 2005, more and more categories were exempt from the priority check, including (as of 1 July 2013) skilled workers with a recognised vocational qualification in shortage occupations (see 4.2.1; SVR 2014: 72 ff.). However, it was repeatedly stated in the course of the 2019 legislative procedure that if the situation on the labour market changes, the priority check can be reintroduced at any time (see Bundestag Printed Paper 19/10714: 4). For the time being, though, a full labour market test will remain obligatory for vocational training (section 16a of the amended Residence Act), high-skilled employment (tertiary education) below the salary threshold to qualify for an EU Blue Card (section 18b of the amended Residence Act) and for beneficiaries of the Western Balkans Regulation (section 26 of the amended Employment Ordinance; see Box 6), to name the most important categories.

53 Such as specialists and other types of professionals like artists, sports professionals, researchers and sometimes employees of churches and faith-based organisations. In about half of the countries surveyed for a European Migration Network study, highly qualified workers were exempt from labour market tests, including in France, Italy and Spain (see EMN 2015a: 21–22). Countries also have exemptions based on non-economic criteria, as it may be strategically important to favour some categories of migrants based on cultural, social or diplomatic factors.



4.2.2 Meeting specific labour market needs through shortage occupation lists

Shortage occupation lists collate in-demand occupations to allow employers in specific sectors to hire foreign workers more easily. These lists can be used as a basis for bypassing complex labour market tests (or, in the case of points-based systems, for favouring migrants who are qualified to work in shortage occupations). They also make it easier to hire workers for in-demand occupations.⁵⁴ The shortage occupation lists used in the countries studied here include a number of high- and middle-skilled jobs. For instance, the list used in **France** includes both occupations requiring higher skills (e.g. IT experts) and those requiring medium-level skills (e.g. construction supervisors, managers and technicians).

Such lists can address both nationwide labour shortages and those experienced in specific regions. France, for instance, drew up a shortage occupation list in January 2008⁵⁵ that encompasses occupations experiencing labour shortages nationally and in specific regions. Spain created a shortage occupation list (the Catalogue of Hard-to-Fill Occupations, *Catálogo de Ocupaciones de Difícil Cobertura*) following the Royal Decree of 2004, which lists shortage occupations at the levels of autonomous community and province.

In France and Spain, employers looking to hire people in these shortage occupations can bypass labour market tests and thus recruit workers more quickly. **Spain** introduced its shortage occupation list as a way to speed up the recruitment process under the General Regime for in-demand occupations (e.g. in the health sector). This approach provides for greater oversight and input by the government in regard to the profile of labour migration flows. In Germany, handling of the shortage list is a more complex process, as the recognition of qualifications plays a crucial role when admitting third-country nationals to the German labour market (see Box 7).

Policymakers usually draw on both quantitative and qualitative sources when drafting a shortage occupation list (e.g. labour market data and input from employers or social partners). When France introduced its list in 2008, for example, it made use of employment, unemployment and vacancy data, job forecasts, and input from the national Employment Agency, occupational federations and other social partners (see EMN 2015b: 29). The 30 occupations selected for inclusion in the list⁵⁶ all had a high “rate of tension” – a measure that compared the number of registered job vacancies with the number of job applications. **France’s** list was intended to be updated on an as-needed basis following consultations with the government and social partners, but in practice it has not been updated since 2008 (case study FR).

By contrast, **Spain’s** shortage occupation list is intended to be updated on a quarterly basis by the Tripartite Labour Commission for Immigration (*Comisión Laboral Tripartita de Inmigración*), an advisory body to the Ministry of Labour, Migration and Social Security comprised of representatives from the Ministry, business associations and trade unions. The Commission assesses the national employment situation using unemployment and employment data submitted by the public employment offices in Spain’s autonomous communities and then reviews a draft list of shortage occupations proposed by the national public employment service. Over the years, this list has included both occupations requiring high- and middle-skilled workers (e.g. doctors, nurses and engineers).

Shortage occupation lists can serve as a mechanism so that governments can adapt their labour migration system according to changing labour market needs. In the case of **Spain**, for example, policymakers were able to reduce the Catalogue of Hard-to-Fill Occupations as demand for foreign workers fell due to the recession – from 488 listed occupations at the start of 2008 to 98 by late 2009 (EMN 2009: 20). This flexibility requires the lists to be updated on a regular

54 Sweden’s shortage occupation list does not function as an admission channel for recruiting foreign workers from abroad, although it does allow third-country nationals who are already in the country and who are offered a job in a shortage occupation to apply for residence and work permits from within the country (case study SE). Most notably, the Swedish shortage occupation list includes low- and middle-skilled occupations such as bakers, bus drivers, hairdressers, cleaners and taxi drivers.

55 Following the adoption of the Law of 24 July 2006.

56 In its bilateral agreements (see 5.1), France extends the number of listed occupations that are negotiated individually with each partner country. These bilateral lists are, however, not regularly updated.

Box 7 Germany: The paramount importance of recognised skills

Occupation- and skills-specific requirements play a crucial role in Germany's system for granting labour market access to third-country nationals. The Federal Employment Agency updates a list of shortage occupations twice a year⁵⁷ (known as the "bottleneck analysis", *Fachkräfteengpassanalyse*) for which specific skills are needed. A skills- and occupation-specific shortage can be reported for the whole of Germany or only for individual regions. To date, third-country nationals wishing to take up a "skilled occupation" (*qualifizierte Beschäftigung*) that requires at least two years of vocational training may only enter the German job market if their occupation is on the white list of shortage occupations (*Positivliste*). However, once the new Skilled Worker Immigration Act enters into force on 1 March 2020, the instrument will be dropped altogether, and admissions will no longer be restricted to any specific "bottleneck professions", nor will they be subject to a labour market test. However, it is questionable whether this will remove the key barrier to access for foreign workers, as they still need to have a foreign professional diploma that is recognised as equivalent to a German qualification (so-called proof of equivalence, see SVR 2018: 52).⁵⁸ This may lead to a core dilemma when admitting third-country nationals: On the one hand, the German vocational system is lauded for its high standards and genuine on-the-job training. On the other hand, this very specific type of training barely exists abroad and professional certificates are unlikely to be considered fully equivalent to German standards. Under the new law, the adaptation of qualifications and training on the job will be facilitated (section 16d of the amended Residence Act). However, this option is only available to migrants with a formal diploma (see BA 2018a: 9).

basis so as to be able to reflect current priorities in a fast-moving labour market. This can be a resource-intensive and time-consuming process, requiring an in-depth analysis of labour market data and inputs from an array of different stakeholders. Spain's practice of holding regular consultations with a standing commission comprising government, employer and trade union representatives is thus a promising approach, providing an opportunity to update the list up to four times a year. Another challenge is ensuring that the methodology for compiling these lists can accurately capture current and future labour market needs (see 6.1.1). Some analysts remain sceptical about whether shortage occupation lists can ever accurately predict future labour market needs, regardless of how much governments invest in their methodology (see Sumption 2011; see also 6.1.1).

4.2.3 Regulating access through quotas

Numerical limits for certain sectors, admission channels or labour migration systems as a whole can provide a greater degree of control over both the number and profile of labour migrants arriving each year. However, the key question is whether these quotas serve as a strict upper limit or as a target – and what to do if demand outstrips supply. If governments struggle to forecast what labour or skills shortages they may face, the task of setting appropriate quotas seems even more difficult.

For some countries, these quotas may cap the number of residence and work permits that can be issued to non-EU foreign workers. Under the terms of Italy's 1998 Act and its amendments, the Ministry of Interior and the Ministry of Labour and Social Policies

57 See <https://statistik.arbeitsagentur.de/Navigation/Footer/Top-Produkte/Fachkraefteengpassanalyse-Nav.html>, 27.08.2019.

58 Unlike the aforementioned white list of shortage occupations and the labour market test, this criterion will *not* be waived under the new Skilled Worker Immigration Act – with only one minor exception: it will be possible to approve ICT jobs irrespective of a recognised professional qualification if certain other criteria (such as three years of experience on the job, sufficient German and a minimum salary) are met (section 6 of the amended Employment Ordinance, as of 1 March 2020).



are required to publish a triennial Document of Migration Policy Planning (DMPP, *Documento Programmatico Triennale*) after consulting with regional and local authorities, trade unions and other actors (case study IT). Once the DMPP has been drawn up, the two Ministries set an annual cap on entries of non-EU foreign workers with distinct quotas for seasonal employment, non-seasonal employment and self-employment, and the available slots are filled on a first come, first served basis. A growing share of entry permits are also reserved for converting permits (e.g. converting a study or seasonal employment permit into a non-seasonal or self-employment permit). The government can also set quotas for specific occupations. Between 2005 and 2010, for example, a growing proportion of non-seasonal employment permits were reserved for domestic and care workers, while special quotas were also assigned for workers in the fishing sector (2006) and construction sector (2007). A proportion of the annual quotas is also reserved for countries with which Italy has signed a bilateral agreement on migration management (see 5.1), and the law also creates special quotas for descendants of Italian citizens living in Argentina, Brazil, Uruguay and Venezuela.

In other countries, quotas may serve as more of a target than a cap (as is the case in Australia, Canada and New Zealand, e.g.) or they may only apply to a portion of labour migration admissions. Spain, for example, sets quotas that only apply to its Collective Management System (*Gestión Colectiva de Contrataciones en Origen*). This system operates alongside its General Regime, allowing employers of 10 or more workers to hire groups of temporary workers for certain occupations from countries with which Spain has signed a bilateral agreement. Spanish law establishes three pathways under this system: (1) temporary jobs lasting up to nine months in a one-year period (e.g. seasonal agricultural work), with migrants then required to return to their country of origin; (2) “stable” jobs that grant renewable work permits lasting at least one year for certain occupations (e.g. in the construction and hospitality sectors); and (3) three-month job search visas for the children or grandchildren of

Spanish nationals and people seeking work in specific occupations or regions experiencing labour shortages. Quotas for the latter two categories (and qualifying occupations) are established through annual ministerial orders issued by the Ministry of Labour, Migration and Social Security, and can be revised in the course of the year according to labour market needs.⁵⁹ Falling demand for foreign workers following the recession led to the latter two pathways being suspended in 2012.

Italy and Spain both rely on a mixture of quantitative data and qualitative inputs when drawing up their annual quotas. Before issuing Spain’s annual ministerial order, the Secretary of State for Migration consults employment and unemployment data from the public employment service and draws input from the autonomous communities (including requests from employers and trade unions). The Tripartite Labour Commission for Immigration, which includes representatives from business associations and trade unions, also provides input on the final proposal. Italy’s annual quotas are drawn up using data on labour shortages, including employment and unemployment data, estimates of potential labour demand based on an ad-hoc survey conducted by the Union of Chambers of Commerce, and input from regional and local authorities, business associations and trade unions. This process also draws on input on the “integration capacity” of local authorities, both in terms of their labour needs and the local availability of social services.

Quotas can in principle offer governments a hands-on approach to managing their labour migration systems by controlling both the scale and profile of labour migration into their country and offering a mechanism for publicly consulting with an array of different stakeholders on labour market needs. By setting a ceiling on admissions, policymakers can avoid a scenario of unexpectedly high influxes of foreign workers and thus protect the domestic labour force from undue competition. However, in practice it can be difficult for policymakers to define an appropriate number, given the challenges of predicting future labour market needs.

As is the case with shortage occupation lists (see 4.2.2), the effectiveness of quotas depends on how accurately they capture labour market needs. In the case

59 Article 169 of Royal Decree 557/2011.

of Italy, for example, the quotas are in part informed by an ad-hoc survey (*Progetto Excelsior*) carried out by the Union of Chambers of Commerce that assesses employers' willingness to hire foreign workers in the industrial and service sectors and what skills they need. However, the focus of this survey ignores other key sectors that employ low- and middle-skilled foreign workers, such as the agricultural and domestic or care work sectors. The quota system also involves several bureaucratic steps that require employers to apply for authorisation (with applications being granted on a first come, first served basis and eligibility checks and labour market tests being conducted), then migrant workers to apply for a visa in their country of origin, then employers to apply for a residence permit upon arrival of the migrant worker. This can delay the process and deter employers from using the quota system (case study IT: 28–29). If the system is too complicated, employers looking to recruit foreign workers may opt to hire people outside of legal channels (see 6.2).

4.2.4 Limiting access through short-term admissions: Seasonal work as a central admission channel for low-skilled migrants

In addition to measures to shape the scale or profile of labour migration, governments can also opt to admit some workers on a very short-term basis or for recurring – though strictly temporary – periods. While all the countries studied here admit low- and middle-skilled workers on an initially temporary basis, these workers typically do not have access to opportunities for longer-term residence beyond the provisions to facilitate re-entry for multiple seasons. This approach is used for workers who are needed on a short-term, seasonal basis in the agriculture, construction, horticulture, hospitality and tourism sectors, for instance.

All five countries studied have a dedicated scheme for recruiting third-country nationals for seasonal work, although **Germany** does not currently use this channel. Indeed, in Germany admission for seasonal work used to be a significant entry channel for low- and middle-skilled workers, but it has been dormant since the main countries of origin joined the EU and demand for seasonal workers was satisfied under the Free Movement Regime (see case study DE: 21).⁶⁰ But while EU nationals form part of the seasonal labour force in the other countries studied, recruitment of further third-country seasonal workers has been of paramount importance for some Member States. France, Italy, Spain and Sweden all rely on third-country nationals to meet seasonal labour demands in the agriculture and horticulture sectors (e.g. fruit picking). However, due to the economic downturn in southern Europe in particular, admissions via this migration channel have significantly decreased, as the Eurostat data show (see Fig. 3 and Table 1).

