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SPECIAL ISSUE

**Organisational Recruitment
and Patterns of Migration**

Interdependencies in an Integrating Europe

Edited by
Michael Bommers, Kirsten Hoesch,
Uwe Hunger and Holger Kolb

Preface

This single issue-volume of IMIS-Beiträge presents the main findings of the international research project ›The Political Economy of International Migration in an Integrating Europe‹ (PEMINT) funded by the Fifth Research Framework Programme of the European Union from 2001 until 2004. The project was coordinated by Maria Baganha (University of Coimbra/Portugal) and included research groups in six countries directed by Michael Bommes (IMIS, University of Osnabrück/Germany), Emilio Reyneri (University of Milano-Bicocca/Italy), Han Entzinger (ERCOMER, University of Rotterdam/The Netherlands), João Peixoto (Technical University of Lisbon/Portugal), Sandra Lavenex (University of Berne/Switzerland) and Andrew Geddes and John Salt (University of Sheffield and University College London/UK). The volume presents the research approach of PEMINT, its methodology as well as its empirical findings and theoretical conclusions.

The organising and editing of the volume was procured by the German research team at the Institute of Migration Research and Intercultural Studies (IMIS), Michael Bommes, Kirsten Hoesch, Uwe Hunger and Holger Kolb. We would like to thank Sigrid Pusch and Jutta Tiemeyer who prepared the manuscripts for publication as well as Alex Balch for his painstaking proof-reading.

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Maria I. Baganha and Han Entzinger

The Political Economy of Migration in an Integrating Europe: An Introduction

1. Objectives

The European Union (EU) has been created to function as one large labour market. Numerous obstacles preventing workers from taking up employment outside their own Member State have been gradually removed. Still, workers do not move that easily within the Union and employers seeking manpower often prefer other solutions to recruiting elsewhere in the EU. Statistics indicate that intra-EU migration is relatively low and not growing particularly rapidly. Migration from outside the EU is more significant numerically and also more dynamic. These findings serve as a starting point for the project *The Political Economy of Migration in an Integrating Europe (PEMINT)*, from which this special edition of *IMIS-Beiträge* presents some preliminary results.

The European Commission is funding the PEMINT project under its Fifth Framework Programme for Research.¹ The project involves eight research teams from six European countries.² It started in the autumn of 2001 and will be finished late 2004. The main objective is to understand how national and international companies in the EU make recruitment decisions in situations where the domestic labour market does not satisfy their needs. Do they look elsewhere in the EU, or outside the Union? What alternatives do

1 The project is funded under the 5th Framework Programme, Improving Human Potential and Socio-Economic Knowledge Base, Key Action for Socio-Economic Research (Contract N^o HP – CT – 2001 – 00059).

2 The following research teams participate in the PEMINT project: Maria I. Baganha (project co-ordinator); Pedro Góis, José Carlos Marques, Joana Ribeiro (University of Coimbra, Portugal); Michael Bommers, Kirsten Hoesch, Uwe Hunger, Holger Kolb (University of Osnabrück, Germany); Barbara Daroit, Ivana Fellini, Anna Ferro, Giovanna Fullin, Emilio Reyneri (University of Milan-Bicocca, Italy); Madelon den Adel, Wim Blauw, Han Entzinger (Erasmus University Rotterdam, Netherlands); João Peixoto, Catarina Sabino (University of Lisbon, Portugal); Philippe Koch, Eliane Kraft, Sandra Lavenex (University of Berne, Switzerland); Alex Balch, Andrew Geddes (University of Liverpool, United Kingdom); Janet Dobson, John Salt (University College London, United Kingdom).

they envisage and pursue, and what are the major determinants of their decision-making in these matters? The eight research teams in PEMINT tried to achieve this objective by using a common approach and a common methodology. An analysis of relevant statistics, legislation and research outcomes was part of this methodology, as well as interviews with employers and other actors involved in the recruitment process. Later on in this special issue a further specification of our methodology is provided.

Our main assumption in this project is that numerous obstacles encountered by employers as well as migrants hamper the free circulation of labour within the EU. In our view these obstacles are a sign of the ›incompleteness‹ of European integration. In this project we not only wish to list and analyse these obstacles, but we also aim to find out how employers respond to them through their recruitment practices. We clearly and deliberately limit ourselves to the employers' perspective, even though we are well aware of the fact that the perspective of the workers, in particular that of (potential) migrant workers, is equally relevant. In the PEMINT project, however, this only emerges as one of the variables that employers have to take into account. Thus, the main objective of our project is *to understand how decision-making processes concerning labour recruitment by national and multi-national firms lead to different outcomes in terms of labour mobility and international migration under the impact of different welfare provisions and different fiscal systems, as well as policy, institutional, and regulatory frameworks.*

The focus of the project is on decision-making on recruitment. Decision-making has been compared for three different sectors of the economy and, within each of these, also for different occupational levels. The sectors are construction, health and ICT (Information and Communication Technology). These were selected because they differ vastly in the degree to which they are subject to national regulation as well as in the scope of the orientation of their activities and their degree of institutionalisation. ICT is by far the least regulated and most international sector, health care the most regulated and national one, while construction is somewhere in the middle. Moreover, at the start of the project labour shortages existed in these sectors in almost all countries included in the project. The national labour market supply was insufficient to fill existing vacancies. We assumed that this might be a reason for employers to look abroad. Economic conditions have changed considerably since PEMINT was initiated in 2001. Economic growth has slowed and many – though certainly not all – shortages in the labour market have disappeared. We believe, however, that this has not affected the project's relevance as it is predicted that, in view of demographic developments, Europe's labour shortages also have a significant structural component. Sooner or later, therefore, the PEMINT findings will be of use to anyone involved in European labour market policies.

2. The PEMINT Model

At the start of the project a research model was developed to describe systematically the factors that may explain the effects of incomplete European integration on labour migration (see figure 1). The central variable in our model is *decision-making on recruitment*. We started from the classical economic assumption that decision makers in organisations always seek to minimise labour costs. If one were to argue strictly from an economic angle, the *demands of the labour market* would be the only relevant determinant in decision-making on recruitment. In reality, however, employers have to account for a large number of additional determinants, which often constrain their ability to pursue what would seem the most obvious strategy. In our model we have distinguished four types of such determinants.

First, there is the *regulatory framework*, the rules and regulations that are meant to ensure fairness and to protect all interests involved in an equitable way, but which employers often experience as obstacles to a completely free market. The hiring and firing of personnel is always subject to an elaborate set of legal arrangements. In the case of migrant workers the regulations that govern immigration and foreign employment are of particular relevance. In this project their impact has been studied at the international, European and national level.

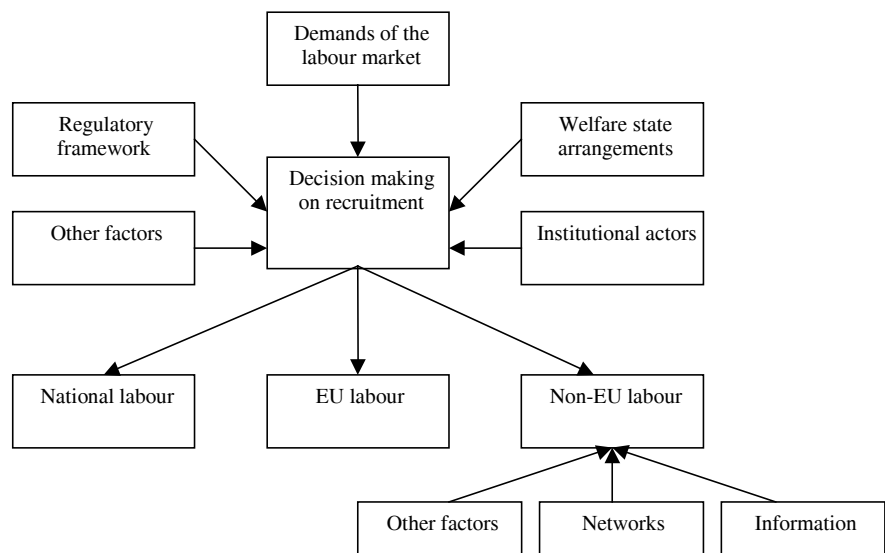
Second, on the basis of previous research we expect certain particular types of *arrangements that relate to the welfare state* to be of special significance. These not only include social security and social policy instruments, in line with the common understanding of the concept of the welfare state, but they also include the tax system. After all, it is through taxation that the cost of welfare arrangements has to be borne. In their decision making on recruitment employers are likely to account for this. Including this variable into our model, therefore, will enable us to make comparisons between the PEMINT countries, as welfare and tax arrangements differ considerably between them, probably even more than the rules that govern immigration, which are increasingly designed at a European level. It is here, therefore, that we assume that the idea of incomplete European integration as a potential factor affecting decision making on recruitment may emerge most clearly.