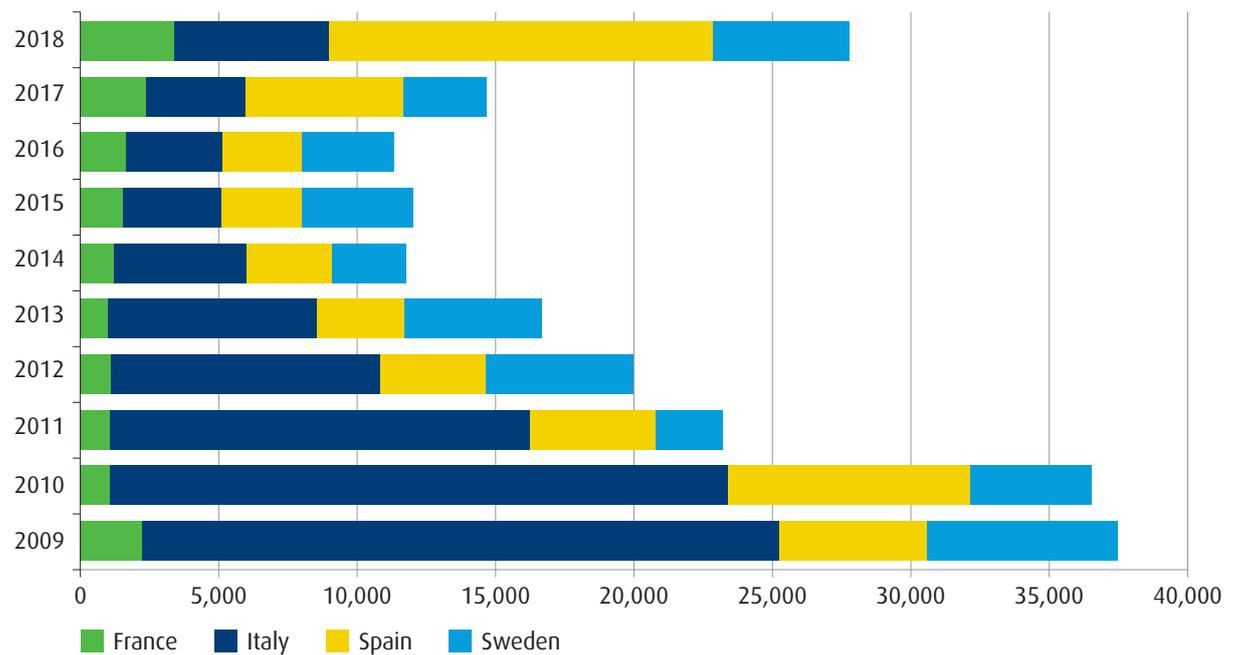
Each country administers its seasonal worker scheme differently based on its relationship with third countries, the needs of the labour market and its broader migration system. **Spain** primarily recruits seasonal workers through its Collective Management System. In doing so, it relies on countries with which it has signed a bilateral agreement on managing labour migration flows, such as Morocco. This system allows autonomous communities to customise their schemes according to local needs. However, since the economic crisis, the quota set under the Collective Management System has been drastically reduced.⁶¹ On the other hand, due to a recent recovery in certain sectors of the Spanish economy, including the agricultural sector, admissions for seasonal work have started to increase again.⁶² These adjustments clearly reflect the degree of flexibility of the Spanish system in that it

60 In the past, Germany had seasonal employment agreements with Poland, Romania, Hungary, Slovakia, the Czech Republic, Croatia, Slovenia and Bulgaria (see Offer/Mävers 2016: 134). Before accession, around 300,000 permits for seasonal workers from these countries were issued each year; the current number of free-moving seasonal workers can no longer be statistically recorded (see Späth et al. 2018: 12).

61 Both the stable job component and the job search visa option have been suspended (see 4.2.3): the quota assigned to non-seasonal workers was cut from approx. 16,000 slots in 2008 to approx. 900 in 2009 (case study ES: 21).

62 In 2016, approx. 5,500 permits were issued, whereas admissions increased threefold, to approx. 17,400 in 2017 (EMN 2017: 9). These numbers differ from Eurostat data due to the different methodology applied. Member States are now obliged to report data on seasonal workers based on common guidelines. This will significantly improve the comparability of data on employment levels of low- and middle-skilled migrants in this burgeoning sector.

Figure 3 First residence permits issued for seasonal work, 2009–2018



NB: No admission of third-country nationals for seasonal work in Germany; see Table 1 in the Appendix

Source: Eurostat 2019b

can respond to the fluctuating needs of the economy. The **French** system is similar, as it is based on well-established cooperation with Morocco and Tunisia, countries which provide most of the seasonal workers coming to France every year (see OECD 2017: 264). French employers can thus build on solid networks with these two countries. In **Italy**, the government sets quotas for seasonal workers and cooperates with selected partner countries,⁶³ but it does not specify the number of visas allocated to each partner (case study IT). The economic downturn also led to massive cuts in the number of slots available in Italy's quota system, from 80,000 slots in 2007 to 17,000 in 2017 (approx. -80 per cent). This number is also striking in terms of the discrepancy it shows between planned quotas on the one hand and actual admissions on the other (approx. 3,600 admissions in 2017; see Fig. 3 and Table 1 on seasonal residence permits). **Sweden**, on the other hand, does not use bilateral agreements, but migrant networks and established links between

employers and recruitment agencies in Thailand have led to a de facto migration corridor emerging between Sweden and Thailand for berry pickers (see Box 8).

As outlined in Chapter 3, seasonal workers are one of the few categories of workers that are subject to an EU Directive (Directive 2014/36/EU), which sets common standards for their entry, residence and protections (see Hooper/Le Coz 2019). The Directive defines a maximum period of stay of between five and nine months within a 12-month period (to be determined by Member States) and it does not extend family reunification rights to seasonal workers. Germany, France and Sweden have set the maximum period of stay at six months, while Spain has chosen nine months. The Seasonal Workers Directive emphasises the temporary nature of this work, although it does allow for seasonal workers to extend their contract or change employers, and to facilitate the re-entry of workers who entered at least once within the past

63 As of 2018, partner countries for seasonal migration included Albania, Algeria, Bosnia-Herzegovina, the Republic of Korea, Côte d'Ivoire, Egypt, El Salvador, Ethiopia, North Macedonia, Philippines, Gambia, Ghana, Japan, India, Kosovo, Mali, Morocco, Mauritius, Moldavia, Montenegro, Niger, Nigeria, Pakistan, Senegal, Serbia, Sri Lanka, Sudan, Tunisia, Ukraine (D.P.C.M. 15 December 2017: https://www.cliclavoro.gov.it/Normative/DPCM_15_dicembre_2017.pdf, 27.08.2019).

Box 8 Migration corridors for seasonal work: Berry pickers in Sweden

Third-country migrants coming to pick berries during the summer months are a common form of seasonal labour in Sweden, and this growing industry is increasingly reliant on seasonal workers from Thailand (case study SE). In fact, a private initiative launched in the 1980s by a Thai woman living in Sweden who invited relatives to work there during the berry-picking season eventually developed into a distinct and established migration corridor between the two countries – pointing to the importance of migrant networks in facilitating migration for low-skilled work in particular. In 2017, a total of 3,043 work permits were granted to berry pickers and planters, and almost all of the workers in this category came from Thailand (2,933) or Ukraine (99). This marked a slight decrease compared to 2015. The latest figures suggest an opposite trend: In 2018, the number of Thai berry pickers rose again to almost 5,000, which was due to an increased demand for berries on the world market (Hedberg/Axelsson/Abella 2019: 14).⁶⁴ A number of special requirements were introduced for berry pickers following concerns about poor conditions and wages (see Herzfeld Olsson 2018). They include giving responsibility to a Swedish Trade Union for these workers and for developing a collective agreement on their salary and working conditions. Sweden’s labour migration system was designed with the intention of creating one single channel for labour migrants (see 4.1), but the country has subsequently introduced a seasonal work permit as part of its implementation of the EU’s Seasonal Workers Directive. However, this only applies to those seasonal workers who are employed by Swedish companies, and in practice most are employed by Thai agencies and thus enter through the regular labour migration system (case study SE). According to a recent empirical study based on 165 interviews, a berry picker pays an average of USD 4,000 to work in Sweden for a period of roughly 70 days. Thus, an average berry picker will have to work for 1.6 months to cover these costs; actual earnings amount to around USD 2,000 per season – roughly three times what an average worker can earn in Thailand over the same period (Hedberg/Axelsson/Abella 2019: V).

five years and met the conditions of their stay. In the case of **Spain**, for example, employers can opt to “re-hire” the same seasonal workers and, by doing so, they skip the process for recruiting groups of workers in countries of origin via the Collective Management System. Some countries have opted to issue multi-year residence permits to simplify this process while still issuing short-term work permits and requiring workers to return to their country of origin between these periods. In 2007 France introduced a “seasonal worker” residence card that can be issued to workers for three years (and is renewable) if they have an employment contract lasting at least three months and commit to return to their home country after that employment ends. While **Italy** generally allows third-country nationals to switch employers once they arrive in the country, seasonal workers are exempt from this rule

and cannot change jobs or employers (case study IT: 14). With the exception of **Germany**, which recruits seasonal workers from other EU Member States, the countries studied here all use this particular labour migration channel the most for recruiting low- and middle-skilled workers from third countries.

4.2.5 Privileging mobility through country-specific admissions

Another option for governments looking to shape the profile of labour migration flows are country-specific approaches, which are often combined with other approaches as detailed in the above, for example by reserving part of a quota for nationals of certain origin countries or giving them privileged access to available channels by lowering entry requirements. As discussed

⁶⁴ Exact comparisons with earlier years are, however, methodologically problematic, as the statistical categorisation of berry pickers changed in 2015 (Swedish Migration Agency 2019a).



in Chapter 2, this country-specific approach may be motivated by shared historical, cultural or economic ties, or it may be informed by more contemporary foreign policy, economic or migration management priorities.

All of the case-study countries except for Sweden have opted for this approach in one way or another. They either strike direct agreements with governments (**France, Italy, Spain**) or give preference to nationals of specific third countries through primary or secondary legislation (**Germany**). **Sweden**, by contrast, pursues a country-blind approach based on the assumption that employers should recruit workers from wherever is most effective and convenient for them. This principle gives employers a great deal of autonomy and it also makes for a straightforward system: as all foreigners enter under the same conditions, this can be easier to navigate than a variety of country-specific frameworks. While **Germany's** labour migration system in principle follows a universalist approach without offering preferential access to nationals from groups of third countries, there are some exceptions, most notably the Western Balkans Regulation (see Box 6) and a range of small-scale pilot projects with third countries.⁶⁵

5 Cooperation on migration with origin countries: The role of partnerships and targeted projects

Setting up partnerships in order to manage migration flows is a top policy priority at EU and Member State level. The choice of a partner country may be dictated by factors that are unrelated to the objectives discussed in the above. Knowledge of and trust in the institutions and capacities of third countries are often key when selecting a partner, as governments want to ensure reliable cooperation and efficient procedures. Choices may be based on the existence of previous ties, historical relations or a common language, but

they may also relate to a third country's capacity to be a partner in all operational aspects of implementing a bilateral agreement or mobility programme. The different logics underlying various forms of cooperation mechanisms can be captured by taking a migration management perspective (5.1), and by focussing on targeted legal migration projects, labour market and development goals (5.2).

5.1 Linking legal migration to other policy rationales

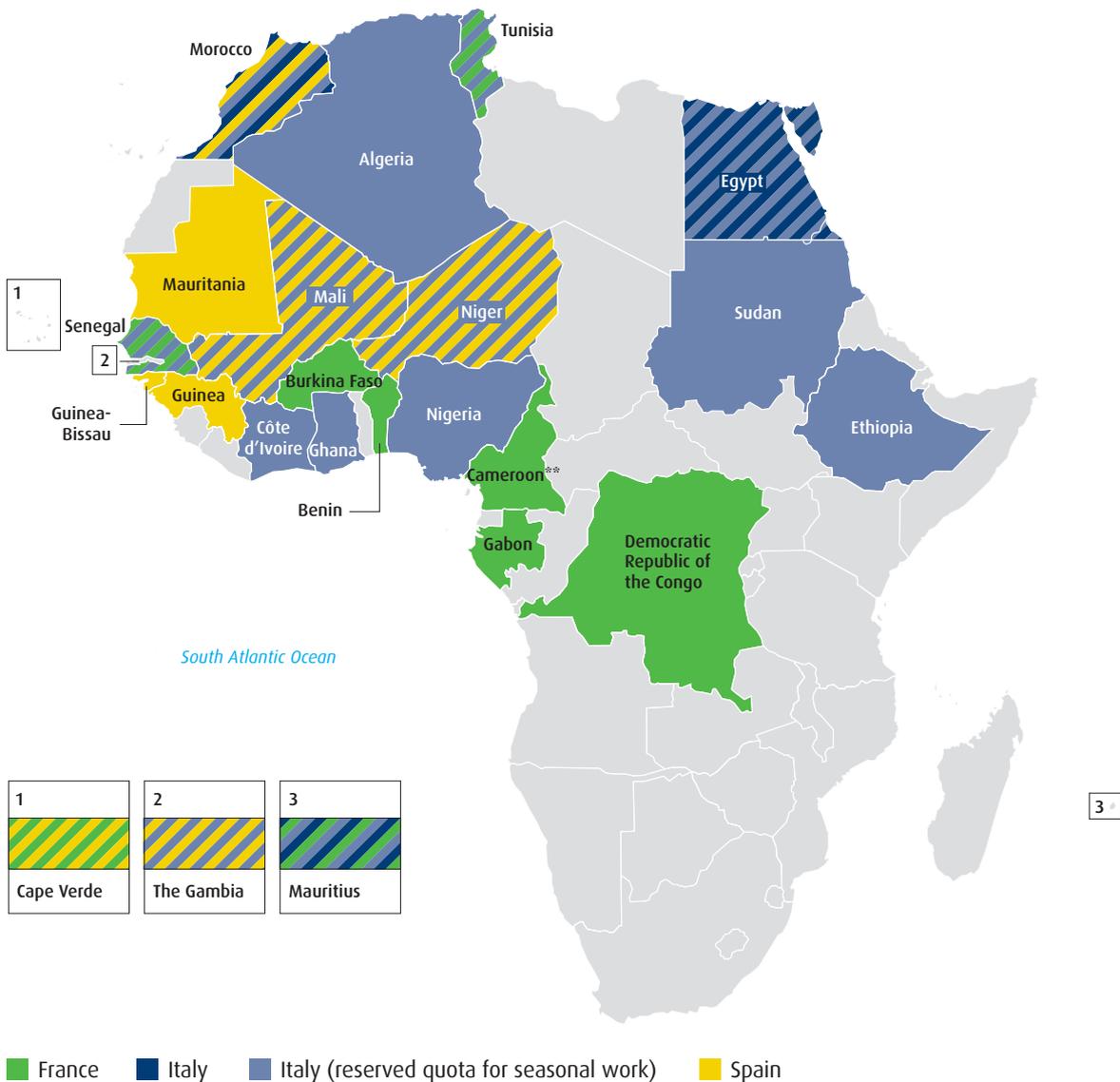
In the EU context, the idea of linking cooperation with partner countries in the field of legal migration and development with combatting irregular migration has been prominent since the first Global Approach to Migration (GAM) and the introduction of Mobility Partnerships (MPs; see 3.3). While the bilateral agreements concluded by **France, Spain** and **Italy** have mirrored this rationale by emphasising the role of partnerships, **Germany's** Western Balkans Regulation is not applied in cooperation with the countries concerned.

Comprehensive migration management: French, Italian and Spanish agreements with origin countries
Bilateral agreements provide a formal framework for cooperation measures. They typically link cooperation on migration management to more preferential access for third-country nationals within the general admission policy. This is the case in Spain's Collective Management System and Italy's quota system. In France, by contrast, nationals of partner countries can also apply for shortlisted jobs through the normal admission system. Figure 4 gives an overview of bilateral agreements that France, Italy and Spain have entered into with African countries that are of primary interest when it comes to managing migration flows.

From 2006 onwards, **France** concluded a series of bilateral agreements with 13 countries that, for the most part, have significant migrant populations living

⁶⁵ For many years now, Germany has applied a "most favoured nation" provision to a number of third countries, fostering mobility (by lifting the visa requirement, section 41 of the Residence Ordinance) and employment (by allowing any form of employment upon a labour market test, section 26 (1) of the Employment Ordinance). Preferential labour market access is given to nationals of Andorra, Australia, Israel, Japan, Canada, the Republic of Korea, Monaco, New Zealand, San Marino and the United States. However, these are not countries from which significant numbers of low- and middle-skilled migrants enter the country.

Figure 4 French, Italian and Spanish migration management agreements*



NB: *In addition to its few formal legal migration agreements, Italy offers reserved quotas, set within its annual Flows Decree. This overview does not include Germany's placement agreements, concluded at sub-governmental level, i. e. by the International Placement Service of the Federal Employment Agency, or other types of targeted European pilot projects, see 5.2.

**The agreement with Cameroon was, ultimately, not ratified.

Source: SVR Research Unit/MPI Europe/dpa/UN/KALUZA+SCHMID Studio

in France (see Reslow 2013: 151). This move⁶⁶ was part of national policy reforms as well as initiatives at the EU level. Managing migration flows, retaining skills and talents formed the core of then President Nicolas

Sarkozy's 2006 "selective migration policy" (*immigration choisie*), and the idea of partnership was highlighted in the context of French co-development policy (see, for its genesis, Chou/Baygert 2007). France concluded

66 The approach was not completely new. Prior to 2006, France already had bilateral agreements with countries in Africa, the Middle East and Eastern Europe that facilitated residence permits for their nationals without them having to take the labour market test. They included agreements with Morocco, Tunisia and Poland on seasonal work that facilitated access to the job market. The agreement with Morocco dates back to 1987 and grants Moroccan nationals a residence permit after three years of temporary stay instead of five years as provided by law, see <https://www.immigration.interieur.gouv.fr/Europe-et-International/Les-accords-bilateraux/Les-accords-bilateraux-en-matiere-de-circulation-de-sejour-et-d-emploi/L-accord-franco-marocain>, 27.08.2019.



broad migration management agreements (*Accords de Gestion Concertée des Flux Migratoires*), which included clauses on legal migration, development aid, return and the fight against irregular migration, with Senegal (2006), Gabon (2007), the Democratic Republic of the Congo (2007), Benin (2007), Tunisia (2008), Cape Verde (2008), Burkina Faso (2009) and Cameroon (2009).⁶⁷ Further, most of the agreements included special provisions for young professionals between the age of 18 and 35 who are interested in temporary stays.⁶⁸ They also facilitated access for workers in categories included in the additional labour shortage list that was negotiated on a case-by-case basis with each partner country (see Panizzon 2013: 89). Workers from those countries that signed a formal agreement with France who engage in occupations included in the shortage list do not have to take the labour market test (see 4.2.2). The agreements reached differ from country to country, however, and France offers different conditions and advantages to each country. For instance, 108 occupations are listed for Senegal but only nine for Gabon. However, as an evaluation by the OECD shows, the additional occupations listed in the agreements have not increased labour migration from these countries,⁶⁹ and their overall quantitative record is almost negligible: between ratification of the agreements (2009–2010) and 2014, approximately 500 third-country nationals were admitted on the basis of the agreements, with Senegal and Tunisia being the main beneficiary countries (accounting for more than 90 per cent of nationals admitted). Reasons for the limited effect of the French agreements include the absence of adequate institutional counterparts in the partner countries, the fact that they are largely unknown among French employ-

ers and that the occupations listed in the agreements do not correspond to current labour market needs (see OECD 2017: 337).

From the early 2000s, Spain signed a series of agreements with key countries of origin and transit granting preferential labour migration. Following a surge in irregular migration in the mid-2000s, Spain took steps to link this preferential recruitment to cooperation on migration management – and, like France, on development assistance too. Spain's early bilateral agreements outlined procedures for giving preferential recruitment (including selection, protection of rights and return) to nationals from countries such as Colombia (2001), the Dominican Republic (2002), Ecuador (2001), Morocco (2001), Mauritania (2007) and Ukraine (2011).⁷⁰ The agreements with Morocco and Mauritania were accompanied by separate agreements on returns and readmissions. Given the growing numbers of people attempting to cross illegally into Spain's North African territories (Ceuta and Melilla) in 2005 and 2006, Spain embarked on "second-generation agreements" with a number of partner countries. These agreements, which took a broader approach to migration, linked cooperation on migration management (e.g. on border management and returns) both to preferential recruitment opportunities and development assistance (case study ES: 13). Examples include agreements signed with Gambia (2006), Guinea (2007), Cape Verde (2008), Mali (2008), Niger (2008), and Guinea Bissau (2009).⁷¹ These agreements have been cited as a source of inspiration for the EU's MPs (see González Enríquez et al. 2018: 15). Spain's Collective Management System (see 4.2.3) is currently only open to countries with which it has signed a bilateral

67 The agreement with Cameroon was, ultimately, not ratified. The agreements are available at <https://www.immigration.interieur.gouv.fr/Europe-et-International/Les-accords-bilateraux/Presentation-generale-des-accords-bilateraux>, 27.08.2019.

68 Under the Young Professionals Agreements (*Accords relatif aux échanges de jeunes professionnels*), nationals of signatory countries aged between 18 and 35 can get a work permit for between six and 18 months (max.: 24 months) to gain work experience abroad if they commit to return to their home country. They are also exempt from the labour market test. The maximum number of young professionals varies from agreement to agreement (between 100 and 1,500 migrants). Senegal, Gabon, Tunisia, Mauritius, Cape Verde, Benin, Russia, North Macedonia, Montenegro, Serbia and Lebanon have concluded this type of agreement, see <https://www.immigration.interieur.gouv.fr/Europe-et-International/Les-accords-bilateraux/Les-accords-bilateraux-relatifs-a-la-mobilite-professionnelle>, 27.08.2019.

69 Only two per cent of total labour migration inflows to France could be attributed to third-country nationals from signatory countries (see OECD 2017: 328).

70 See Secretary of State for Migration, Convenios de flujos migratorios laborales, http://extranjeros.mtramiss.gob.es/es/normativa/internacional/flujos_migratorios/index.html, 27.08.2019; Convenios marcos de cooperación en materia de inmigración, http://extranjeros.mtramiss.gob.es/es/normativa/internacional/marco_cooperacion/index.html, 27.08.2019.

71 For an overview of the Spanish agreements, see http://extranjeros.mtramiss.gob.es/es/normativa/internacional/marco_cooperacion/index.html, 27.08.2019.

agreement, although exceptions have been made in the past if vacancies in in-demand occupations could not be filled by nationals of the signatory countries. Spain's Secretary of State for Migration receives requests from Spanish employers for foreign workers and cooperates with authorities in the country of origin to identify and vet prospective workers to fill these roles. The national Employment Agency in the partner country advertises the jobs and draws up a shortlist of candidates that is then reviewed by a selection commission. This selection commission is comprised of representatives from the partner country's Employment Agency, Spain's Ministry of Employment, Migration and Social Security and, potentially, the employer or employer association if it wishes to participate.

Italy also has extensive cooperation with countries of origin. It has signed specific labour migration agreements with Albania, Egypt, Moldova, Morocco, Sri Lanka, Mauritius and the Philippines since the mid-2000s.⁷² These agreements provide for an exchange of information between Italy and the respective signatory country about supply and demand in specific sectors as well as a general declaration of intent to foster cooperation in labour migration and training facilities. The agreement with Egypt, for instance, provides for Italian employers to select candidates in cooperation with Egyptian authorities⁷³ as well as to deliver pre-departure training and language courses in Egypt. These specific labour agreements should, however, not be equated with the preferential quota system that is part of the annual governmental Decree, which defines the maximum number of third-country nationals to be admitted per category. In these "Flows Decrees" (*Decreto Flussi*) a share of the quotas is reserved for countries that are signatories of bilateral agreements (such as that with Albania, concluded in 1997) or other types of more informal political agreements (see Ferreira 2018: 169). These quotas are openly used

as bargaining chips, as they are increased whenever cooperative partner countries commit to combatting irregular migration and are reduced when cooperation on border management and readmission is deemed unsatisfactory. The number of countries receiving reserved quotas was increased from three (Albania, Morocco and Tunisia) in 2000 to 29 in 2018.⁷⁴

The Italian, Spanish and French bilateral agreements reflect the idea, also upheld at EU level, of setting up partnerships that link different types of migration management issues. However, information is scarce as to whether this linkage has worked out in practice. Except for France, no official evaluations of how many people have actually moved under these agreements have been conducted. The Spanish migration management agreements are regarded as good practice, though. They have been established over a long period of time, resulting in effective operational mechanisms between Spain and its partner countries (see case study ES: 25). By contrast, Italy's and France's endeavours have yielded fewer positive results in terms of the legal migration component.

Linking labour market access to restrictions in the asylum system: A "unilateral" partnership

Migration management considerations were also relevant when Germany introduced its Western Balkans Regulation.⁷⁵ Before 2015, Germany received large numbers of asylum applications from individuals from Western Balkan countries, who rarely qualified for protection. Concerns about the effects of such unfounded asylum claims on an already overstretched asylum system led to agreements being reached between Germany's Ministry of the Interior and its counterparts in Albania, Kosovo and Serbia so as to bring about a drop in the numbers of asylum applications and increase voluntary returns (Bither/Ziebarth 2018: 13). Further, in 2014 Germany declared Bosnia and

72 For an overview of the Italian agreements, see <http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/accordi-bilaterali/Pagine/Attivita-e-servizi.aspx>, 27.08.2019.

73 See Articles 5, 6 and 7 of the Italian-Egyptian agreement at <http://www.lavoro.gov.it/temi-e-priorita/immigrazione/focus-on/accordi-bilaterali/Documents/EGAccordoBilateraleEgitto.EN.pdf>, 27.08.2019.

74 Albania, Algeria, Bosnia-Herzegovina, Egypt, El Salvador, Ethiopia, Gambia, Ghana, Côte d'Ivoire, Japan, the Republic of Korea, Kosovo, India, North Macedonia, Mali, Mauritius, Moldova, Montenegro, Morocco, Niger, Nigeria, Pakistan, the Philippines, Senegal, Serbia, Sri Lanka, Sudan, Tunisia, Ukraine (D.P.C.M. 15 December 2017: https://www.cliclavoro.gov.it/Normative/DPCM_15_dicembre_2017.pdf, 27.08.2019).

75 See also Box 6.



Herzegovina, North Macedonia and Serbia to be “safe countries of origin”,⁷⁶ with Albania, Kosovo and Montenegro following a year later. In effect, by the end of 2015 irregular migration to Germany and filing asylum claims had become a much less attractive option for nationals of all six Western Balkan countries.⁷⁷ In addition to repatriation and voluntary return measures, a re-entry ban was imposed and information campaigns were launched that warned possible migrants of the risks of irregular entry and the limited prospects of obtaining protection status in Germany (see Bundestag Printed Paper 19/2018: 2).⁷⁸ Thus, it could be assumed that opening up legal migration options for nationals of the six Western Balkan countries was offered as a bargaining chip to get these countries to cooperate on reducing irregular migration. However, in fact, the “deal” on restricting access to asylum and opening channels for work was less a result of negotiations with countries of origin than a political bargain struck within the coalition government in Germany. Centre-left proponents of the regulation demanded that existing labour migration rules for nationals of the affected Western Balkan countries be relaxed to compensate for restrictive asylum measures (case study DE: 23). By contrast, although Germany was cooperating on migration matters with the Western Balkan countries, introducing the regulation was not part of its overall communication strategy towards these six countries. Indeed, particularly in the first two years the regulation was not very well known in the countries concerned, including among government representatives (see Bither/Ziebarth 2018: 30).

With regard to the nexus between irregular and regular migration, in the absence of empirical data, it is still difficult to assess whether the Western Balkans Regulation redirected some of those migrants

who would previously have sought out asylum channels.⁷⁹ Two indicators, specifically, speak in favour of the Western Balkans Regulation having a redirecting effect: (1) the regulation has contributed to a considerable increase in labour migration of low- to middle-skilled workers (see Box 6); (2) traditional immigration avenues for nationals of the six states (i.e. employment options outside the regulation such as qualified employment or the EU Blue Card) have remained stable even after the introduction of the regulation (case study DE: 25). All of this suggests that the regulation is first and foremost used by those who in the past did not have (either de jure or de facto) access to legal immigration channels (see Brücker/Burkert 2017: 3).

5.2 Pilot projects for legal migration for work and training

Targeted legal migration projects are a form of very close bilateral cooperation that marry two policy-making rationales. First, they are a way to alleviate shortages in specific in-demand sectors, such as nursing, agriculture and hospitality. Second, they can be used to pursue development objectives, as projects are tailored to both destination and home countries’ interests (see Hooper 2019: 2). Countries of origin gain migration opportunities for their nationals as well as potential remittances and returning qualified individuals; countries of destination obtain suitable workers or trainees in sectors that are experiencing shortages; and migrants benefit from upskilling and work experience – the so-called “triple win” effect. In contrast to broader bilateral agreements (see 5.1), the aim of tailored legal migration projects is not to pursue

76 Asylum claims from the nationals of safe countries of origin are considered unfounded by default and the burden of proof that the opposite is the case is on the claimant. Further, periods for raising objections are shorter and applicants are not allowed to work but still have to fulfil residence requirements.

77 The number of asylum applications from the Western Balkan states has dropped drastically since the regulation was introduced. In fact, by 2016 it had dwindled to about one third (approx. 35,000) compared to 2015 levels (approx. 121,000); by 2017, it had further decreased to about 10 per cent (approx. 11,000) (see case study DE: 10).

78 The information campaign included a short film produced by the Federal Police that was available in several national languages. Along similar lines, the Federal Office for Migration and Refugees (BAMF) placed advertisements on Facebook and warned potential migrants in national public media against entering Germany with unfounded claims (see BAMF 2016: 65).

79 No empirical data are as yet available as to whether and to what extent former asylum applicants could be “rerouted” onto a labour migration path. Further questions, such as the vocational skills levels of workers admitted through this channel, form part of an ongoing extensive evaluation of the regulation commissioned by the Federal Ministry of Labour and Social Affairs (BMAS) and carried out by the Institute for Employment Research (IAB) that is to be completed by the end of 2019.

migration management objectives, including return and the fight against irregular migration, but to directly place foreign workers or trainees in companies willing to participate in these programmes. Tailor-made projects are more binding in nature because they monitor the migration process more closely. Nevertheless, they tend to be time-bound and limited in terms of numbers of participants. Indeed, publicly funded projects recruit at a limited quantitative level because of complex and cost-intensive preparatory and supporting measures. The expectation that they may reduce irregular migration should, therefore, be treated with caution although it is upheld by recent EU pilot projects (see below). While some countries, like Germany, are very inclined to set up targeted programmes, others, like **France**, are more reluctant to do so and prefer to rely on their migration agencies working with partner agencies in origin countries.