Our third major determinant involves the relevant *institutional actors*, such as government and government agencies, trade unions, employers' associations, interest groups, migrant advocacy organisations and others whose policies and views may affect employers' decisions. Here too we can expect considerable differences not only between the different institutions themselves, but also between the PEMINT countries and the three sectors of the economy included in our research. Europe's incomplete integration, there-

fore, is also reflected at the insitutional level, and we expect these to account for differences in recruitment practices.

Finally, and in view of the exploratory nature of PEMINT, we have thought it wise to include *other factors* into our model as well. It has emerged during the project that some of these, such as pre-existing migration networks or cultural differences and similarities between migrants and the local population often prove to be of overriding significance.

Figure 1: Research Model



Concerning the dependent variables, we have started from the assumption that employers who wish to recruit manpower have three options. They will turn first to the domestic, i.e. the national, labour market. Only when supply here turns out to be insufficient will they direct their recruitment activities towards other countries. Given the existing rules, they will first do so within the EU and only as a second choice will they go elsewhere. The PEMINT project takes a special interest in employers’ decision making on these matters. What makes them decide to focus their recruitment activities on specific countries, how do they obtain the necessary information and what channels

will they use? Obviously, employers have more options than labour recruitment alone. One may think here of outsourcing certain activities to other companies or transferring such activities to other countries where the relevant know-how is equally available, or where labour is cheaper, or both. We assume this practice to be more common within multi-national companies than within organisations whose activities are confined to one Member State. Another option would be the hiring of undocumented workers already present in the country. However, since it is illegal to do so, we could not expect the employers to admit to us that they make use of this practice.

3. Selection of Cases

The PEMINT countries – Germany, Italy, the Netherlands, Portugal, Switzerland and the United Kingdom (UK) – have been selected so as to include some in the South and some in the North of Europe, as well as some smaller and some larger States. Furthermore, one of the six (Switzerland) is not an EU Member State, but is part of the European Free Trade Association (EFTA) which means it is connected to the EU through a network of free trade agreements. During the project the regulations that govern the free circulation of workers were gradually expanded to Switzerland. We assume that this selection represents sufficiently the variety that exists within the EU-15/EEA. The three sectors of industry central to our research equally represent a broad variety of contexts in which the various dimensions of incomplete European integration and their impact on the recruitment of labour can be observed.

The *construction sector* serves as a good example of interconnections that require a more detailed European level of research and analysis. We can observe that the more porous Southern European countries receive labour from third countries while their own nationals move abroad. For instance, Lisbon sends workers to Berlin while it receives workers from Cape Verde and Ukraine. In much of the EU the construction sector has long been characterised by a mix of domestic and foreign employees. Low taxes in some Member States attract companies as well as labour from elsewhere. Unlike most other branches of industry, it is not easily possible to relocate sites in the construction and building industry. By definition much of the sector is territorially bound, which is an extra incentive for employers to cut the cost of labour, for example through innovative recruitment practices and by attempting to avoid too much regulation. Thus, employers in construction will be challenged, more than in other sectors, to look for cheap labour outside domestic markets. EU regulations encourage them to do so in other Member States rather than outside the Union. This gives the construction sector a strong European dimension, which is reinforced because of the obligation of com-

pulsory tendering for larger projects through the EU Official Journal. One effect of these specific conditions has been that Member States with high levels of social security attract labour from Member States where social security is lower, thus transferring part of their labour costs to these countries. For instance, workers from the UK and Portugal employed by their respective national firms in the construction industry in Berlin pay their social security dues and taxation in their countries of origin.

Our second case is the *health sector*. This sector is complex because of the different national organisational contexts for health care delivery. It is a sector where migration from both within and outside the EU can be observed as a result of demand pressures on health care providers. These pressures occur at all skill levels – ranging from low (basic nursing) to high (professional medical doctors), even though the nature of the needs differs considerably from one Member State to another. In Portugal and Italy, for example, private sector niches have developed as a result of high demand unmet by state provision. The result has been the recruitment of health care workers from non-EU countries, such as the Philippines, into the private sector in Italy and intra-EU migration by Spanish general practitioners into the Portuguese public health care sector. In the UK and the Netherlands, health care demands and labour shortages have prompted both intra- and extra-EU recruitment of health care workers. The health care sector also brings issues associated with Europeanisation into view. In particular, the recognition of professional qualifications and the effects of freedom for service providers within the single market. In Germany, for instance, the effects of free movement of service providers on an insurance based system have become manifest in the reconstruction of the traditional welfare system as non-German insurance companies have gained access to the German health care system.

Our third case, the *ICT sector*, has strong international features that have been present from its beginnings. Including this sector in our project thus seemed a natural thing to do. It has also enabled us to focus more specifically on highly qualified migration and on the recently emerging alternative of recruiting ›brains without bodies‹, which is a consequence of the internationalisation of communication. A good example of the latter has been the debate in Germany on the need to recruit highly qualified immigrants (at last a ›positive‹ immigration debate in Germany) as opposed to the alternative of purchasing ICT products from third countries outside the EU, such as India. Across the EU we see similar discussions with roughly the same arguments, but not always with the same outcomes. In Portugal, for instance, the arguments have been recycled with respect to recruitment of highly qualified Brazilians. This is an area that requires a comparative European investigation focused on decision-making processes within individual firms about whether to recruit ›brains or bodies‹. The size of the firms and their actual capacity to

implement one or other strategy may be relevant factors in predicting their behaviour.

This brief presentation of the three sectors indicates most clearly that an analysis of trends in labour recruitment and labour migration in Europe cannot be confined to that continent alone, let alone to the EU. In a growing number of sectors developments on the world scale are of increasing significance. Therefore, in the PEMINT project we have also examined the impact of emerging institutions of global governance, particularly the role of the recently concluded General Agreement on Trade in Services (GATS). Considering such institutional developments at a truly international level highlights the broader context of economic migration in the EU and underlines the growing tension between a globalising economy, the rise of the service sector and the national organisation of labour markets and numerous other institutional arrangements. International labour migration can thus be seen as a phenomenon caught between the needs of the market and the regulations – often experienced as restrictions – imposed by states.³

4. Theoretical Considerations

As already stated, the main objective of the PEMINT project is to understand how decision-making processes concerning labour recruitment by national and multi-national firms lead to different outcomes in terms of labour mobility and international migration under the impact of different welfare and fiscal provisions as well as different regulatory and policy frameworks and institutional actors. To pursue this central objective, different theoretical frameworks may be of interest. We will briefly discuss these in the following paragraphs.

There is a widespread conviction, shared by many politicians in particular, that Europe does not need more foreign labour than it already has. From this perspective, the ongoing global process of the restructuring of the economy has produced a progressive displacement from Europe of a large number of labour intensive industries, thus greatly restricting the need for unskilled labour. Simultaneously, this trend creates new opportunities in activities connected with information and knowledge that are essentially dependent on highly qualified manpower. Under this process, rising unemployment (both among native and immigrant populations) has come to be seen essentially as the result of a mismatch between supply and demand for different skill types. It is widely accepted that this mismatch will only increase if more economic immigrants with lower skills are allowed to enter.

3 Han Entzinger/Marco Martiniello/Catherine Wihtol de Wenden (eds.), *Migration between States and Markets*, Aldershot 2004.

The persistence of high unemployment rates across Europe has helped to reinforce these convictions, both in government circles and in public opinion in general. European governments have been acting according to these prevailing convictions and have been stepping up their efforts to close their borders to economic migrants. Only reluctantly and exceptionally will they authorise illegal immigrants to become legal residents.⁴

However, from the mid-1980s onwards an increasing body of literature has shown how far from reality this mainstream discourse is. These works have mainly been conducted under the influence of the work of Sassen⁵ and Friedmann⁶ on the so-called 'global cities' of Tokyo, New York and London. They have been extended to other global cities such as Hong Kong and Singapore, and other European cities such as Paris and Amsterdam.⁷ This last set of European cities has been viewed as displaying only some of the characteristics exhibited by the global cities. This led Body-Gendrot to characterise this in-between type as a 'soft global city'.⁸ The ongoing effort to theorise the economic impacts of globalisation has led to the conceptualisation of a global system where the existence of central nodes (that is the global cities) assures the control of the rest of the system. Although these studies have been highly criticised, they have also undoubtedly contributed to the enhancement of our understanding of some of the main aspects of the current migratory situation, namely the macro-economic dynamics that are currently fostering much of the migratory flows to advanced urban regions. A major characteristic of these flows is their bipolarity: both highly skilled and unskilled workers tend to be vastly over-represented.

The major limitation of these theories is their lack of attention to the role played by the institutional framework in which the new flows are occurring and their disregard of individual agency in producing unexpected mi-

4 Grete Brochmann/Tomas Hammar (eds.), *Mechanisms of Immigration Control. A Comparative Analysis of European Regulation Policies*, Oxford 1999; Andrew Geddes, *Immigration and European Integration. Towards Fortress Europe*, Manchester 2000.

5 Saskia Sassen, *The Global City*, New York 1991; idem, *Cities in a World Economy*, London 1994; idem, *New Employment Regimes in Cities*, in: *New Community*, 22. 1996, no. 4, pp. 579–594.

6 John Friedmann, *The World City Hypothesis*, in: *Development and Change*, 17. 1986, pp. 69–83.

7 F.L.N. Li et al., *A Cultural Economy Perspective on Service Sector Migration in the Global City. The Case of Hong Kong*, in: *International Migration*, 36. 1998, no. 2, pp. 131–157; Sophie Body-Gendrot, *Paris. A 'Soft' Global City*, in: *New Community*, 22. 1996, no. 4, pp. 595–605; Robert Kloosterman, *Mixed Experiences. Post-industrial Transition and Ethnic Minorities on the Amsterdam Labour Market*, in: *New Community*, 22. 1996, no. 4, pp. 637–653.

8 Body-Gendrot, *Paris*, p. 604.

gratory outcomes. These factors, however, are far from irrelevant in the present migratory situation. For example, the current EU regulations regarding immigration force employers in the richer Member States faced with labour market shortages to direct their recruitment efforts more than they may wish to the somewhat less well-off Member States in the South (and, in certain cases also in the East). From a purely economic perspective it would be preferable to look for even cheaper labour in third countries. Present EU rules, however, do not allow for this. The effect of this practice is that labour shortages are being shifted from the North to the rapidly growing economies of the South. To fill these newly developing gaps, employers in the South increasingly have to fall back on new labour migrants from Africa and the East, many of whom have come illegally. Thus, the institutional arrangements concerning migration at the EU level tend to have rather paradoxical effects. Many South European workers moving North do so through local firms that specialise in subcontracting labour. For employers in the more elaborate and more costly welfare states of Northern Europe this is quite advantageous. Since their South European (EU) workers remain contributors and beneficiaries of the social security and pension systems in their country of origin, the North European employers can lower their labour costs considerably. At the same time, the current restrictions in EU immigration policy do not allow South European Member States to recruit all the workers their economies may need from third countries. As a consequence of this, the number of undocumented immigrants in these countries has been growing rapidly. Even though some may see this as economically beneficial in the short run, it can be extremely disruptive in the longer run, not only economically, but also from a social perspective. In sum, the existing regulatory EU framework regarding immigration has numerous consequences for the functioning of European economies. Some of these may be second or third order effects, and most have probably not been intended by policy makers. As we have seen in this example, the current restrictions on labour immigration into the EU promote a redistribution of labour within the Union. This, in turn, leads to a transfer of responsibilities from the economic agents of the more developed welfare states, where legal protection and benefits for workers are high, to the less advanced welfare states, where protection and benefits of workers are low. Besides this, it encourages undocumented migration to these less advanced welfare states, which may generate social instability.⁹

9 MISSOC, *Social Protection in the Member States of the European Union*, Brussels 1998, European Commission, DG V; Maria Baganha, *Immigrants' Social Citizenship and Labour Market Dynamics in Portugal*, in: Michael Bommes/Andrew Geddes (eds.), *Welfare and Immigration. Challenging the Borders of the Welfare State*, London 2000; Elspeth Guild, *European Community Law from a Migrant's Perspective*, London 2000; Uwe Hunger, *Temporary Transnational Labour Migration in an Inte-*

Labour mobility is usually understood with reference to three theoretical frameworks. As we have seen, *globalisation theory* tells us why migratory flows are marked by bipolar profiles of migrants – either highly skilled or unskilled. *Institutionalist theory* informs us of reasons behind the development of black markets that arise as a consequence of immigration controls. Institutional theorists claim that, when a state closes its borders without addressing labour market demands, black labour markets develop to fulfil these requirements. *Labour market segmentation theory* tells us why countries of high unemployment may continue to require foreign labour. It is generally understood that during the three 'glorious decades' following the end of the Second World War, labour markets in several European countries became segmented. The domestic population became more educated and encountered greater opportunities in the primary labour market, while leaving the so-called bad and dirty occupations to immigrant workers. This situation crystallised and the fact that employment became scarce in the primary sector did not change the needs of the secondary sector since a downgrade from primary to secondary occupations is unlikely to occur due to welfare state safety nets.¹⁰

In order to utilise the high explanatory value of these theoretical approaches it has been necessary to re-specify the contexts under which the conditions to which they refer become relevant. This is because all theories discussed tend to describe the effects of processes without being specific about the contexts in which these are being produced. Therefore, the PEMINT project has introduced a shift in perspective by commencing from the demand side of labour markets. This means that we will focus on organisations and their decision-making processes concerning the acquisition of goods and services and, in particular, the recruitment of workers.¹¹ This then will allow us to find answers to questions that have remained unanswered in the more general theoretical approaches, which tend to stress the macro-economic angle and to overlook the relevance of institutional, social and political aspects. In particular, our approach will help us understand the impact on decision-making within organisations of the functioning of different national labour markets, welfare and fiscal arrangements. Our approach will

grating Europe and the Challenge to the German Welfare State, in: Bommers/Geddes (eds.), *Welfare and Immigration*, pp. 189–208.

10 Michael J. Piore, *Birds of Passage. Migrant Labour and Industrial Societies*, Cambridge 1979; Emilio Reyneri, *The Role of the Underground Economy in Irregular Immigration to Italy. Cause or Effect?*, in: *Journal of Ethnic and Migration Studies*, 24. 1998, no. 2, pp. 313–331; Maria Baganha, *Immigrant Involvement in the Informal Economy. The Portuguese Case*, in: *Journal of Ethnic and Migration Studies*, 24. 1998, no. 2, pp. 367–385; Bommers/Geddes (eds.), *Welfare and Immigration*.

11 Marc Granovetter, *Getting a Job. A Study of Contacts and Careers*, Chicago 1995.

also help us understand the impact of national and European migration policies and other relevant regulations, precisely because it will provide us with a context in which these conditions actually become socially meaningful.¹² Our research model, presented and explained at the beginning of this Introduction, uses decision-making processes by employers as a starting point, and enables us to analyse how they assess the conditions just mentioned and how this affects their decisions on recruitment. We are equally interested in the effects of employers' decisions on the migratory flows as these actually develop: highly qualified as opposed to low skilled, temporary as opposed to permanent migration, legal as opposed to illegal, European as opposed to non-European.¹³ Finally, we assume a close relationship between specific demand contexts defined by organisations and the structure of migration processes that may result from this demand.

5. The Articles in this Issue

It is within this conceptual framework that the articles included in this special issue of *IMIS-Beiträge* have been written. The first two articles focus on two types of regulatory frameworks, both of them at a supra-national level, that are of extreme importance for answering our central research question. First, **Sandra Lavenex** analyses the role of labour mobility in the General Agreement on Trade in Services. Next, **Elsbeth Guild** describes the legal framework within which EU migration takes place.

The two articles that follow deal primarily with the national level, emphasising what in our research model we have called ›welfare state arrangements‹. Each article describes and compares the situation in the six PEMINT countries. The first, written by **Manuel Pedro Baganha**, is on taxation, social benefits and migration. It was produced as background paper at a relatively early stage of the project in order to highlight the problems of incomplete integration as well as the interlinkages between migration and the institutional

12 Vito Tanzi, *Taxation in an Integrating World*, Washington, DC 1995, Brookings Institution; K. Ussher, *The Spectre of Tax Harmonisation*, London 1999, Centre for European Reform; MISSOC, *Social Protection in the Member States of the EU*.