Targeted bilateral projects at the national level:

Germany at the forefront

While Germany has not embarked on concluding bilateral agreements, it has launched an array of innovative programmes intended to target labour or skills shortages and contribute to better development outcomes in partner countries. Germany's deep involvement can be explained by several interplaying factors that do not necessarily apply to the other case-study countries: first, Germany's **Ministry for Economic Cooperation and Development** and the **GIZ (Deutsche Gesellschaft für internationale Zusammenarbeit)**, the German government's service provider and agency in the field of development cooperation, have been very active in recent years in fostering this type of initiative; second, Germany is witnessing severe labour shortages in specific sectors (in particular in nursing and care of the elderly); third, Germany has a very specific type of vocational training and recognition of skills system (see Box 7), which is why skills partnerships including language and technical pre-departure training are well suited to its labour market structure. Germany has run several pilot projects, ranging from training partnerships for young migrants who do vocational training to upskilling projects and to further on-the-job training. Most projects are open to workers or trainees in nursing, healthcare and care of the elderly, sectors

with growing labour shortages (see Bonin/Ganserer/Braeseke 2015) and target middle- to high-skilled third-country nationals. These projects have yielded mixed results, but hold significant potential. The "Triple Win" programme for skilled nurses and geriatric nursing carers from Serbia, Bosnia-Herzegovina, the Philippines and Tunisia and two programmes involving care work trainees from Vietnam are considered particularly successful, as they established relationships on a working level, with a variety of actors being involved in the different phases of the project. "Triple Win" targets countries with a surplus of professionally trained nurses who cannot find adequate employment at home and whose qualifications can be recognised in Germany. Candidates undergo linguistic and intercultural preparation in their home country. Once they are in Germany, they benefit from a swifter procedure for recognising their professional certificates. While the migrants help to meet the growing demand for care workers in Germany, the tense labour markets in the countries of origin are also relieved. Furthermore, migrants earn a proper salary and generate potentially beneficial remittances. The project with Vietnam follows a similar logic: it targets young professionals with a Bachelor degree in nursing and trains them in a shorter two-year vocational training programme in Germany after preparatory language classes in Vietnam (see BMWi 2016).

More recently, Germany has also set up training partnerships in sectors beyond the care and nursing fields. For instance, the **German-Moroccan Partnership for the Training and Recruitment of Skilled Workers** provides vocational training to approximately 100 young Moroccans in hotels and restaurants in Germany. Participants undergo three years of full vocational training and acquire a German certificate. In other programmes, such as "Triple Win", qualifications acquired abroad need to be recognised as equivalent to German standards, which is complex and requires participants to take training modules to adapt their qualifications (see Düvell 2019: 14). To be eligible for this programme, applicants have to prove they have practical experience in the hotel and restaurant sector, but they are not required to present a vocational qualification, which means that this type of programme is also open to low- and middle-skilled migrants. In addi-



Box 9 Public-private partnership for training and labour mobility at municipal level

A concrete mobility scheme that serves as an example of “good practice” is the **MENTOR** (Mediterranean Network for Training Orientation to Regular Migration) **project**, part of the EU’s MP with Morocco and Tunisia. The pilot scheme, carried out in 2018, provided a three-month traineeship to 20 young people from **Tunisia** and **Morocco**, which they did in either Milan or Turin after completing pre-departure training. The project also aimed to enhance cooperation on common training capacities, employment and youth services operating in the cities involved in the project; improving information about legal temporary and circular migration to Italy and the EU for Tunisian and Moroccan citizens; and supporting the labour market integration and further professional development of trainees upon their return to Tunisia and Morocco. MENTOR was led by the Municipality of Milan in collaboration with the City of Turin, and was supported by a broad range of national and local stakeholders, both state and non-state (case study IT: 25). Thus, according to the final project report (Comune de Milano 2018), including a variety of stakeholders at different levels in “Committees of Local Consultation” during the selection, matching and placement process, created trust and can be considered key to the smooth implementation. With regard to a possible successor programme, the report recommends, among other things, to scale up both the number of slots for participating young adults and the timeframe of the traineeship (from three months to six months).

tion, participants benefit from six months of language, cultural and professional training to prepare them for their stay in Germany. According to employers and other stakeholders involved in the project this is felt to be very successful. A similar project has been launched with Kosovo, preparing some 30 young migrants to take up vocational training in the construction sector without any previously recognised vocational credentials (case study DE: 28). Cooperation relationships with countries in the Western Balkans, such as Kosovo, are well established and the respective employment agencies or labour ministries are involved in identifying and selecting prospective migrants, coordinating preparations prior to their departure or providing reintegration assistance in partnership with local authorities. It is why German pilot projects are regularly presented as best practices in the European context.

EU projects as alternative migration channels?

The EU is attempting to build on these types of national initiatives by co-funding other pilot projects in the context of its Mobility Partnerships and the European Agenda on Migration. Co-funding is its primary political lever, as the EU cannot build on diplomatic relationships as such and does not have the legal en-

forcement capacities to directly place migrants since admission is still a national competence (see 3.1). Another challenge when it comes to setting up partnerships relates to the institutional architecture in the partner countries, which are not always as well equipped in terms of their labour admission systems as EU Member States. Thus, many of these initiatives focus on capacity building in employment agencies or other governmental bodies rather than setting up concrete mobility schemes for legal migration or training – although there are a few exceptions (see Box 9).

Given the political focus on reducing irregular migration, including by means of a new policy on legal migration in the context of its 2015 European Agenda on Migration, it was not until 2017 that the **European Commission** attempted to relaunch pilot projects for legal migration (see 3.3). These projects are or will be led by Member States and offer temporary training or work placements, with DG HOME (the Commission’s Directorate-General for Migration and Home Affairs) providing support in the form of funding and coordination work. The Commission framed this new initiative as a necessary addition to the European Agenda and a way to show third countries that the EU is serious about opening legal migration channels, including

for low- and middle-skilled workers (case study ES: 2). The first few projects were launched in 2019 between **Lithuania** and **Nigeria**, **Belgium** and **Morocco**, **France** and **Egypt**, **Morocco** and **Tunisia**, and **Spain** and **Morocco**. The design and focus of these projects vary widely, but they have all been directed at skilled migrants with tertiary education to date. Lithuania and Belgium's projects offer temporary work placements to upskill university graduates in the ICT sector, while **France's** project extends an existing initiative, offering internships to students or recent graduates. **Spain's** project supports Moroccan students pursuing a Master degree in Spain and provides them with careers advice and entrepreneurship support. **Germany** and **Luxembourg** also plan to launch pilot projects (see MPF 2019).⁸⁰

Although the EU presents these initiatives as a viable alternative for entering the European labour market to those who might otherwise be inclined to embark on irregular routes, it seems rather unlikely that these projects will help curb irregular migration. One sticking point is the challenge of creating a programme that aligns with the skills profiles of irregular migrants and thus appeals to them (see Hooper 2019: 4). Indeed, skills and qualification requirements tend to be quite demanding, and candidates normally already have a degree, as is the case with the ICT programmes in Belgium and Lithuania. However, several experts involved

in EU and German projects pointed out that despite the limited scope of these initiatives they boost cooperation between destination and origin countries at political and administrative level, and this is a starting point for improving legal migration policy.

Great potential but limited scope

Tailored legal migration projects have so far been accessible to very few people, and their overall record is thus rather mixed. On average, the number of participants taking part in pilot projects varies between 20 (e.g. the MENTOR project) to a few hundred.⁸¹ After the end of their funding period, these programmes often peter out as they lack both sufficient incentives to continue and appropriate employer buy-in.⁸² The **German "Triple Win"** programme is the only initiative with a much wider scope and the potential to be sustainable, since it is financed by prospective employers: nearly 2,000 skilled workers from **Serbia**, **Bosnia-Herzegovina**, **Tunisia** and the **Philippines** have taken up work in Germany since 2013, most of them with the option of a longer-term or permanent sojourn.⁸³

Design questions seem to matter a great deal. But even when there is a demand-supply match with migrants' profiles, successfully establishing or scaling up tailored bilateral programmes hinges on a number of contextual factors: few countries of origin have employment agencies that are able to match worker profiles

80 A new EU-funded programme was on the starting block at the time this study went to press. It promises to foster mobility on a much larger scale. The four-year "Towards a Holistic Approach to Labour Migration Governance and Labour Mobility in North Africa" project (THAMM, 2019–2023) is worth about 20 million euros and seeks to promote legal migration and mobility between North Africa (Egypt, Morocco and Tunisia) and Europe (Germany), to improve the governance of labour migration and to increase the protection of migrant workers. The bulk of the budget is provided through the EUTF (15 million euros), while Germany's Federal Ministry for Economic Cooperation and Development will co-fund the remainder of the budget (see the Action Document for the EUTF, https://ec.europa.eu/trustfundforafrica/region/north-africa/regional/towards-holistic-approach-labour-migration-governance-and-labour_fr, 27.08.2019). The International Organisation for Migration, the International Labour Organization and the GIZ will be implementing the project, which primarily aims to foster the mobility of up to 750 young people from the three North African countries who are interested in migrating for the purpose to work or to receive vocational training in Germany. The programme is also supposed to give opportunities to those who otherwise face particular obstacles to migrating. Thus, one module will identify candidates among groups such as young women or economically marginalized. Further modules include professional, cultural and linguistic pre-departure training for selected candidates; partnering governmental, non-governmental and corporate actors in countries of origin with those in Germany as country of destination; capacity building and knowledge transfer. Both labour demand among German employers and the labour market situation in the countries of origin are to be taken into account in order to avoid brain drain and to create a "triple win" situation (information from GIZ tender documents and terms of reference).

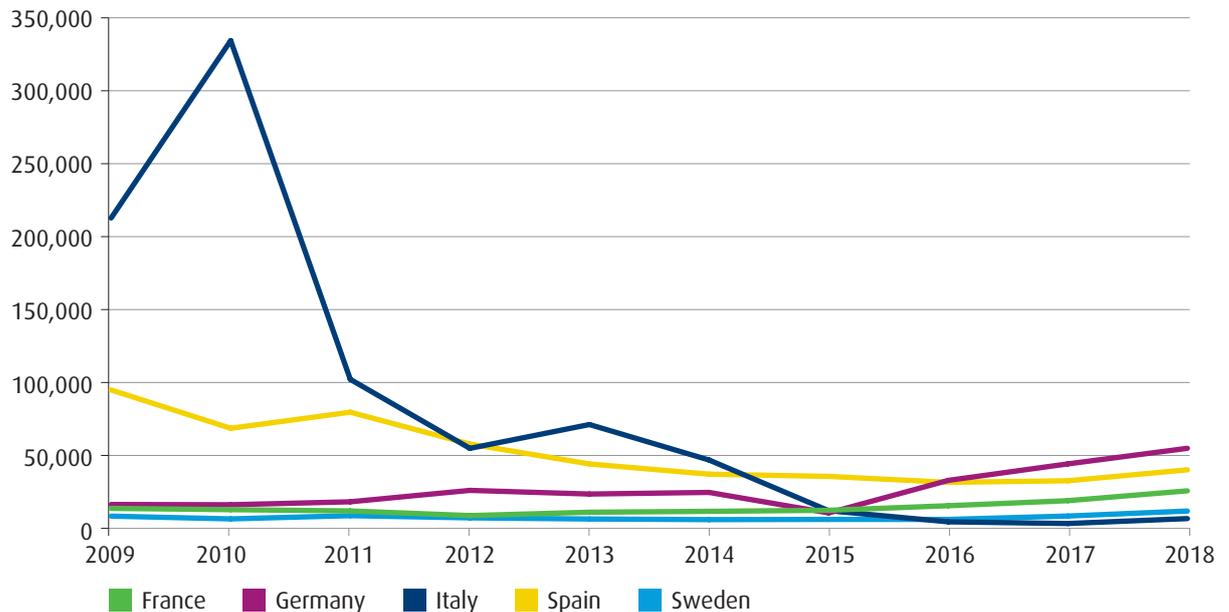
81 For instance, the recruitment-for-training pilot programmes with Vietnam in the fields of healthcare and nursing have brought around 300 young adults to Germany.

82 The German pilot project within the 2009 EU MP with Georgia, for example, helped 40 skilled Georgians find internships in the German hotel, catering and care sectors before they were supposed to return to their home country. Although this programme was meant to promote circular migration, placements have been realised on a one-time basis only, see <http://migration-georgia.alumniportal.com/project-components/circular-migration-between-georgia-and-germany.html>, 27.08.2019.

83 Information provided by GIZ.



Figure 5 First residence permits issued for “other remunerated activities”, 2009–2018



Source: Eurostat 2019b; see Table 2 in the Appendix

with the specific professional skills sets required on labour markets in EU Member States. Given the pervasiveness of the informal economy in many countries of origin, third-country nationals often have practical vocational skills that are not necessarily validated by formal diplomas. This creates uncertainty among employers, and additional resources have to be invested by mediating agencies (such as the GIZ in Germany) or governmental bodies to safeguard proper matching and success, including through language classes and pre-integration measures. Thus, high operational costs, the risk of limited employer or migrant buy-in, and insufficient political support (both in origin and destination countries) can put strains on these programmes and make it difficult to scale them up (see Hooper 2019).

6 Implementation gaps? Taking stock of how policies are put into practice

Beyond tracing policy rationales and explaining the legal design of policies, an assessment of how existing regulations are implemented is just as important

in a policy analysis (see Dye 1976). The question of whether or not migration schemes make a difference, i.e. work in practice, has both a *quantitative* and a *qualitative* dimension.

Despite the paramount importance of numbers, an accurate comparative assessment of Member States' admission numbers is almost impossible to do, as national and European statistics differ quite considerably and do not allow for breakdowns along different skills levels, sectors, type of work, length of stay or countries of origin across the five Member States. Eurostat only provides differentiated, comparable data in regard to seasonal and highly skilled workers (i.e. holders of an EU Blue Card; on seasonal workers see 4.2.3, Fig. 3 and Table 1) but not for other categories. Low- to middle-skilled workers other than seasonal staff are listed in a residual category of “other remunerated activities”. This category also includes trainees, au pairs and other types of highly skilled workers who do not fulfil the criteria to hold an EU Blue Card residence permit (see Fig. 5 and Table 2).⁸⁴ The Eurostat data indicate that the number of residence permits issued for these categories has remained quite stable in

⁸⁴ For a definition of Eurostat's statistical categories, see https://ec.europa.eu/eurostat/cache/metadata/Annexes/migr_res_esms_an5.pdf, 27.08.2019.

Sweden over the past decade. The same roughly holds true for France, although it has seen a small increase in admissions since 2016; the rise in admissions in Germany has been somewhat sharper. A dramatic opposite trend can be observed for Italy and Spain that is likely attributable to the economic crisis.

Thus, the lack of comparable data is a weakness when it comes to basing policies on evidence and understanding what is working and what is not, and why. In turn, the *quality* of admission procedures also determines admission numbers and has an impact on how successful and responsive certain schemes are. Thus, in practice implementation mechanisms essentially need to create a balance between efficiency and control – filling labour market needs in a timely manner and meeting employers’ demands while at the same time safeguarding domestic labour

standards and ensuring that the domestic labour force is not adversely affected (6.1, see Fig. 6). Further, policy actors need to factor in the goal of integrating those foreigners who are already in the country. At the same time, employers should not be incentivised to bypass regular recruitment channels when they look for foreign labour (6.2).