13 Baganha, *Immigrant Involvement in the Informal Economy*; idem, *Labour Market and Migration. Economic Opportunities for Immigrants in Portugal*, in: Russel King et al. (eds.), *El Dorado or Fortress. Migration in Southern Europe*, Houndmills 1999, pp. 79–103; Baganha, *Immigrants' Social Citizenship*; John Salt/D. Rotherham, *Posted Workers in Europe. Final Report to the Department of Employment*, London 1995; John Salt/James Clarke, *Flows and Stocks of Foreign Labour in the United Kingdom*, in: *Labour Market Trends*, 106. 1998, no. 7, pp. 371–386; John Salt et al., *Assessment of Possible Migration Pressure and its Labour Market Impact Following EU Enlargement to Central and Eastern Europe*, Department for Education and Employment (Research Report 138), London 1999.

regulatory frameworks. The second article, by **Janet Dobson** and **John Salt**, is equally important for a proper understanding of the impact of migration on the six PEMINT countries. It contains a review of the relevant migration statistics and it discusses, among many other issues, the problem of their comparability in the light of divergent definitions and policies.

The following three articles synthesise in a cross-national perspective the decision-making process concerning the recruitment of foreign workers in the health, ICT and construction sectors, in the six PEMINT countries. In fact, this is the central variable in the PEMINT model. The articles are based mainly on the outcomes of our survey among companies in these three sectors. A discussion of our methodological procedure can be found in **Michael Bommers' >A Note on PEMINT Methodology<**. We conducted our interviews in well over 200 large companies and other organisations in the six countries. In addition to this, several dozen interviews were conducted with ancillary organisations and subcontractors. Our respondents were mainly human resource professionals, but others were also included, for example the heads of corporate IT departments. The articles on each of the sectors, like most other texts that have emerged from the project, are the product of intense co-operation between the different PEMINT teams.

The article on the health sector was written by **Madelon den Adel, Wim Blauw, Janet Dobson, Kirsten Hoesch** and **John Salt**. The authors direct their attention both to the impact of *general* structural conditions within the health sector and to the impact of more specific *national* structural conditions on patterns of international recruitment and migration. For the former this means an evaluation of the relevance of factors such as culture and language in medical professions, length of training, demographic challenges etc. on recruitment decisions. As to the latter this involves an exploration of possible interdependencies between the national basis of health care provision (tax financed vs. social security contribution based health systems), labour market dynamics and patterns of recruitment and migration.

The authors of the ICT sector report, **Holger Kolb, Susana Murteira, João Peixoto** and **Catarina Sabino**, focus on one of the most dynamic areas of economic activity. The main characteristics and patterns of labour recruitment in the ICT sector are described along with an investigation of the main trends and issues concerning international labour flows and recruitment. One of the most striking findings is the growing dominance of internal labour market operations, in particular in multinational enterprises. These are shaped by the relationship between the demand for certain skills, occupations and education systems, and point to a symbiotic entanglement between the international mobility required by companies and the career considerations of their employees.

Finally, **Alex Balch, Ivana Fellini, Anna Ferro, Giovanna Fullin** and **Uwe Hunger** put together the construction sector report. Here the focus is on divergent but complementary patterns of migration in the construction sector that result from preferences in terms of subcontracting, and the rationale behind the use of ›posted workers‹. In countries with high non-wage labour costs, posted workers can be recruited strategically in order to reduce those costs. The authors of the report also pay special attention to complementary patterns of migration between EU countries where employers have higher or lower levels of social security contributions.

In a later stage of the PEMINT project we also conducted a large number of interviews with relevant institutional actors, such as government departments and agencies, employers' associations and trade unions. This was to gain more insight into the impact of yet another major independent variable in our model. Some preliminary results from these interviews have been included in the articles on the three sectors in this volume. A more detailed presentation of the outcomes of the interviews with institutional actors can be found in the article ›The impact of organised interests on migration processes from a cross-national and cross-sectoral perspective‹ by **Andrew Geddes, Philippe Koch, Eliane Kraft and Sandra Lavenex**, following the three sectoral reports. We will of course be reporting our full findings when the PEMINT project is completed.

This special issue of IMIS-Beiträge on the PEMINT project finishes with a conclusion, written by **Michael Bommers** and **Andrew Geddes**.

Regulatory Frameworks: International, European, National

Sandra Lavenex

Towards an International Framework for Labour Mobility? The General Agreement on Trade in Services (GATS)

In the light of politicised publics and recurrent restrictions of national asylum and immigration laws, the entry and stay of foreign nationals is usually regarded as one of the last bastions of state sovereignty. This view is backed by the relative weakness of multilateralism in states' attempts to regulate migration flows. In contrast to the flow of goods and finance, where states have established strong international regimes to co-ordinate their (liberal) policies, no similar development has taken place with regard to the international mobility of persons. With the exception of the codification of a weak international refugee regime after World War II, states have shown little effort to cooperate at the global level.¹ In so far as co-ordination takes place, this is limited to the aspect of immigration control, either in the form of supranational integration projects such as the EU, or in loose, largely informal intergovernmental consultations with a low degree of institutionalisation and enforcement.² Yet, calls for a comprehensive international migration regime have been gaining increasing prominence, both in academia and in political circles.³

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- 1 James Hollifield, *Migration and International Relations. Cooperation and Control in the European Community*, in: *International Migration Review*, 26. 1992, no. 2, pp. 568–595; Saskia Sassen, *Regulating Immigration in a Global Age*, in: *The Annals of the American Academy*, 570. 2000, pp. 65–77.
 - 2 Examples for such loose intergovernmental co-ordination are the Budapest process in Europe linking Western and Central/Eastern European countries in the fight against irregular migration, the Puebla process between the US and Mexico or the transatlantic Intergovernmental Consultations on Asylum and Immigration (IGC).
 - 3 Bimal Ghosh (ed.), *Managing Migration. Time for a New International Regime?*, Oxford 2000. Outside academia, the establishment of an international migration regime is at the heart of the Berne-Initiative sponsored by the Swiss government (see <http://www.iom.int/en/know/berneinitiative/index.shtml>) and is being discussed in the Global Commission on International Migration launched by UN General Secretary Kofi Annan in December 2003 (see <http://www.un.org/apps/sg/sgstats.asp?nid=686>).

This article shows that the view that states are reluctant regarding international rules depicts only part of the reality of immigration politics – that which has to do with states' desire to maintain control over politically and socially contested forms of immigration. A look at the approach of states towards desired forms of economic migration depicts a very different picture, and confirms the emergence and consolidation of supranational regulatory structures at both the regional and global level which, rather than enhancing immigration control, aim at the liberalisation of labour mobility. Whereas the free movement regime inside the European Union (EU) may be seen as an exception in the international context, certain aspects of labour mobility have become codified at the international level, in the General Agreement on Trade in Services concluded within the World Trade Organisation (WTO). Although limited in scope, the GATS provisions represent the first (almost) global and internationally binding rules on international labour movements – and, given the pressure exerted by developing countries for greater concessions on labour mobility – are likely to be expanded with the current round of trade negotiations in the WTO.

This article gives an overview of the rules on migration defined as the movement of natural persons in the context of cross-border service trade in the GATS Treaty. After a brief background note on the political context of the issue of labour migration in the GATS negotiations, the general framework for liberalisation as laid down in the Treaty is presented. Sections three and four offer a categorisation of national barriers to trade in this respect, and provide a short analysis of the scheduled commitments by the contracting parties with a focus on the EU. This analysis is complemented by a review of sectoral commitments in the three sectors construction, health and ICT. The last section reviews the current state of international negotiations and concludes with some reflections on the future of trade mobility regulations at the international level.

1. Trade and Migration

Movement of people is a relatively new concern for the trading system. The inclusion of labour mobility in a multilateral agreement aimed at liberalising trade in services is a sign of the changing patterns of exchange and interdependence in the global economy. It is however also the outflow of negotiations between trading partners with different interests and comparative advantages in the WTO. While western industry lobbied for limited provisions concerning intra-corporate transfer within multinational enterprises, the main promoters of a greater liberalisation of labour movement provisions in the GATS are some developing countries, which, in the current development round, have made these claims a priority.