6.1 Meeting the challenges of administering legal migration policies

The challenges and success factors in regard to implementing labour migration schemes, in particular ones that provide access for low- and middle-skilled migrants from third countries, surface at different stages of the admission process. Based on empirical evidence

Figure 6 Challenges and success factors in administering legal migration policies



Source: SVR Research Unit/MPI Europe/KALUZA+SCHMID Studio



gathered from the five countries studied on the multiple and often complex administrative steering and approval processes, these challenges and success factors can be grouped around the issues of adequately assessing labour market needs (6.1.1), setting up swift, reliable and transparent admission procedures (6.1.2), systems for bearing the incurred costs (6.1.3), and safeguarding labour market standards and migrant workers' rights (6.1.4).

6.1.1 Assessing labour market needs

Assessing existing labour market needs is a common challenge when implementing legal migration policy in Germany, France, Italy, Spain and Sweden. Nevertheless, different challenges arise in each Member State depending on the respective legal migration model applied. If countries following a more state-led approach (see Chapter 4) want to uphold their steering capacities and continue to closely control migrant flows, not least in order to protect the local workforce, they also need to accurately assess and forecast labour market needs. Thus, the steering of labour migration systems should not have to rely on unreasonable demands made by industry stakeholders but should rather be based on objective and timely evaluations. However, this is difficult to achieve, as data on vacancy rates are often incomplete and relies on a variety of actors to act quickly and coordinate effectively.

Incomplete data and delays in measurement

Official labour market statistics on job openings and vacancies tend to be incomplete, as they require sectors and specific occupations to be mapped once shortages are identified.

One limitation is linked to the fact that employers do not systematically report vacancies to a common entity, be it public or private, national or local. This is often exacerbated in segments of the labour market for which few or no professional skills are required and in which vacancies are filled more on an ad-hoc ba-

sis. For instance, the **French** foreign workforce service (SMOE) often denies work permits because it considers the rate of tension for certain occupations to be too low although employers can in fact not find any candidates (see OECD 2017: 235). This is mainly due to the fact that the tension assessment is based on demand and supply (job offers available) even though this calculation does not reflect the needs of the labour market as a whole. For instance, one estimate done in 2017 suggests that just 38 per cent of job offers were advertised through the French Employment Agency (*Pôle Emploi*), while most recruitment was done via other channels (e.g. online, word of mouth, agencies and classified advertisements) (see OECD 2017: 243). **Germany's** Federal Employment Agency faces similar difficulties, as only around half of all vacancies are reported to it (see Burstvedde/Malin/Risius 2017: 8). However, these shortcomings are mitigated (at least to some degree), as a representative job vacancy survey of German employers is carried out by the Institute for Employment Research (IAB), an agency of the Federal Employment Agency. It regularly asks employers about their current vacancies, occupation- and skills-specific needs, as well as estimated future needs (see Vollmer 2015: 31–32). By contrast, the Excelsior Survey conducted in **Italy** can only partly make up for such shortcomings: For one thing, it measures employers' reported intention to hire foreign workers, which is highly susceptible to economic performance and trends (see Salis 2012: 13). Apart from that, the Italian survey is limited to the most important industrial and services sectors and ignores enterprises in the agricultural sector and especially private households which rely on foreign workers. These shortcomings may partially explain the mismatch between estimated labour market needs and actual planned quotas that has characterised endeavours to steer labour migration in the past.⁸⁵

As a counterexample, **Sweden's** more liberal approach does not use shortage lists, which saves on associated resources and gives employers almost all

85 Furthermore, the goal of forecasting labour market needs is rendered rather ineffective by the high degree of flexibility of the Italian system, which allows foreign workers to change occupations or even sectors immediately after arrival (see Chapter 4). Hence, it cannot be ensured that migrants who are admitted will end up working in shortage occupations or specific regions experiencing labour or skills shortages. Instead, foreign workers can opt for more competitive jobs and, in doing so, they can end up undercutting local workers. One stakeholder in Italy described this system as undermining its demand-driven logic and essentially constituting a de facto job search visa (case study IT: 14).

the leeway they could wish for. However, this has led to scenarios arising in which some employers bring in foreign workers in sectors like the restaurant sector in which there is no shortage of domestic workers (see Frödin/Kjellberg 2018: 80; Emilsson 2014: 138). By contrast, though, there is as yet limited evidence regarding Germany's Western Balkans Regulation (see Box 6). The high numbers of people who enter via this channel and statements by various industry associations in the construction and catering industries, for instance, would suggest this policy corresponds to actual labour market needs irrespective of skills level assessments and should thus to all intents and purposes be in the interest of German employers.

Needed, not wanted – or too complex? Effective consultation with key actors as a challenge

Getting labour market assessments right is a challenging undertaking. One way to improve the quality of these assessments is to consult various stakeholders, but it is important to balance this approach with the demand for timely assessments. Relevant stakeholders include, first and foremost, the employers themselves (either by conveying their demands through surveys or by consulting employers' associations), trade unions and subnational public authorities that monitor and are involved in labour market governance. These regional authorities, as the Italian case illustrates, are sometimes too understaffed or under-equipped to contribute in any meaningful way; their reports, which by law are supposed to provide information about the presence of migrant communities in their respective territories and their predicted labour needs, tend to be overlooked by central government as a consequence (case study IT). The **Italian** approach of defining multi-annual quotas via its Document of Migration Policy Planning (DMPP) was designed in a highly participatory manner (see 4.2.3). However, coordination between national and regional levels as well as consultations with trade unions

came at a high cost, as they massively slowed down the planning process. Before 2005, the triennial DMPP was often issued after a long delay. The DMPP for the period 2004 to 2006 was not adopted until mid-2005, and no DMPP has been adopted since then – probably as an implicit acknowledgement of the difficulties involved in carrying out effective and rigorous forecasts of labour migration needs in the country for such long periods and involving the various actors. Besides this lack of capacities and resources at regional level, the Italian case also demonstrates a lack of political will on the part of central government to properly take into account regional interests, given that regions are now only informed *after* central government takes a decision on any new quota (case study IT: 28).⁸⁶ The case is similar in **France**: while the adoption of the first shortage occupation list for third-country nationals in December 2007 was the result of a comprehensive participatory process during which the social partners were consulted, attempts to update it in 2011 failed. This was because the French Council of State set aside the new list, arguing that trade unions had not been involved in the decision-making process (OECD 2017: 252).⁸⁷ By contrast, the **Spanish** Tripartite Labour Commission for Immigration convenes on a quarterly basis and advises on drafting the Catalogue of Hard-to-Fill Occupations. It is comprised of representatives from central government, business associations and trade unions, and draws on input from regional governments (see 4.2.2 and 4.2.3). It also safeguards a basic, continuous forum of stakeholder, expert and regional involvement, although it has been noted that the role of these actors was somewhat diminished compared to central government during the economic crisis (case study ES: 24).

It has been demonstrated that the task of properly and swiftly assessing sector-, occupation- and region-specific labour shortages is cumbersome and complex. Fragmented data used as the basis for deciding which occupations should be put on a shortage list,

86 According to the case study authors, the ongoing reframing of migration as a problem of security and control (shifting responsibility for the issue from the Ministry of Labour and Social Policies to the Ministry of the Interior) has gradually diminished the role of the regions, employers' organisations and trade unions in the decision-making process.

87 One underlying reason for this might be that French trade unions tend to be split between one camp that is quite protectionist and thus sceptical towards immigration and one that is quite liberal. Trade unions tend not to lobby for more labour migration of low- and middle-skilled migrants in particular because of high unemployment in France and persisting integration problems among resident migrant workers.



insufficient consultation of regional and non-state actors in the process of determining labour market needs and the inflexibility of procedures result in reduced accuracy and limited usability for employers.

6.1.2 Long procedures, unpredictable outcome? Time lags and lack of reliability

Much of the success or failure of a labour migration system is determined by the administrative procedures that employers, in particular, are required to follow in order to recruit the migrant workers they need. The most relevant aspects here are, first, transparency and timeliness (i.e. the steps employers or migrants need to take to successfully take up employment and how time-consuming these steps are), and, second, the reliability of the outcome. In other words, employers have to trust that if the procedures are followed, they will be able to recruit the foreign worker they preselected. Certainly, the two aspects are closely linked, as a cumbersome and timely procedure that employers eager to fill vacancies have to undergo will undermine trust in the system as a whole. Although this represents a challenge for labour migration policy implementation in general, long procedures and unpredictability can be particularly problematic for employers wishing to find a low- and middle-skilled workforce, which is often needed on a short-term basis. If employers perceive recruitment as an insurmountable obstacle, they may be incentivised to seek other solutions, such as hiring undocumented workers.

The complexity and length of procedures

Administrative processes can be time-consuming because they involve several levels of actors, as the French and Italian examples show. However, the issuing of visa documents can present a further bottleneck when the administration is understaffed and unprepared for changes in legal migration

procedures, as has been the case in Germany since the introduction of the Western Balkans Regulation.

The **French** and **Italian** admission systems clearly illustrate the extent to which the complexity of admission procedures can be an insurmountable obstacle for employers. In France, the labour market test, which includes priority checks and a skills adequacy test (see 4.2.1), is cumbersome and incentivises employers to recruit foreign workers who are already in the country, even if undocumented, rather than recruit legally from abroad (see also 6.2).⁸⁸ The test is a lengthy process, as the application for a work permit has still not been digitised and because the skills adequacy test, run by the foreign workforce service (SMOE), takes time. Also, staff in the SMOEs are not necessarily equipped or properly trained to assess foreign credentials (see OECD 2017: 238). The process of granting a work permit is long and bureaucratic in Italy as well (see Caponio et al. 2012: 33–57). Several procedural steps need to be taken once the annual Flows Decree (see 5.1) has been published before the quota can be set. Overall, once a company has identified a foreign worker, the whole procedure, starting with the application for a work permit and finishing with the issuing of the residence permit, takes between several months and several years.⁸⁹ Structural reasons for these shortcomings lie in the Italian administration's limited staffing levels and financial capacities (see Finotelli/Echeverría 2017: 46).

In **Germany**, the new entry channel via the Western Balkans Regulation shows that successful labour migration policy implementation also depends on capacities in embassies. Although the general procedures for issuing visas for employment purposes have been accelerated in recent years, German diplomatic missions are seriously overstretched. Despite an increase in staffing levels, waiting periods have also increased significantly, both for getting an appointment in one of the diplomatic missions and for getting

88 Seasonal workers are an exception in France: while employers recruiting seasonal workers are required to undergo the labour market test, this is largely a formality – almost all requests are approved and the refusal rate is less than seven per cent. In Vaucluse, one of the departments in which seasonal employment is most common, less than one per cent of the applications were rejected in 2015 (see OECD 2017: 271).

89 For instance, in 2008 it took, on average, 188 days for authorisation to be issued to employers, while it took an additional 123 days between the request for permission to stay being submitted and that document being issued (case study IT: 29).

approval.⁹⁰ This largely results from poor planning.⁹¹ As a consequence, after finding a match and offering an employment contract to a third-country national under the regulation, German employers will need to keep the vacancy open for more than a year – an unacceptable waiting period that effectively diminishes the usefulness of the scheme and means employers will have to look for alternative sources of labour.

By contrast, the lean **Swedish** system only checks whether working conditions in the prospective job (including salary) are in line with collective agreements or established practice, a process that usually takes only a few weeks. While this safeguards swift procedures, it comes with more than just isolated incidents of misuse (see 6.1.4), which is why controls have been tightened. However, the Migration Agency has ensured that this will not lead to a lengthy process for all employers undergoing the procedure. To compensate for additional checks, trusted employers that frequently hire job seekers from third countries can be certified and are thus guaranteed that residence permits will be processed quickly; electronic applications from foreign workers with a job offer from a certified employer are now often processed within days (case study SE).

Systemic flaws undermining employers' trust

While the length of an approval procedure alone has the potential to undermine trust in a system, employers (and potential migrant workers) may be further deterred by other factors that render the procedure unreliable. For instance, in **Italy** another administrative hurdle is the first come, first served logic applied in the Flows Decree, which governs the quotas. It is frequently a pressing issue for employers that they cannot be sure that their demands will be met; once the entry slots for seasonal and non-seasonal work as defined in

the Decree are filled, further demands by employers remain unsatisfied.

Another main issue has to do with the fact that responsibilities are split between different ministries that may not share the same policy objectives. For instance, in **France** power struggles between SMOEs and the regional prefectures can produce erratic results, as prefects can revoke work permits that have already been granted by the territorial SMOEs. This makes the procedure unreliable for employers, who may not understand the conflicting rationales at play: the prefecture follows a security-oriented logic towards migration control, whereas the SMOEs, which report to the Labour Ministry, are eager to satisfy labour market needs (see OECD 2017: 235).

A similar effect frequently occurs under **Germany's** Western Balkans Regulation. While the Federal Employment Agency often quickly approves an application based on a general check of potential labour conditions, diplomatic missions have to perform a more in-depth check of a candidate's visa application, resulting in a much higher rejection rate.⁹² This might not always be the result of general visa requirements not being met, such as the obligation to have a passport, proof of identity, the absence of grounds for deportation or a secured livelihood (prerequisites that the diplomatic mission is obliged to check). In some cases, it seems to be the result of what could be coined a "restrictive mindset" in visa offices. They are instructed to strictly scrutinise and refuse applications submitted by labour migrant candidates without a proper skills certification equivalent to a German vocational degree. However, one person who was interviewed as part of the German case study stated that, even under the Western Balkans Regulation, which is also open to migrants without formal proof of qualifications, German visa offices in the six Western Balkan countries favour

90 In early 2019, applicants had to wait more than 12 months to get an appointment to apply for regular low- and middle-skilled employment categories (see Bundestag Printed Paper 19/8229: 5).

91 Embassies and consulates were, first, not sufficiently prepared for the sudden increase in applications in a period in which they were already overstretched due to the normal number of incoming visa applications (see Bither/Ziebarth 2018: 25). Second, their new role as a quasi-auditing body for labour market policies called for extra work and expertise, which was not readily available. By contrast, the preceding examination by the Federal Employment Agency in Germany was limited to a formal assessment of working conditions under the respective employment contract offered, and passive approval by way of no objection being raised sufficed.

92 For a comparison of work permits issued by the Federal Employment Agency and visas granted by diplomatic missions under the Western Balkans Regulation, see case study DE: 25.



applications from skilled migrants who have vocational credentials.

To sum up, employers can be deterred by time-consuming selection procedures without having any guarantee that they will eventually be able to hire the third-country nationals they have preselected. Employers often need to cover their lack of a workforce, low-skilled labour in particular, at short notice and cannot wait several months until the migrant has passed through the different stages of the admission and visa issuing process. Therefore, transparent, reliable and quick procedures are needed that guarantee swift and predictable implementation of migration channels.

6.1.3 Who foots the bill for recruitment? The distribution of costs

Making labour migration systems work comes at a cost – both in terms of human and financial resources – to employers, labour migrants and the public bodies that administer the authorisation process (unless the latter waive these costs entirely to employers and potential employees). The question of who foots the bill – employers, workers or the state – is key to the success and sustainability of labour migration schemes.⁹³ Indeed, searching for appropriate candidates abroad, understanding how to ensure comparability of diplomas and practical skills, and providing language, on-the-job or pre-departure training take time and require financial and human resources. This can be an excessive burden, in particular for small and medium-sized enterprises (SMEs).

For their part, potential migrants with low and medium qualification levels are unlikely to be able to cover the costs of travel, accommodation and training upfront, even when administrative fees for the issuing of visas and residence and work permits are quite moderate⁹⁴ (by only covering the expenses incurred by the public authorities). The flipside of market-oriented labour migration systems like the Swedish one, which give employers the freedom to hire practically anyone they want, is that potential migrants and employers need to find each other by their own efforts⁹⁵ and negotiate arrangements for sharing the costs of the match.

Systems in other countries encourage employers to cover more of the expenses incurred. For instance, **Spain**, with its rather unique approach to allowing employers to recruit groups of workers in dedicated countries of origin within the Collective Management System (see 4.2.3), has shifted part of the costs incurred onto employers. Thus, companies are responsible for providing appropriate housing to seasonal workers and they have to cover half of their travel costs (case study ES: 18).⁹⁶ Under the General Regime, employers also sponsor the workers they need for specific jobs.

In **Germany**, similar efforts have been undertaken in recent years,⁹⁷ but the country is facing difficulty convincing companies to invest in a matching infrastructure and to pay for upskilling measures in the context of recognising foreign credentials, which places a particular strain on SMEs.⁹⁸ Therefore, forthcoming measures taken under the new Skilled Worker Immigration Act that facilitate legal migration for

93 A separate cost item relates to basic post-arrival integration measures. All five EU Member States considered in this study provide some sort of integration programme for newcomers, for instance, language and/or integration classes, the costs of which are primarily borne by state or regional authorities (see <https://ec.europa.eu/migrant-integration/country/governance>, 27.08.2019).

94 In Sweden, the fee to be paid by a third-country national applying for a first-time work permit is SEK 2,000, roughly 200 euros (case study SE); migrants fair better in Germany, where the fee for a residence permit is only 100 euros (see section 45 of the Residence Ordinance).

95 Against this backdrop and in the absence of mechanisms or institutions that facilitate matching between Swedish employers and third-country nationals in specific countries, firms tend to rely on their networks to identify potential foreign recruits. As a result, around 70 per cent of Swedish employers that recruit workers from abroad have a foreign background themselves and they usually hire them from the same countries or regions, confirming that personal connections and contacts are important when it comes to finding workers (see Swedish National Audit Office 2016: 91).

96 By contrast, according to one interviewee, France recently stopped financing seasonal workers from Morocco or Tunisia, given the short distance and existence of well-established diaspora groups that organise this type of recruitment channel. It remains to be seen what the effects of this measure will be.

97 See, for example, the website *Make it in Germany*, which features several thousand job vacancies (<https://www.make-it-in-germany.com/en/>, 27.08.2019).

98 See the German government's *Recognition in Germany* information portal at www.erkennung-in-deutschland.de/html/en, 27.08.2019.

medium-skilled migrants to Germany should primarily address questions of cost sharing, especially in sensitive in-demand occupations.

Jump-starting programmes: Transferring publicly funded pilots to sustainable schemes

Companies are often reluctant to fund the entry costs for new labour migration schemes that cover specific occupations or target countries. In areas with severe labour shortages and no alternative recruitment paths, governments have recently made public funding available to launch pilot projects, the objective being that these projects will then be sustained directly by the private sector. There are various options for promoting these new schemes, ranging from state-funded programmes to partially financed arrangements to schemes supported by third parties, the EU and the World Bank, for instance.⁹⁹

However, sustainability and scale are by no means guaranteed, and some programmes have ground to a halt after only one project cycle, not least due to poor employer buy-in (see Hooper 2019: 5). Reasons include inadequate planning from the onset, for example on account of misjudging demand or flawed project design, resulting in employers feeling there are risks involved in taking part or that the costs are too high. For instance, several small-scale projects within the context of the EU's MPs received initial co-funding from the EU or individual national ministries, but they were discontinued as the key partners were not ready to assume costs when the first phase ended. This illustrates one of the major pitfalls of publicly funded projects: successful implementation and upscaling of projects needs employer buy-in, while many companies are unwilling to bear the costs associated with selecting and preparing those taking part in coordinated placement projects. Language and professional pre-departure training, even if it is organised in

the country of origin and is therefore less expensive, can cost several thousand euros, which can place a heavy strain on SMEs.¹⁰⁰ Public-private partnerships and programmes that are subsequently adopted by the private sector are more likely to be feasible and sustainable for larger enterprises able to make the necessary investment. A German–Vietnamese training partnership initially supported and tested by Germany's Federal Ministry for Economic Affairs and Energy (BMWi), for instance, was taken over by the German Hospital Group *Vivantes*, which has been continuing the scheme independently ever since (see Vivantes 2015). This example also shows that whether costs are distributed between public and private actors ultimately to a large degree also depends on the social relevance of the industry or sector concerned: political acceptance of subsidies provided to the nursing and medical fields, given that they are essential parts of the welfare system, tends to be greater than, for example, subsidies for the hotel and restaurant industry.

6.1.4 Enforcing labour market standards and migrant workers' rights

Monitoring labour market standards and ensuring labour migrants' rights is a common challenge for EU Member States. If they have no protection mechanisms, this can result in "wage dumping" and the exploitation of foreign workers. Both in liberal systems (such as in **Sweden** and under the Western Balkans Regulation in **Germany**) and in more restrictive ones (such as the Italian or Spanish seasonal worker schemes), the role of the employer is decisive, as migrants may be dependent on their employers, who may seek to benefit from holding that position of power. Low-skilled migrants, who often work under precarious conditions and in the informal economy, tend to be the most vulnerable in that sense.

99 For instance, the German–Moroccan Partnership for Training and Recruitment of Skilled Personnel is financed by a World Bank fund. Especially in areas such as the hotel and catering industry, it is still difficult to find employers willing to invest in tailored skills programmes, given that they are often SMEs with limited financial resources (see Düvell 2019: 14).

100 This challenge is also pertinent with regard to young migrants from third countries who are recruited for vocational training. To get a visa in Germany, prospective migrants have to prove that they fulfil the minimum maintenance requirement, that is they have at least 800 euros to live on each month. In their first two years of training, however, their salary is typically way below that sum. If the employer covers further costs or provides accommodation, this threshold can be reduced by a lump sum of 150 euros (see Federal Foreign Office 2018: 4). However, without an additional grant candidates would have a hard time even finding that amount of money. While the law allows them to take on an additional job, they will hardly find the time to do the jobs, as company-based vocational training programmes are usually full time.



Although the Swedish immigration system is known for its openness and efficacy, the low level of government involvement renders the system vulnerable to abuse. Indeed, numerous reports have revealed that some employers have paid migrant workers lower wages than originally agreed and have been misusing their role by taking money from aspiring migrants in exchange for a Swedish residence permit. This has been facilitated by Sweden's vague control mechanisms: the authorities verify that information about wage and working conditions in the so-called offer of employment are in line with collective agreements, but the employer can ultimately offer an employment contract that deviates from what was indicated in that initial offer (see Engblom 2014: 355). In the event of a breach of wage and working conditions, the employee ends up shouldering the risks: while Swedish employers only risk losing staff, employees can lose their job and their work permit can be withdrawn, which can ultimately lead to their expulsion (see EMN 2018: 20).

Seasonal work as a potentially precarious domain

Seasonal workers can be particularly vulnerable, as the demand for a cheap and flexible workforce in a sector that authorities have difficulty overseeing facilitates exploitative systems. Employees are often deprived of social rights such as health insurance, decent salaries and proper working conditions, and it is crucial that seasonal workers' rights are safeguarded (see McLoughlin/Münz 2011).

In Italy, issues around the employment conditions of seasonal labour migrants are well documented, but this has hardly led to substantive improvements even though non-state actors such as trade unions and religious associations have lobbied against the possibility of linking a foreign worker's residence permit to the employer (job contract), as this is perceived as a form

of slavery (case study IT: 14). In particular, it is the agricultural sector in Italy that is criticised (see Corrado 2018). The very nature of agricultural work, i.e. its flexibility, seasonality and physical labour, coupled with often remote and rural locations, has rendered migrants not only socially and physically isolated but also particularly vulnerable to exploitation. In addition, high levels of informality and low levels of enforceability of workers' rights have contributed to the rise of the "caporalato" system¹⁰¹ in Italy's agricultural sector.

Although, in contrast to Italy, the Swedish government has taken important steps to prevent foreign workers being exploited, questions around vulnerability remain,¹⁰² especially in regard to the distinct group of berry pickers (see Box 8). In the past, these workers often faced problems on account of their specific work circumstances and the institutional framework. Due to the lack of collective agreements on salaries or working conditions and the fact that no trade union took responsibility for berry pickers, wage cuts were endemic. As most berry pickers were awarded their salary on the basis of the amount of berries delivered, wage losses were huge in years in which weather conditions led to a poor harvest. Thus, workers sometimes returned to their country of origin in debt to their recruiting agencies or had to take out loans to finance their travel. Since 2011, however, reporting has drawn attention to these rights violations, leading to the introduction of stricter requirements. Employers must now have a registered subsidiary office in Sweden, demonstrate their ability to pay wages, even if the season is poor, and present payslips from previous years to receive a new permit to recruit foreign workers. Now, the Swedish Municipal Workers Union is held to account for this specific migrant group, and has even provided a separate collective agreement for the berry-picking industry (see Herzfeld Olsson 2018: 160).

101 Traditionally, "caporali" act as informal intermediaries between farm employers and migrant employees. For the most part, they are responsible for just-in-time recruitment and organising the workforce before and during the harvest season. In this context, the exploitative means employed to guarantee a time- and cost-efficient harvest have widely been reported, including threats, violence and blackmail (see Corrado 2018: 14).

102 One aspect that makes labour migrants in Sweden more vulnerable than in other countries is the lack of a perspective of being able to stay legally in the country because residence and work permits are temporary during the first four years. In case of irregularities, even minor ones, third-country workers risk losing their right to remain, and their permits may be revoked or not extended. This circumstance caused a lot of criticism and in December 2017 a legal amendment was passed. It allows the Swedish Migration Agency not to revoke a residence permit for work purposes if the employer does not comply with requirements in terms of salaries or insurance payments (see EMN 2018: 20). There were also a number of adjustments to ensure better respect for migrant rights.

The **Spanish** Collective Management System enables Spanish employers to hire multiple workers for certain occupations and it seems more appropriate when it comes to reducing vulnerabilities and protecting workers' rights.¹⁰³ One of the drivers for setting up this system was the desire to cut the large share of irregular migrants in Spain. For instance, the number of workplace inspections was stepped up considerably in the 2000s even though resources became scarcer due to the recession (see Finotelli/Echeverría 2017: 46). Like in Sweden, trade unions play a crucial role, as they have traditionally been very involved in shaping labour migration policy and in asserting labour migrants' rights. As a representative of one of the major trade unions stated in an interview, they view themselves as responsible both for foreign workers and those born in Spain and they are therefore very active when it comes to labour migration policymaking.

To sum up, awareness of migrant workers' rights has been growing in the countries studied, and both governmental and non-governmental actors have made efforts to better protect migrant workers against rights violations. However, the monitoring and sanctioning of rights violations continue to be a problem in some Member States, and are largely dependent on administrative capacities and the involvement of trade unions and civil society organisations.

6.2 Circumventing the admission of low- and middle-skilled workers through other channels

Whether legal migration policy for work and training for low- or middle-skilled migrants works in practice also depends on whether adjacent policy fields give third-country nationals who did not arrive through the intended legal channels access to the labour market. Policies such as regularisations of undocumented workers can sometimes serve as "functional equivalents", and can call into question the state's steering capacities

and its agency when it comes to managing migration flows properly (Pastore 2014). Despite irregular migration being rejected as a definite policy, state authorities sometimes tacitly tolerate it, condoning and enabling the presence of an irregular workforce in some Member States (Ambrosini 2016; Cheliotis 2017). National policymakers thus face a twofold challenge: they need to make sure that legal pathways are available and effectively accessible to those low- and middle-skilled migrants who tend to move irregularly, and they need to avoid sending the message that people can enter irregularly and expect to eventually gain legal status (see SVR 2019b).

The five countries studied do, however, face different types of challenges in this regard. In Italy, Spain and, to a lesser extent, in France, the presence of an unauthorised migrant workforce has contributed to an informal economy and has been a longstanding issue. Not least since 2015, debates in Germany and Sweden (and also in France) have focused on how to integrate failed asylum seekers.

Regularising undocumented workers in Italy, France and Spain

Hiring foreign workers in the informal economy has been a way for employers to sidestep the legal migration systems in Italy, France and Spain in particular. During the 1990s, the small number of places available through Spain's quota system, coupled with cumbersome and lengthy procedures for obtaining residence and work permits, as well as weak enforcement led to a surge in unauthorised migration. Thus, **Spain's** quota system gradually became a way to legalise the status of foreign workers who were already in the country, with people holding jobs in qualifying occupations applying for a work permit and then legally leaving and re-entering the country (Garcés-Masareñas 2012: 148–149). **Italy's** quota system is also reportedly used to regularise unauthorised migrants already in the country, who can leave and then legally re-enter. In 2012, the Monti government carried out the last regu-

103 Nevertheless, there have also been some reports about the abuse of Moroccan workers, see <https://www.theguardian.com/global-development/2019/apr/14/rape-abuse-claims-spains-strawberry-industry>, 27.08.2019.



larisation campaign, providing approximately 100,000 slots.¹⁰⁴ This may explain why a large share of the annual quotas for foreign workers was not used, even before the economic crisis. And some have been used improperly, with employers reportedly opting to apply to hire foreign workers through the quota system but then employing them through the informal economy instead. Thus, the shortcomings of the quota system both in terms of lack of user-friendliness and lack of ability to meet labour market demands (see 6.1.1) continues to contribute to high levels of irregular migration and employment in the informal economy.

Since the mid-2000s, **Spain** has reformed its legal migration system by increasing the number of slots available through the Collective Management System, coupled with increased enforcement and the introduction of a process for regularising migrants' status. The formal regularisation process for individual workers, known as the *arraigo*, allows unauthorised migrants without a criminal record to obtain legal status.¹⁰⁵ In 2009, about 82,000 migrants gained legal status through the *arraigo* system, but this number decreased to about 30,600 in 2017 (most of whom were migrants from Latin America and African countries).¹⁰⁶ This system was in part introduced in response to criticism from other Member States, including Germany and the Netherlands, that pushed Spain to abandon mass regularisations, which it ultimately did in 2005 (case study ES: 14).

In **France**, the conditions under which regularisation is possible have become more flexible since 2012 (see OECD 2017: 311). Foreign migrants without a resi-

dence permit can now get access to a work permit (*admission exceptionnelle au séjour*, AES) under certain conditions.¹⁰⁷ When it comes to occupations requiring low- and middle-skilled workers, French employers tend to hire migrants who are already in the country, as labour market entry is facilitated for regularised migrants, whereas the formal procedures for newly arriving low- and middle-skilled migrants are complex and opaque (see OECD 2017: 311). In 2018, 7,400 residence titles were granted for economic reasons to formerly irregular migrants (AES).¹⁰⁸ This number is relatively high given the low number of first residence titles issued in 2018, namely approximately 32,000, 9,500 of which were status changes, for instance student to employment purposes (case study FR: 6).