The relevance of the GATS for labour migration results from the fact that in service trade, the movement of the service provider is often inseparable from the content of the service itself. Direct contact between the consumer and the supplier is often seen as essential for the efficient supply of services. In addition, movement of labour is often used in conjunction with, or as an ancillary to, other modes of delivery – for example, movements of software consultants complementing cross-border delivery of computer software and short visits of high-level professionals or technicians to complement delivery through local subsidiaries or firms. According to Ghosh, »the greater the labour intensity of the service to be traded, the more it is likely to be affected by restrictions to market access through visas and work and residence permits«. ⁴ This trend is magnified in certain sectors by the growing demand for specialised expertise due to the emergence of new technologies, new forms of business organisation, and shorter reaction time-spans in dynamic markets. ⁵ In particular, firms operating internationally need to transfer expertise internationally through the temporary relocation of specialists, professionals and contractual service providers.

The current wording of the GATS Treaty with regard to the mobility of natural persons in the service sector must be understood as a compromise between the interest of industrial countries in a limited liberalisation of temporary movements of highly skilled personnel and managers on the one hand, and the pressure of developing countries for a stronger opening of labour migration on the other hand. When the industrial nations and above all the USA decided to raise services onto the Uruguay Round agenda in the mid-1980s, they faced opposition from the developing countries. ⁶ This followed from the fact that most developing countries are traders at the margin and are not competitive in those service sectors which interest the North, especially financial and telecommunication services. Therefore, liberalisation of their markets was perceived as hindering the development of their own service industries, whereas those aspects where the developing countries would have had comparative advantages, such as the export of labour, were – at first – not tackled by the multilateral negotiations. In particular, these countries felt that the liberalisation of foreign direct investment would allow the industrialised countries to open foreign branches on their territory without them being able to compete for investment capital and technology. ⁷

4 Bimal Ghosh, *Gains From Global Linkages. Trade in Services and Movements of Persons*, London 1997, p. 51.

5 Jolita Butkeviciene, *Movement of Natural Persons under the GATS: Perspectives for the New Negotiations*, UNCTAD Secretariat, Geneva 1999, p. 3.

6 See the Report by the GATT Secretariat Document MTN.GNS/W/104, p. 2.

7 UNCTAD, *The Outcome of the Uruguay Round: An Initial Assessment. Supporting Papers to the Trade and Development Report 1994*, New York 1994, p. 173.

Calling for ›symmetrical‹ commitments in the liberalisation of services, the developing countries requested the inclusion of the labour factor in the negotiations where they possess comparative advantages because of their labour surplus, the lower costs of labour, and the skill potential in several service sectors.⁸

The second round of negotiations (1989–1990) was then dominated by the clash of interests between the developed countries on the one side, who favoured only a limited liberalisation of temporary labour movement for highly qualified personnel such as managers or specialists⁹, and the developing countries on the other side, who argued that their participation in the world market for service trade depended primarily on the liberalisation of labour movement. Accordingly, a group of eight developing countries (Argentina, Columbia, Cuba, Egypt, India, Mexico, Pakistan, and Peru) presented a proposal which foresaw the (temporary) »cross-border movement of personnel covering unskilled, semi-skilled and skilled labour« (Art. 1(3)1) »without arbitrary distinction relating to skills or position in corporate hierarchies« (Art. 2(3)) and without infringing on national immigration, residence or citizenship laws (Art. 1(4)).¹⁰ This proposal not only extended the range of workers falling under the Agreement, it also suggested to »permit firms providing services for which access has been granted under the Framework to recruit personnel from the source, among countries signatory to the Framework, which is economically most advantageous« (Art. 3(1)), thus introducing free competition over the production factor ›labour‹.¹¹

The result of the GATS negotiations was an open compromise reached one year after conclusion of the Uruguay Round in July 1995. Accordingly, »Members may negotiate specific commitments applying to the movement of all categories of natural persons supplying services [...]«. ¹² This includes both service suppliers who are employed by a foreign or national firm and independent workers. While the Treaty thus adopted the open formulation favoured by the developing countries (irrespective of skills and hierarchical position), the actual scope of liberalisation was however left to the Members' own commitments laid down in the schedules to the GATS. The new round

8 Ghosh, *Gains from Global Linkages*, pp. 57ff.; UNCTAD, *The Outcome of the Uruguay Round*, p. 19.

9 See the Communication from the United States, Draft Agreement on Trade in Services, GATT Document MTN.GNS/W/75 of 17.10.1989.

10 Communication from Argentina, Columbia, Cuba, Egypt, India, Mexico, Pakistan, and Peru: Annex on Temporary Movement of Services Personnel, GATT Document MTN.GNS/W/106 of 18.6.1990.

11 See Terence Stewart (ed.), *The GATT Uruguay Round. A Negotiating History (1986–1992)*, 3 vols., The Hague 1993, vol. III.

12 Para. 3 Annex on Movement of Natural Persons Supplying Services under the GATS.

of services negotiations started in January 2000. This legal framework is presented below.

2. General Scope of Labour Mobility in the GATS

The GATS covers the cross-border movement of all production factors in service trade, including the factor labour and hence the cross-border movement of natural persons who enter another country for the purpose of service supply. It recognises ›labour‹ as a factor integral to trade in services and the importance of movement of labour for providing services to the international community. Movement of natural persons is contained as one out of four modes of delivery of services in the GATS negotiations. These modes are (Art. 1(2) GATS):

1. cross border supply, which denotes the possibility for non-resident service suppliers to supply services cross-border into the Member's territory;
2. consumption abroad, which means the freedom of the Member's residents to purchase services in the territory of another Member;
3. commercial presence, indicating the opportunities for foreign service suppliers to establish, operate or expand a commercial presence as legal persons in the Member's territory, such as a branch, agency, or wholly-owned subsidiary;
4. and finally presence of natural persons which opens the possibilities offered for the entry and temporary stay in the Member's territory of foreign individuals in order to supply a service.

Thus, market access commitments under the GATS cover not only cross-border trade but also trade based on local establishment, movement of consumers, and movement of service providers. Labour mobility can take place either under mode 3 (commercial presence) or as natural persons under mode 4. Measures taken under either mode may have direct implications for service supply under the other mode. Because establishing commercial presence through mode 3 requires capital, service sectors in which mode 4 is dependent on the use of mode 3 are mainly carried out by OECD countries. Sectors which can be delivered exclusively through mode 4, such as computer and related services and health services, are often carried out by non-OECD countries which are then able to realise a comparative advantage in cheaper labour costs.¹³ In sum, this inclusion of labour mobility in the GATS has a direct implication for national immigration laws and labour market regula-

13 Allison Young, Labour Mobility and the GATS: Where Next? Paper presented at the World Service Congress ›Services: Generating Global Growth and Opportunity‹ in Atlanta, 1-3.11.1999, p. 8.

tions, areas which were hitherto screened from multilateral liberalisation efforts (see below).

The general limits of labour mobility under the GATS are fixed in the *Annex on Movement of Natural Persons*. Its first paragraph clearly states that the Members' commitments under this mode relate only to the temporary admission of foreign nationals or foreign permanent residents as service providers in their territory. Accordingly, the GATS does not:

»apply to measures affecting natural persons seeking access to the employment market of a Member, nor shall it apply to measures regarding citizenship, residence or employment on a permanent basis [...]«.

Furthermore, the fourth paragraph contains a safeguard according to which the Agreement does not:

»prevent a Member from applying measures to regulate the entry of natural persons into, or their temporary stay in, its territory, including those measures necessary to protect the integrity of, and to ensure the orderly movement of natural persons across, its borders, provided that such measures are not applied in such a manner as to nullify or impair the benefits accruing to any Member under the terms of a specific commitment.«

It seems that these two limits are self-evident and would not need mentioning; it is uncontested that an international treaty covering the liberalisation of a certain sector of the economy would not impact on questions of naturalisation or residence. The explicit mention of these limits rather reflects the sensitivity of the underlying issue and the fear of developed countries from binding international agreements regarding immigration.

3. National Barriers to the Movement of Natural Persons

A general characteristic of trade barriers imposed on services is that they are opaque and not amenable to easy (quantitative) measurement. Given the varied modalities of services trade, tariffs are not very effective to protect national service sectors, so that most barriers to trade take the form of non-tariff barriers. From the point of view of liberalisation, these non-tariff barriers are very complex and are linked to various aspects of state-society relations and administrative regulatory traditions. Barriers to the provision of services by natural persons may be categorised in three groups:

1. general immigration legislation including visa requirements;
2. labour market regulation governing the issuance of work permits etc.;
3. and regulations defining foreigners' ability to work in individual areas.