Germany and Sweden: Pathways for failed asylum seekers through labour market integration

In the wake of the high intake of asylum seekers particularly in 2015 and 2016, asylum processing times in Germany and Sweden became rather long. To avoid losing too much time before beginning the integration process, policies focused on providing asylum seekers with integration measures and access to the labour market at an early stage, even before their case was decided. Thus, a not insubstantial number of those asylum seekers whose claims for protection were ultimately rejected managed to secure themselves a job in the interim. Despite efforts to increase the number of deportations and assisted voluntary returns, in a number of cases rejected asylum seekers could not leave or be deported, for various reasons. Without

104 To be eligible for regularisation, migrants had to have been in Italy since 31 December 2011, while employers had to demonstrate an income of no less than 30,000 euros. In addition, a lump sum of 1,000 euros had to be paid, in addition to no less than six months of social security contributions during the entire period of irregular employment. The numbers of previous regularisations were even higher, peaking at approx. 650,000 in 2002, 350,000 in 2006 and around 220,000 in 2009 (case study IT: 20).

105 To qualify, applicants have to meet one of three criteria: (1) two years' residence in Spain and formal documentation that they have been working illegally for at least six months (this can be difficult to obtain); (2) three years' residence in Spain, an offer of employment for at least one year, and either family ties to Spain or a report from their municipality documenting their social integration; or (3) being the parent of a child holding Spanish nationality or being the child of a Spanish citizen (Ministry of the Presidency 2004; Secretary of State for Migration 2016: <http://extranjeros.mitramiss.gob.es/es/InformacionInteres/InformacionProcedimientos/Ciudadanosnocomunitarios/hoja037/index.html>, 27.08.2019).

106 Secretary of State for Migration 2018: Flujo de autorizaciones de residencia concedidas a extranjeros. Resultados detallados, sheet 5, <http://extranjeros.mitramiss.gob.es/es/Estadisticas/operaciones/flujos-autorizacion/index2.html>, 27.08.2019.

107 (1) A job contract (or promise of one from an employer) and the commitment on the part of the employer to pay tax to the Migration Office; (2) having worked for at least eight months in the past 24 months, or 30 months in the past five years; (3) being in France for at least five years (or three under other conditions) (Ministry of the Interior, circular of 28 November 2012, http://circulaires.legifrance.gouv.fr/pdf/2019/03/cir_44486.pdf, 27.08.2019).

108 Most of the third-country nationals benefitting from regularisation for economic reasons come from African countries (see OECD 2017: 310).

calling these measures “regularisations”, both countries have found pragmatic ways of offering temporary or even permanent residence rights to those in a work or training relationship, though under specific circumstances and prerequisites.

In **Germany**, third-country nationals who are required to leave the country but cannot be removed and do not leave voluntarily are frequently granted what is referred to as “temporary suspension of deportation” (*Duldung*), meaning their stay is temporarily “tolerated”. Asylum seekers and rejected applicants with such a temporarily suspended deportation status can take up employment if they have been in Germany for at least three months and the Federal Employment Agency gives its approval.¹⁰⁹ According to numbers provided by the Federal Employment Agency, around 120,000 out of the 270,000 work permits granted in 2018 to third-country nationals were issued to those whose removal had been temporarily suspended and those with permission to remain (BA 2019). Nationals of these countries mainly came from the six Western Balkan countries, Nigeria and Gambia (BA 2018b). It is important to note that a work permit does not safeguard an asylum seeker from deportation, as their permission to stay primarily hinges on the outcome of the asylum procedure. Recently, the introduction of a more generalised lane-switching option for rejected asylum seekers who have successfully integrated into the labour market has been debated, but it will be limited to a specified cut-off date (1 August 2018), as opponents of the idea believe that an extended lane-switching option could otherwise lead to pull effects.¹¹⁰

In contrast to the above options, which are restricted to specific groups in Germany (see SVR 2019b: 170–171), **Sweden** allows all asylum seekers whose applications for protection are rejected to switch to a labour migration channel within two weeks of receiving a rejection notice. The only requirement is that they

need to have been working for at least four months¹¹¹ while their asylum claim was being processed and their employer needs to agree to extend their contract. This option has been used more extensively in the context of the unplanned inflows beginning in 2015, although absolute numbers are quite low (955 cases in 2017 compared to only 155 in 2014). The large asylum inflow resulted in long asylum processing times. As many asylum applicants had to wait a year or longer for their cases to be decided, some managed to find work while they were waiting and then qualified for a status change (see Parusel 2018). As the number of asylum seekers decreased dramatically in 2016, 2017 and 2018 and both the Migration Agency and the courts gradually worked off the huge number of open cases they had accumulated, processing times will in future presumably be substantially shorter. Asylum seekers will in many cases not manage to work for four months or more before their case is decided, and thus the number of individuals who will qualify for a status change is likely to fall. Evidence shows that most rejected asylum seekers who successfully changed their status and stayed in Sweden as labour migrants took up employment in low-skilled occupations, working as cleaners or auxiliary staff in restaurants, for example (Swedish National Audit Office 2016: 48).

These phenomena demonstrate the strong ties between different types of migration flows that can, in some cases, provide national labour markets with alternative sources of foreign workers. Governments at national and regional levels need to strike a balance between different policy goals. First, in order to be able to uphold the system’s legitimacy, they need to place a firm emphasis on those whose asylum claims are rejected being obliged to leave. Second, they need to find pragmatic ways to integrate those who either qualify for protection or who are in an irregular situation with no realistic prospect of ever returning to

109 There is a specific pathway to legal residence for young people in vocational training called the “3+2 rule”. Failed asylum seekers whose deportation has been temporarily suspended may pursue qualified vocational training in a state-approved or comparably regulated recognised trade if other criteria are met, for instance the third-country national is not from a safe country of origin. After completing their training (normally after three years), those whose deportation has been temporarily suspended can then be granted a residence permit to pursue employment corresponding to the vocational qualification they have gained.

110 Bundestag Printed Paper 19/10707.

111 This possibility of a “status change” was originally introduced in 2008 and further facilitated in 2014. Under the old rules, failed asylum seekers had to be employed for at least six months by the same company to qualify for a status change (case study SE: 28).



the labour market.¹¹² However, this latter goal may incentivise further migrants to come through informal and often risky channels. Furthermore, existing legal pathways for work and training are at risk of being devalued if they are more cumbersome and less promising to pursue compared to irregular channels.

7 Conclusions and policy recommendations

As EU and national policymakers explore ways to expand legal migration pathways for work and training as part of their efforts to reduce irregular migration to Europe (and ongoing efforts to meet labour and skills needs), this study seeks to inform these efforts by examining current policies on admitting low- and middle-skilled migrants as well as their implementation and results to date. While the EU has made some progress on harmonising legal migration policies, decisions about which third-country nationals to admit for work and training and on what terms still largely lie with Member States. As a result, approaches vary widely across Europe. The five countries studied present five different approaches to selecting labour migrants, with Sweden being an example of a highly employer-led system and the other four representing a more state-driven approach. This sheds light on the catalogue of options available to policymakers as they explore what expanding legal migration pathways to Europe could look like in practice.

The primary rationale behind legal labour migration systems is to fill labour market gaps, and countries are experimenting with different ways of assessing and anticipating labour market needs in their selection systems. But other priorities such as migration management, economic ties (e.g. trade), development cooperation and domestic politics are also factored in to decisions on which workers to admit. In **Italy** and **Spain**, for example, labour migration policy reforms during the 1990s and 2000s were driven by labour market considerations while at the same time being part of broader efforts to deter irregular migration and

tackle the informal economy by offering more options for hiring foreign workers legally.

In the wake of the large-scale irregular arrivals in 2015 there has been a growing tendency to view legal migration pathways as offering an alternative to irregular migration. In practice, though, this is often undermined by the mismatch between existing legal migration pathways in these countries, which mainly focus on recruiting high-skilled workers, and the profile of those on the move, with only a small share of the populations in some key sending countries having a high-school leaving certificate (or equivalent vocational training) or a tertiary education.

The immigrant selection systems in all five countries studied rely on employer sponsorship, but they differ in how active a role their governments play in managing their selection systems and the tools governments use to this end. **Sweden**, for example, provides significant leeway to employers when it comes to identifying and selecting the workers they need, while the other four countries have opted for a more interventionist approach, using a combination of labour market tests, shortage occupation lists and quotas to shape the profile of labour migrants entering their country. Another point of divergence is the role of bilateral relations in selection systems, with Sweden opting for a country-blind approach and others offering preferential treatment to those from third countries with which they enjoy close ties. Finally, while all the countries offer opportunities for third-country nationals to enter for tertiary-level studies, **Germany** has an explicit entry channel for vocational training. And while discussions in Germany about extending legal migration options for vocational training have been part of recent policy reforms that will enter into force in early 2020, this perspective has barely featured in the other case-study countries.

This study took stock of current policies on admitting low- and middle-skilled migrants, and considered options available to policymakers for building on these efforts. The broad policy frameworks in place for admitting low- and middle-skilled migrants were discussed, reflecting on ways to ensure that national

112 For an overview on Europe's "shadow population", see <https://www.ft.com/content/58f2f7f8-c7c1-11e8-ba8f-ee390057b8c9>, 27.08.2019.

selection systems can meet labour or skills needs while offering sufficient oversight of the recruitment process. This requires that careful consideration be given to policy questions such as how to balance labour market checks and avoid too much red tape, and how to best assess and respond to labour market needs. Country-specific channels were then examined, drawing on insights from the case studies, in order to then offer recommendations on how to pursue partnerships or programmes on labour migration with third countries.

7.1 Designing and implementing selection policies for low- and middle-skilled migrants

Ultimately, there is no “right” approach to recruiting and admitting labour migrants, with each country’s selection policies operating within the context of its immigration history, economic situation and the role of its welfare state (see Jurado/Brochmann 2013). Each approach has its advantages and drawbacks. While Sweden’s system provides employers with the leeway to assess and select the workers they need, it leaves the government with less of a say about the profile or scale of labour migration – or the ability to test whether employer demand reflects genuine shortages in these occupations. **France, Germany, Italy and Spain have opted for a more hands-on approach** that provides a greater degree of control over labour migration flows, but the different policy tools they use also have shortcomings. The efficiency of labour market tests, shortage occupation lists and quotas hinges on governments’ willingness to invest in updating them (and their methodologies) on a very regular basis. In turn, while these policy tools offer more oversight of labour migrant recruitment, they risk slowing down the recruitment process – potentially even deterring employers from using these channels. And regardless of which approach governments opt for, enforcing labour market standards and safeguarding migrant workers’ rights remain ongoing issues.

To varying degrees, all five labour migration policy frameworks allow for the legal mobility of low- or middle-skilled third-country nationals. In a quid pro quo logic, these legal mobility opportunities were sometimes linked to other migration management objectives, such as return and readmission. Limited data prevent comparisons of migration flows across the five Member States along different skills levels, sectors, type of work, length of stay or countries of origin. While coherent data provision by Eurostat has improved for isolated categories (such as on the EU Blue Card and, more recently, on seasonal workers), both the EU’s and Member States’ statistical offices could do more to broaden and substantiate the statistical evidence base for policymaking in the area of legal migration for work and training. This would require more Member State commitment to harmonised data, though.¹¹³

Furthermore, successfully implementing selection policies for low- and middle-skilled migrants hinges on the ability to judge labour market needs and to respond accordingly. As part of these efforts, policymakers can consider steps to better assess labour market needs, build the infrastructure to allow employers to hire workers quickly and improve protection for labour migrants.

Assessing labour market needs

Accurately estimating and forecasting labour market needs is crucial when it comes to implementing selection systems that are linked to fixed quotas. However, it remains a challenging undertaking, particularly for low- and middle-skilled jobs. Countries’ methodologies for assessing labour market needs are beset by a lack of comprehensive data on vacancies, which tend to focus on jobs advertised through employment agencies and overlook other recruitment channels used by employers (e.g. online portals or even word of mouth) (see OECD/European Commission 2014). Governments may also collect inputs from industry, employers or other stakeholders on current or anticipated needs (such as through employer surveys), but this can be a time-consuming and resource-intensive

113 This could be achieved, for example, by reforming Regulation (EC) 862/2007 on Community statistics on migration and international protection. In its last report on implementation of the Regulation, the European Commission urged Member States to make an effort to fill existing data gaps and improve the quality of the data delivered to Eurostat (see COM(2018) 594 final).



process. On paper, Italy has a sophisticated process for identifying and defining labour market shortages, but it is constrained by both a lack of resources and limited capacity among local counterparts to conduct these checks. Data on labour market needs also go out of date quickly, with employer decisions about hiring hinging on economic performance and trends – ultimately raising questions about the extent to which governments can accurately predict imminent shortages, let alone future labour market needs.

To improve their insights into labour market needs, governments could consider taking the following steps:

- **Build capacity to assess labour market needs.** While some governments have developed detailed methodologies for assessing labour market shortages, their implementation hinges on having sufficient resources – and committing to regularly reviewing these techniques in the light of labour market churn and changing hiring practices. Encouraging governments to share best practices with each other on other data sources (such as employer surveys and data on online job postings) could be a useful undertaking. The EU could support these efforts both by providing resources to key national (and even subnational) stakeholders and investing in efforts to develop better data on low- and middle-skilled labour needs.
- **Prioritise consultations.** Consultations with other stakeholders, such as industry or employer representatives, local or regional government representatives, trade unions and civil society representatives, can offer invaluable insights both about labour market needs on the ground and local communities' capacity to receive and support new arrivals. But such consultations can be resource intensive and lengthy: Italy adopted its last Document of Migration Policy Planning back in 2005, reflecting, in some part, the arduous coordination process that this involved. One option for improving local input more informally is to equip local employment agencies to consult with their local counterparts as they collect unemployment and vacancy data, as Germany's Federal Employment Agency does. Alternatively, governments could consider alternatives to large-scale, ad-hoc consultations, such as a standing commission or advisory body. Spain's Tripartite Labour Commission for

Immigration, for example, serves as a small advisory body with representatives drawn from central government, business associations and trade unions. The Commission also receives regular input from regional governments.

Building the infrastructure to select and vet migrants quickly

A second priority is building the infrastructure that allows employers to hire workers quickly through these selection systems. Delays in getting approval to hire foreign workers limits employers' ability to respond nimbly to emerging needs and may even encourage them to look for other options for hiring these workers. In the case of Italy, for example, the red tape of the quota system means companies can end up waiting several months – or even several years – to get a foreign worker approved and a residence permit issued, leading some employers to look to hire from the informal economy instead. Similarly, the time taken to conduct France's labour market test has encouraged employers to hire migrant workers who are already in the country (irrespective of their legal status).