Member states' official consensus says that limitations falling under the first category are beyond the formal scope of the GATS. The Annex on the Movement of Natural Persons expressly exempts measures regarding citizenship

and residence as well as the rules governing permanent employment from the disciplines of the Agreement. Accordingly, the commitments made under the schedules do not go beyond existing regulations regarding e.g. the issue of visas for temporary stay. Moreover, the operation of visa requirements only for natural persons of certain Members, but not for others, is not *per se* regarded as contrary to the Agreement.¹⁴ Still, even if the formal scope of the Treaty is thus limited, the processes engendered by it certainly have implications for national immigration policies in so far as global competition is increasingly recognising (in particular skilled) labour as a scarce resource. National immigration and labour market regulations may also be affected by Article IV.4 GATS which is designed to allow members to simultaneously maintain domestic regulatory policies regarding qualification requirements and procedures, technical standards, and licensing requirements while ensuring that any trade distorting effects of those policies are minimised as much as possible.¹⁵

Measures falling under the two other groups of barriers to ›mode 4‹ supply do formally fall under the scope of the Treaty and may be captured either under the general horizontal commitments or in specific sectoral commitments falling under Articles XVI (market access), XVII (national treatment) and XVIII (other additional commitments). These may include numerical quota for access to the national labour market; licensing and qualification requirements; residency requirements and non-eligibility under subsidy schemes; discrimination with regard to mandatory social insurance systems (e.g. denial of pension entitlements); or restrictions affecting the mobility of family members etc.¹⁶

4. Scheduled Commitments

Considering the conceptual vagueness of central provisions regarding the mobility of labour in the GATS and the defensive wording of the relevant Annex (see above), the actual scope and contents of ›mode 4‹ must be sought in the schedules attached to the Treaty. The entries in schedules constitute binding commitments for the country to allow the supply of the service in question under the specified terms and conditions and not to introduce any new measure that could restrict its access to the market. The importance of

14 Footnote 1 to the Annex on Movement of Natural Persons.

15 In particular, this article stipulates that domestic regulations shall be »a) based on objective and transparent criteria [...]; b) not more burdensome than necessary to ensure the quality of the service; c) in case of licensing procedures, not in themselves a restriction on the supply of the service.« (Article IV.4 GATS).

16 WTO, Council for Trade in Services, Presence of Natural Persons (Mode 4), Background Note by the Secretariat, S/C/W/75 of 8.12.1998, pp. 11ff.

such terms and conditions is enforced by the stipulation that the commitments cannot be withdrawn or modified until the Agreement has been in force for three years and that such changes should be subject to agreed arrangements with the affected countries on compensatory adjustment.¹⁷ In addition, the WTO's dispute settlement process offers a means of authoritative enforcement in case of infringement of agreed commitments.¹⁸

The current schedules regarding mobility of persons are the result of an additional year of negotiations taking place after conclusion of the Uruguay Round in 1994 on the initiative of the developing countries which called for more liberalisation in this respect.¹⁹ As a consequence, six GATS members presented modified schedules in 1995, including the EU.²⁰ A new revision of the schedules will result from the new round of 'GATS 2000' negotiations started in February 2000. Overall, the new negotiations comprise two phases: the 'rules-making' phase during which members will negotiate new rules for services on subsidies, safeguards and government procurement; and the 'request and offer' phase, in which the Members are currently negotiating further market access (see below).

The review of the contemporary commitments included in the schedules confirm the general weakness of GATS provisions in this regard and the reluctance of member states to open their national labour markets to foreign service providers. According to a note by the WTO Secretariat,

»The GATS permits the signatories to circumscribe their commitments in several ways. First, the GATS contains relatively few general obligations that apply in the absence of specific commitments. Moreover, the single most important general obligation – the most-favoured-nation (MFN) rule of Article II – will not apply if a Member exempts certain measures from MFN at the time of entry into force of the agreement. Secondly, specific commitments only apply if a sector has been scheduled, and all Members have omitted sectors from their positive lists of

17 Ghosh, *Gains from Global Linkages*, p. 94.

18 Yet, only governments have access to this dispute settlement procedure. The only possibility for a company or an individual person who feels that he or she is not given fair treatment in a foreign market according to GATS rule is hence to request his or her home government to seek redress with the other government in question. In case no agreement can be reached, the process goes before the WTO's Dispute Settlement Body which may decide retaliation against the offending Member.

19 *Beschluß zu den Verhandlungen über den grenzüberschreitenden Verkehr natürlicher Personen*, BGBl. 1994 II, p. 1670.

See Matthias Koehler, *Das Allgemeine Übereinkommen über den Handel mit Dienstleistungen (GATS)*, Berlin 1999, pp. 192ff.

20 The other five states were Australia, Canada, India, Norway and Switzerland. On the negotiations of the competent GATS Negotiation Group on the Cross-Border Movement of Natural Persons see GATS Document TS/NGNP/W/1 of 2.5.1994 and GATS Document TS/NGNP/1 of 10.6.1994.

commitments. Even where a sector has been scheduled, particular modes of delivery may be excluded from any commitment, and the precise terms of commitments undertaken can be conditioned through market access limitations (Article XVI) and national treatment limitations (Article XVII).»²¹

Indeed, the Agreement allows a considerable flexibility in applying the general principles of liberalisation. As mentioned in the quote, it is a sectoral agreement in the sense that it only applies to specified sectors in service trade which are specifically listed in the national schedules.²² Unlike other agreements in the GATT Uruguay Round, which adopt a ›negative list‹ approach, the GATS provisions for market access and national treatment follow a ›positive list‹ approach in the sense that only those service industries that are specifically listed in national schedules come under GATS disciplines. Furthermore, the national schedules may impose limitations and conditions on the – in principle – unrestricted provisions on market access and national treatment for specific modes of supply. Thus within a sector listed in the national schedule a member country may include restrictions on movement of persons as service providers while liberalising other modes of supply. This means that the extent of movement of persons is largely determined by the commitments concerning (a) sector coverage and (b) the nature and extent of limitations imposed on market access and national treatment.²³ Together with the lack of specific definitions in central terminology (such as ›temporary‹ stay, ›specialist‹ etc.), this approach increases the scope for discretionary administrative practices in the implementation process and, from an economic perspective, reduces transparency of barriers to trade.²⁴

The following section gives an overview over the structure of national schedules by first offering a categorisation of persons falling under the Agreement and secondly summarising the main horizontal and vertical commitments. The specific entries concerning the construction, health and ICT sectors in the EU schedules are analysed in section five.

4.1. Categories of Service Providers

The structure of national schedules is as follows: they start with the horizontal commitments which apply to all service sectors listed by the respective GATS Member and then contain the sector-specific commitments which ap-

21 WTO, Note by the Secretariat of the Working Party on GATS Rules, Document S/WPGR/W/1 of 6.7.1995.

22 Neela Mukherjee, GATS and the Millennium Round of Multilateral Negotiations. Selected Issues from the Perspective of the Developing Countries, in: Journal of World Trade, 33. 1999, no. 4, pp. 87–102, here p. 89.

23 Ghosh, Gains from Global Linkages, p. 107.

24 Ibid., p. 92; Mukherjee, GATS and the Millennium Round, pp. 89ff.

ply vertically only to specified areas. This sectoral organisation²⁵ does not operate on the basis of a classification of jobs falling under the Agreement, thus hindering the identification of the persons and their exact activity covered by the schedules.²⁶ Moreover, there is no agreed definition or specified timeframe of what constitutes ›temporary‹ presence. In the schedules, the allowed duration of stay reaches from 90 days to five years.²⁷ Nevertheless, such an analysis can be thought through a categorisation of service providers on the basis of general criteria contained in the schedules.²⁸ These criteria are the definition of the group of natural persons contained in the schedule; the definition of the temporal duration of their stay; indications on the source of their income; its level; the existence of numerical quota and additional qualification and competence requirements. On the basis of these criteria, one can distinguish five groups of natural persons:

- a) *business visitors* who keep residence and professional affiliation in their country of origin and whose temporary entry serves the conduction of negotiations on agreements concerning the supply of a service. Their stay is normally allowed for a duration of between three and six months and is generally not subject to numerical quotas or additional qualifications. Some schedules do however commit themselves to national treatment towards this category of service suppliers, such as the schedule of the EC and its Member States.²⁹
- b) *natural persons involved in the establishment of a foreign branch* who also move by order of a foreign firm. These persons are usually chief executives of the respective firms, although there is no common definition with regard to the contents of the title ›executive‹ or regarding the duration of stay involved, which can reach from three months to two years. Some countries require additional criteria such as the availability of a specific investment capital or a specified period during which the person has been employed by the respective firm.