There are several steps that governments can consider taking to support the selection process and help it produce timely results:

- **Identify and tackle bottlenecks in selection systems.** Governments should take steps to identify and tackle bottlenecks in their systems when reviewing applications and issuing a decision, including in diplomatic missions abroad. This is often simply a question of staffing levels, especially in a scenario where applications increase rapidly (as experienced by German embassies in the Western Balkans, e.g.). Delays within Italy's system could be remedied by increasing resources for the overstretched administration and, crucially, exploring options to simplify procedural steps in the quota system to make it a less time-consuming process. A greater degree of transparency for employers and migrants about how these applications are adjudicated, the status of applications (and expected timeline) and whether a successful outcome can reasonably be expected is key if governments wish to deter employers from looking for easier (and potentially illegal) options for hiring migrant workers (see Papademetriou/Hooper 2019).

- **Explore ways to speed up processing.** Alongside efforts to address bottlenecks, governments can also consider some recent initiatives to try and speed up processing. They could explore possible ways of digitising applications and even reviewing whether a first come, first served system is the most efficient approach. The European Commission, for example, has sponsored research exploring whether an Expression of Interest system as pioneered in New Zealand, Australia and Canada would be applicable in a European context (see OECD 2019). And while efforts to apply this in the context of the Blue Card reforms have currently stalled, this approach could also be instructive for national governments wishing to streamline their application processes for middle- or high-skilled migrants. Another option is to explore ways to expedite the application process for certain employers, for instance those hiring workers in shortage occupations (as is the case in France and Spain) or by certifying trusted employers who meet certain requirements (as is the case in Sweden). The certification approach applied in Sweden rewards employers who play by the rules by offering them an expedited process that can be completed within days. However, certification is only open to companies that regularly hire workers from third countries, with no equivalent available for SMEs that hire migrant workers more infrequently. Germany's new Skilled Worker Immigration Act provides for an expedited procedure for skilled migrants via centralised foreigners authorities in each of the 16 federal states, providing a point of reference exclusively available to employers in Germany and diplomatic missions abroad.
- **Commit to regularly update selection policies: establish an ever-learning system.** Regardless of which policy tools governments opt to use, their successful implementation relies on regular updates in line with labour market trends. Shortage occupation lists and quotas, for example, rely on accurate information about labour market needs at the local level, while the efficacy of labour market tests depends on their ability to incorporate current hiring practices. Some countries have found it easier to regularly update their selection policies than others, though. In part, this is a reflection of whether they rely on ad-hoc updates or whether their system is designed to

include mechanisms to conduct updates on a more regular basis. France's shortage occupation list, for example, has not been updated since January 2008, with efforts to update the list in 2011 ultimately being shelved due to pushback from social partners, who felt they had not been adequately consulted (OECD 2017: 246). Spain's immigration laws, on the other hand, provide for quarterly updates to its Catalogue of Hard-to-Fill Occupations and quotas issued by its Tripartite Labour Commission for Immigration. As part of a recent large-scale reform of its labour migration policy, Germany decided to open up its entry channels to skilled migrants irrespective of shortage occupation lists or priority checks, not least because it was felt that bi-annual updates of the list of shortage occupations did not appropriately reflect labour market demands (see BA 2018a: 8).

Improving protections for labour migrants

Low- and middle-skilled migrants, especially those working in seasonal occupations, remain vulnerable to exploitation by unscrupulous employers. Recent reports of the abuse of female seasonal workers in Spain illustrate the perils faced by migrant workers in low-wage, precarious jobs even in a country with a well-regarded seasonal labour programme – and for a group of workers subject to an EU Directive. This illustrates why Member States need to prioritise steps to prevent abuse and improve protections for low- and middle-skilled migrants, including:

- **Better enforcement.** Effective enforcement depends on changing the calculus for employers and encouraging them to play by the rules. Nevertheless, this is often a question of resources. While workplace inspections enable governments to ensure employers are meeting their obligations, governments may have a small workforce to conduct these checks, requiring them to be strategic about how and where to conduct these visits. Another option is to involve civil society actors in monitoring working conditions and providing resources to migrant workers who experience abuse. In response to growing reports of the abuse of berry pickers in Sweden, the government gave a trade union responsibility for these workers and for designing a collective agreement on their behalf, which has helped improve (though not



resolve) poor working conditions. And alongside punitive measures such as fines, governments can also explore options for incentivising good behaviour and due diligence on the part of employers, such as “rewarding” them with certification and faster recruitment processes, as set out above.

- **Review permits that tie migrants to one employer.** Another step that governments could consider taking to reduce the vulnerability of migrant workers is to evaluate the common practice of linking migrant workers’ permits to a specific employer. Linking migrant workers to one employer acts as a safeguard to ensure that migrants are admitted to do the job in question, but the prospect of losing permission to stay and work may deter migrants from reporting exploitative working conditions. On the other hand, Italy’s system of allowing migrants to freely switch jobs upon arrival has undermined the rationale behind admitting migrant workers to fill in-demand occupations. Governments could explore introducing some degree of flexibility into their job permits, either by allowing migrants to switch jobs after a certain period of time (as is the case with Sweden’s renewable permits) or by allowing them to do so under certain circumstances.

7.2 Country-specific channels

Alongside ideas for capitalising on existing national frameworks for legal migration, this study also examined options for pursuing country-specific channels, whether through dedicated partnerships with third countries or discreet projects offering temporary labour migration or training opportunities. In the wake of the increase in mixed migration towards Europe, there has been a renewed push at the EU level to pursue greater cooperation on migration with key countries of origin or transit. The Joint Valletta Action Plan agreed by African and European leaders in 2015 identified expanded legal migration opportunities as a key component of these efforts (see Box 2).

However, delivering more legal migration opportunities via country-specific channels, be that in the form of visa facilitation or more opportunities for temporary work or study, has proved to be challenging. There is

often a gap between the rhetoric around comprehensive approaches to migration and practice, with legal migration projects initiated under the EU’s Mobility Partnerships since 2007, for example, being limited in scope and number.

While there is a clear political incentive to pursue closer bilateral cooperation on migration – from a migration management as well as from a development cooperation perspective – a country-specific approach also comes with challenges. Such an approach invites accusations of favouritism and risks encouraging one-upmanship as countries of origin or transit try to leverage more resources from their European counterparts. A country-specific approach also adds further complexity to selection systems, making it harder for employers and migrants to find their bearings. For instance, nationals of countries granted reserved quotas in Italy can only be admitted through this specific channel and are excluded from regular labour migration channels.

With these advantages and drawbacks in mind, this study identified a number of steps governments could take to deliver on the ambition of expanding country-specific legal migration options for middle- and low-skilled workers and how to achieve the best possible outcomes from country-specific channels.

Build capacities to recruit locally

The success of expanding legal migration pathways with third countries hinges on engaging destination-country employers and presenting a compelling case for why they should recruit workers from these countries. The Sweden–Thailand corridor for berry pickers, for example, points to the importance of diaspora connections, personal referrals and local recruitment agencies in establishing a legal migration pathway. But governments wishing to speed up this process can consider a number of steps to encourage employers to participate in new initiatives, potentially drawing on financial support from the EU to do so:

- **Familiarise destination-country employers with labour markets in countries of origin.** Governments can take steps to help destination-country employers, in particular SMEs, better understand the labour market in countries of origin. This could include offering information sessions or resources about local labour market dynamics and recruitment support

(including how to read diplomas), or helping employers establish in-country networks through country visits or by tapping into diaspora networks. Another option is to present engagement in third countries to destination-country employers as an opportunity to expand their operations in countries of origin and move away from viewing this as more of an exercise in corporate social responsibility. This could build on examples such as a pilot project in Germany that offers work placements to recently graduated Tunisian engineers, which has resulted in some German companies hiring a number of participants who completed a placement in Germany to work for their operations in Tunisia (see Hooper 2019: 16).¹¹⁴

- **Build the capacities of partner countries to assess and select workers.** Spain's Collective Management System is an example of a government-led recruitment process in third countries, with participating employers hiring groups of workers who have been vetted by committees of destination- and sending-country representatives and employer associations. In a scenario where countries of origin are expected to play a role in selecting workers, policymakers will need to be realistic about their capacity to do so and willing to commit resources over time to help build their institutions so that they can assess labour market needs, vet workers for overseas positions and manage the migration process, not least to avoid the risk of brain drain. Another option would be to establish a transnational matching infrastructure by extending services such as international placement agencies (normally under the authority of the ministry for labour affairs or ministry of the interior) in order to organise legal migration in cooperation with trusted partner countries. Existing initiatives promoting capacity building in employment agencies in third countries are promising but could be expanded by including representatives of diaspora networks whenever further initiatives are to be set up.

Explore options for temporary work or training placements

Temporary work or training placements offer a way to test demand for labour migration between destination

countries and key countries of origin and transit. These projects can complement more comprehensive bilateral agreements with third countries. The EU's pilot projects on legal migration offer a current example of this approach, with Member States leading these initiatives while DG HOME provides coordination and financial support. To date, the projects launched have focused on highly skilled migrants.¹¹⁵ A review of previous projects offering temporary work or training opportunities suggests the following priorities:

- **Identify shared priorities for labour migration.**

Despite their potential, tailored projects typically do not lead to many people actually migrating. Often, this reflects the difficulties of moving beyond the "pilot" stage to scale up and institutionalise the projects. It can also indicate the challenge of identifying sectors that are experiencing consistent shortages in one country with a genuine surplus of workers in another country (see Hooper 2019). Germany, for example, has established several projects that focus on recruiting nurses from countries such as the Philippines with high rates of unemployment among their nursing workforce. While destination countries are often focused on recruiting workers for high-skilled occupations, this may not be a good fit for partner countries that may be more concerned about skilled emigration rates. Given the average profile of workers in some of these priority countries, these projects may be easier to implement when there is genuine demand for low- or middle-skilled workers in destination-country economies, whether in seasonal work or other labour-intensive sectors such as construction or hospitality.

- **Explore the potential of vocational training schemes.** Germany in particular has been successfully experimenting with schemes providing vocational training (and subsequent labour market integration) to young third-country nationals who already have a degree in the nursing and care-giving professions. Against the backdrop of a "youth bulge" and high unemployment rates among young adults in some countries of origin, vocational education and training as a means to alleviate that pressure and at the

¹¹⁴ According to GIZ experts, see Hooper 2019: 16.

¹¹⁵ A new EU-funded project involving Germany and Egypt, Morocco and Tunisia as partner countries, with a clear focus on vocational training and middle-skilled employment, may be a promising exception (see footnote 80 in 5.2).



same time to train skilled workers in professions in which there is a lack of domestic trainees should receive more attention from and be further explored by Member State governments. However, pilot programmes will have to generate first-hand knowledge on how such schemes function, as pre-departure (language) training and integrating young migrants into the educational system in Europe can pose a significant organisational and financial challenge. In a similar context, the 2018 Global Compact for Safe, Orderly and Regular Migration featured global skills partnerships (see Clemens 2015), a promising (if largely untested) tool where destination country actors would fund vocational training in countries of origin for students, some of whom would migrate (and could thus be recruited) and some of whom would stay home. For the same cost of training the equivalent number of new recruits in destination countries, destination-country actors could thus also fund training for local workers, providing a clear development benefit for countries of origin separate to the contributions of those who plan to migrate. While there is no one-size-fits-all approach and, to date, such schemes have struggled to create two sustainable training streams for prospective migrants and local workers (see Hooper 2018), EU Member States should seize the decade ahead to test this approach and prioritise the tenets that underpin it: taking care to incorporate domestic training and labour market needs alongside the skills needs in regions of origin, and involving business and educational stakeholders.

- **Share costs.** The viability of temporary work or training projects depends on finding a sustainable way to finance them. Germany's "Triple Win" programme is a rare success story in this field. Under the programme, around 2,000 skilled workers were placed in training and employment between 2013 and mid-2019, financed by prospective employers. Many projects have struggled to find a way to cover the costs of training workers (including their language training) and their living expenses without government support, with employers unwilling to cover these costs if they will only be able to hire the worker on a short-term basis (see Hooper 2019). To avoid these dilemmas, policymakers can explore a number of options, including allowing workers who meet certain criteria (e.g. securing an offer of

a full-time job) to access longer-term migration opportunities, or ways to share costs among different partners, such as public-private partnerships that could involve employers, chambers of commerce or other industry bodies alongside development or employment agencies.

Outlook

As policymakers consider opportunities for creating new or alternative channels for legal migration, this study sets out ways to improve national selection policies alongside options for cooperating with third countries on this issue. There is still a gap between the rhetoric used and results achieved when it comes to expanding legal migration pathways, especially at the EU level. Progress on expanding legal migration pathways, especially for low- and middle-skilled migrants, has so far been limited, reflecting the challenges of implementation and scaling up initiatives, as well as to some extent the limited buy-in on the part of governments and/or employers and general scepticism among the public regarding immigration. Ultimately, though, many of these recommendations depend on what investments governments are willing to make in regard to legal migration and how they plan to prioritise their limited resources. Policymakers will also need to lower their expectations in terms of what their legal migration policies can actually achieve. While these policies offer opportunities to meet labour and skills needs, and potentially to promote development benefits, there is as yet little evidence that they can in fact contribute to the EU's stated goal of reducing irregular migration and disentangling mixed flows. And while the institutional and legal leverage in Brussels and Strasbourg when it comes to prescribing policies – be it in regard to Member States or vis-à-vis third countries – is rather limited, the new EU leadership that will take office in 2019 could adopt a fresh tone on legal migration, bolstered by the new multi-annual financial framework and flanked by Member States' recognition that a joint effort is needed to take Europe's external migration policy forward – and pay more than just lip service when it comes to creating new legal pathways for work and training.

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Tables

Table 1 First residence permits issued for seasonal work, 2009–2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Spain	5,314	8,741	4,507	3,780	3,127	3,075	2,900	2,841	5,699	13,846
France	2,236	1,061	1,059	1,115	1,000	1,205	1,539	1,651	2,369	3,371
Italy	23,034	22,345	15,204	9,715	7,560	4,805	3,570	3,520	3,593	5,617
Sweden	6,879	4,373	2,442	5,349	4,980	2,662	4,008	3,309	3,028	4,947

NB: No admission of third-country nationals for seasonal work in Germany

Source: Eurostat 2019b

Table 2 First residence permits issued for “other remunerated activities”, 2009–2018

	2009	2010	2011	2012	2013	2014	2015	2016	2017	2018
Germany	16,454	16,289	18,315	26,138	23,632	24,737	10,687	32,982	44,292	54,971
Spain	94,961	68,691	79,717	57,880	44,245	37,239	35,719	31,652	32,717	40,217
France	13,790	12,913	12,055	8,860	11,160	11,781	12,491	15,612	19,073	25,823
Italy	212,814	334,386	102,222	54,938	71,267	46,941	12,223	4,581	3,426	6,792
Sweden	8,477	6,601	8,790	7,294	6,516	6,091	6,244	6,238	8,550	11,981

Source: Eurostat 2019b



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About the Expert Council's Research Unit

The Expert Council's Research Unit conducts independent, practice-oriented research projects in the field of integration and migration. The project-based studies are dedicated to emerging trends and issues and focus mainly on the fields of education and refugees/asylum. The Research Unit complements the work of the Expert Council. The core funding is provided by Stiftung Mercator.

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