25 This sectoral structure is loosely coupled to the United Nations Central Product Classification, see WTO, Note by the Secretariat: Services Sectoral Classification List, Document MTN:GNS/W/120 of 10.7.1991.

26 Young, Labour Mobility and the GATS, p. 9.

27 WTO, Presence of Natural Persons; 1. For instance, from a statistical point of view, the International Monetary Fund records wages and other compensation by service providers (and any other workers) who move across a border for less than one year as income for the sending state. Remuneration for stays longer than one year are considered to be part of the host economy, see Young, Labour Mobility and the GATS, p. 13.

28 Koehler, GATS, pp. 216ff.

29 GATS/SC/31, p. 7.

- c) *intra-corporate transferees* of the same employer who are transferred from one branch to another. Most schedules limit their commitments to chief executives and other specialists who possess specific knowledge which is essential to the respective service.³⁰ Some schedules also contain indications concerning minimum wage or qualification. The stay of these persons ranges from two to a maximum five years.
- d) *specialists* who move independently from a prior employment by a service company. Commitments toward this kind of independent service supplier are rare (for the industrialised countries only Australia and the US) and limited to specified qualifications, maximum quotas and economic needs tests, which give precedence to domestic workers.³¹ Thus, these commitments do not provide free access to domestic labour markets but merely foresee the possible authorisation for national firms to temporarily employ foreign specialists.
- e) *contractual service suppliers* employed by a foreign firm without local branch who enter a Member Country for the purpose of supplying a contracted service. This category of persons is only listed by Switzerland and the EC for a limited range of sectors³² and is limited by several additional requirements. These include determined periods of prior employment; professional qualifications and experience; and economic needs test.

4.2. The Structure of Scheduled Commitments

The review of scheduled commitments shows a clear focus on the movement of natural persons linked to the commercial presence of a juridical person, and here also on the limited categories of senior executives and other highly skilled specialists. The comparison with commitments made under other modes underscores the restrictive approach towards mode 4 liberalisation. This is i.a. reflected in the pattern of horizontal limitations in current schedules applying across all sectors, where one encounters five times more limitations for mode 4 liberalisation than for example mode 2. Indeed, liberalisation regarding movement of natural persons follows a diametrically opposed logic to the approach applied in the other modes: the Members normally

30 See for the EC GATS/SC/31, p. 9.

31 Economic needs test means that the person can only be admitted if it can be proved that there is no equally qualified national person.

32 The EC schedule lists 17 sectors including i.a. legal counselling, architecture, engineers, computer, management consulting, translation, entertainment, advertising, and construction (see below and GATS/SC/31/Supplement 2).

started from a general ›unbound‹ which was then qualified by liberalisation commitments applying to specified types of persons, movements and stays.³³

Assessments of the sectoral and horizontal commitments show a high degree of selectivity, with over two-thirds of the concessions applying to skilled personnel such as (senior) executives, managers, persons representing and advanced level of training and expertise, and business visitors.³⁴ Only 18 per cent of all horizontal entries may cover low-skilled persons as well (referred to as ›business sellers‹, ›non specified‹ and ›other‹). However, these terms are not defined in the schedules, thus rendering the comparison of the respective national commitments difficult and leaving the decision to grant permission for temporary entry and stay and of who can be regarded as an executive or a specialist to the discretion of the implementing authorities in the member states.

With regard to *market access*, the most common entry criterion is the pre-employment of the person concerned, followed by numerical quotas limiting the number of persons allowed to enter within a certain category, and economic needs tests. *Economic needs tests* are a key barrier to movement of persons and link the domestic labour market situation with the regulation of foreign labour. Although mentioned as barrier to market access under Article XVI GATS, neither the definition of an economic needs test, nor the rules, criteria or procedures for its application were elaborated.³⁵ A document from the United Nations Conference on Trade and Development (UNCTAD) concludes that »as a result, economic needs tests may have a more or less distortive impact on trade depending on the manner in which they are implemented«³⁶, thus again providing space for administrative discretion in practice. In the case of the EU, only intra-corporate transferees – i.e. senior management, persons who possess uncommon knowledge essential to the establishment's service and business visitors were exempted from such tests in the horizontal commitments – that is only commercial-presence-related

33 WTO, *Presence of Natural Persons*, p. 2.

34 See Neela Mukherjee, *Market Access Commitments under GATS in WTO. An analysis of horizontal commitments from developing countries' perspective*, Paper presented at the World Service Congress ›Services: Generating Global Growth and Opportunity‹ in Atlanta, 1–3.11.1999; and WTO, *Presence of Natural Persons*, tables 9–12.

35 Only three out of a total of 54 cases mentioning economic needs tests have tried to specify the relevant criteria (mainly investment-related such as value thresholds etc.), although the scheduling guidelines provide that »the entry should indicate the main criteria on which the [economic needs test] is based e.g. if the authority to establish a facility is based on a population criterion, the criterion should be described concisely« (Paragraph 3 of the addendum to the scheduling guidelines quoted in WTO, *Presence of Natural Persons*, fn 13).

36 UNCTAD, *Lists of economic needs tests in the GATS schedules of specific commitments*, Document UNCTAD/ITCD/TSB/8 of 17. August 1999, p. 2.

categories of persons.³⁷ Furthermore, their entry is limited to a temporary period of 3 months for contracted work – other durations of stay are not specified since this is regulated nationally.³⁸ In preparation for the 1999 Ministerial Conference, certain less developed countries (LDCs) have suggested the elaboration of a common list excluding certain occupations from the application of economic needs tests. This is however unlikely to happen as it would narrow the discretionary power of governments to regulate the movement of natural persons to supply services. »From an immigration and labour market development perspective, this discretionary power is very important since it preserves the flexibility required to effectively manage immigration and labour market development policy without being locked in to a static set of commitments«.³⁹

Other limiting conditions entered in the schedules concern the requirement that the foreign national brings new technology and minimum investment, that domestic minimum-wage legislation is respected as well as the conditions of work, working hours and social security. An important barrier to movement of natural persons are also labour and technical standards applied in the labour market regulations such as the requirement of a specific educational degree, membership of a specific association, specific technical experience etc. Exemptions from the *most favoured nation* (MFN) principle mainly concern regional agreements and other preferential or reciprocal agreements, in which particular members grant each other more generous conditions than to others.

Finally, negotiations in GATS have centred on the development of *emergency safeguards* designed to protect domestic employment levels in a particular sector or to protect a domestic supplier. This has proven to be a complicated task for mainly two reasons: firstly the difficulty to define the criteria for and the scope of such safeguards, and secondly the difficulty to limit their impact to specific modes of supply given the interdependent nature of these modes and in particular of mode 3 (commercial presence) and mode 4 (movement of natural persons).⁴⁰

While a first assessment of commitments in the construction, health and ICT sectors is given below, it can be stated that Members' commitments are »essentially a trade deal for the multinationals from the industrial coun-

37 See Butkeviciene, Movement of Natural Persons under the GATS, p. 5. Still, the EU is one of only eleven countries who made horizontal commitments exempting particular persons from economic needs tests, see UNCTAD, Economic needs tests in the GATS, pp. 2ff.

38 Young, Labour Mobility and the GATS, p. 22.

39 Ibid., p. 17.

40 Ibid., pp. 19ff.

tries«.⁴¹ Herewith, the liberalisation of labour mobility concerns first and foremost a small layer of high-skilled experts in the OECD world.⁴²

5. The Position of the EU in the GATS Negotiations

Until the Treaty of Nice, and in contrast to the GATT, where the Commission holds full competence in multilateral negotiations, the GATS was subject to mixed competences where the Commission shared responsibility with the Member States. The Nice Treaty introduced full Community competence in commercial policy also in the service sector (amended Article 133 TEC), except for trade agreements relating to cultural and audiovisual services, educational services, and social and human health services, which still fall under the shared competence of the Community and its Member States (Art. 133(6) TEC).

The Commission has historically taken a proactive stance with regard to the liberalisation of labour movements linked to trade in services. A Commission ›policy initiative for jobs in the service sector‹ of November 1996 already recognised the importance of access for service providers outside the EU. Stressing that »it is essential that service providers are able to move in close proximity to their customers«⁴³, the Commission claimed that »access for our service providers to third country markets must be improved«.⁴⁴ Following this line of argument, proposals for two Directives on the free movement of services in the internal market were put forward on 27 January 1999 which cover (a) the right of businesses established in the EU to provide services in another member state using non-Community staff who are lawfully established in the EU and (b) self-employed workers from non-Community countries who are lawfully established in the EU. The two proposals primarily provide for the introduction of an ›EC service provision card‹ which would clarify the situation of non-Community nationals in the framework of provision of services in the EU.⁴⁵ Limited to already established third country nationals, the possibility of extending these proposals to

41 Mukherjee, Market Access Commitments under GATS in WTO, p. 8.

42 See also Butkeviciene, Movement of Natural Persons under the GATS; Elspeth Guild/Philip Barth, The Movement of Natural Persons and the GATS: A UK Perspective and European Dilemmas, in: *European Foreign Affairs Review*, 3. 1999, no. 4, pp. 395–415.

43 European Commission, Putting Services to Work. Communication to the European Council, CSE 6 final, 27.11.1996, § 16.

44 *Ibid.*, § 12.

45 See European Commission, Single market: two proposals to facilitate the cross-border provision of services at <http://www.europa.eu.int/comm/dg15/en/services/services/15.htm>.

the potential admission of non-resident third country nationals is contained in the Commission's ›Proposal for a Council Act establishing the Convention on rules for the admission of third-country nationals to the Member States‹ of 30 July 1997.⁴⁶ Its Article 14 provides for the possibility of admitting ›third country nationals to the Member States to pursue activities involving the supply of services‹ by unanimous Council vote (Article 36 of the Proposal).

These questions have gained new prominence with the preparatory works to the GATS 2000 negotiations. In a preparatory document to these negotiations, the European Commission has stressed the mobility of personnel as a ›key area of concern‹ while recognising the need to take into consideration the ›particular situation of developing Members‹ in this respect.⁴⁷ Stating that ›where special knowledge or expertise is required, service suppliers [...] often need to bring in individual members of staff‹, the Commission recognises that ›rules and quotas for work permits, limitations on use of foreign personnel and bureaucratic delay‹ and ›the failure of the authorities in different countries to take into account qualifications obtained elsewhere‹ constituted barriers to trade in services and rendered ›provision of the service slower and more costly, and in some cases completely impractical‹.⁴⁸

In line with these positions, the Commission has submitted a far-reaching offer in the current ›request-offer‹ phase of negotiations. This offer, which was prepared by the Directorate General for Trade, foresees several significant openings with regard to labour mobility, and was subject to intensive debates in the Council and in national administrations before it could be adopted, one month after the official deadline of the WTO.⁴⁹

The following sections present the current commitments of the EU with regard to mode 4 as well as the offer submitted in April 2003 and then looks at specific commitments in the individual sectors analysed by the PEMINT project, Construction, Health and ICT.

46 European Commission, Proposal for a Council Act establishing the Convention on rules for the admission of third-country nationals to the Member States, Document 597pC0387 of 30 July 1997.

47 See European Commission, Seattle Conference preparation: EC Approach to Services, May 1999, at http://www.europa.eu.int/comm/trade/2000_round/seaserv.htm.

48 See European Commission, GATS 2000: Issues Paper. Domestic Regulation and Mobility of Personnel, Paper of the Directorate General 1, Brussels, 30.11.1999.

49 According to interviews with officials from DG Trade and DG Justice and Home Affairs (JHA), the resistance of national immigration ministers to the offer was surmounted through highest level consultations between Trade Commissioner Pascal Lamy and JHA Commissioner Antonio Vitorino as well as through a very tight schedule which, in some cases, impeded scrupulous debates in national capitals about the contents of the – admittedly highly technical – agreement.

5.1. EC Horizontal Commitments with Regard to Mode 4

Unlike other modes of service supply, mode 4 is normally dealt with in the horizontal part of the Treaty which deals with all sectors unless the sector-specific part specifies otherwise.⁵⁰ The EC's horizontal commitments under the current schedules concerning mode 4 are unbound except for the temporary presence⁵¹, as intra-corporate transferee⁵², of natural persons in a senior position or with exceptional knowledge, provided that the service supplier is a juridical person and that the persons concerned have been employed by it or have been partners in it (other than as majority shareholders), for at least the year immediately preceding such movement. The schedule also specifies that all other requirements of Community and Member States' laws and regulations regarding entry, stay, work and social security measures shall continue to apply, including regulations concerning period of stay, minimum wages as well as collective wage agreements. Thus, existing commitments by the EU are limited to intra-corporate transferees and specialists for temporary stays, while the maximum duration of the stay is left to individual member states' law.

5.2. EC Offer on Mode 4

In a Communication to the WTO of March 2001, the delegation of the European Communities and the Member States called for a greater opening of the GATS rules on the temporary movement of service suppliers.⁵³ Starting from

50 See WTO document General Agreement GATS/SC/31 of 15 April 1994 on trade in services (94-1029): European Communities and their Member States, Schedule of Specific Commitments.

51 The duration of 'temporary stay' is defined by the Member States and, where they exist, Community laws and regulations regarding entry, stay and work. The precise duration can vary according to the different categories of natural persons mentioned in this schedule.

52 An 'intra-corporate transferee' is defined as a natural person working within a juridical person, other than a non-profit making organisation, established in the territory of an WTO Member, and being temporarily transferred in the context of the provision of a service through commercial presence in the territory of a Community Member State; the juridical persons concerned must have their principal place of business in the territory of a WTO Member other than the Communities and their Member States and the transfer must be to an establishment (office, branch or subsidiary) of that juridical person, effectively providing like services in the territory of a Member State to which the EEC Treaty applies. In Italy 'intra-corporate transferee' is defined as a natural person working within a juridical person constituted as a SPA (joint stock company) or a SRL (capital stock company with limited responsibility).

53 European Communities, GATS 2000. Temporary Movement of Service Suppliers, Communication to the Council for Trade in Services of 14 March 2001, World Trade Organisation, S/CSS/W/45 (01-1289).

the observation that »the temporary movement of service suppliers in the framework of GATS is a very delicate subject for all participants« (§ 3), the Communication calls for »broader and deeper commitments under mode 4«, which would »improve the capacity of all countries to compete in trade in services, and would, combined with improvements in other modes, expand the choice of operating strategies for economic actors« (§ 5).

Considering that mode 4 liberalisation has so far been based mostly on a horizontal approach, the Communication calls for an improvement of horizontal commitments before entering into a more detailed specification of sectoral commitments. The document calls for improved regulatory disciplines, as well as clarified and harmonised definitions which should help to establish a »predictable, harmonised and transparent system with the overall objective of allowing the necessary mobility of service suppliers on a temporary basis without compromising immigration policy« (§ 7). In particular, the definitions and/or prescriptions of mode 4 categories such as intra-corporate transferees, executives, managers, specialists and contractual service providers should be harmonised and hitherto unspecified labour market tests specified, so that a common code of practice can be developed which renders them more transparent and non-discriminatory. Finally, the document calls for greater transparency considering the conditions under which service providers may temporarily enter and stay in the territory of members and a simplification of administrative procedures.

The offer, which was submitted after difficult discussions between trade and immigration officials, contains far-reaching innovations for service-providers coming from third countries under the GATS. The main innovations are:

- a) the introduction of a new category of graduate trainees under intra-corporate transfer for a maximum duration of one year, that is transferees who have a lower level of qualifications than senior specialists as in the current schedules;
- b) the extension of the duration of stay for contractual service suppliers from a maximum of three to six months, thereby shifting them into a new immigration category which extends the usual short-stay ›visitor‹ visa of three months;
- c) the introduction of the new category of independent professionals who are self-employed, highly skilled people in specified professions allowed to enter for up to six months (architects, engineers, computer specialist, management consultants and translators). The entry of independent professionals is subject to a numerical ceiling, for which the modalities and level are still to be determined;
- d) the removal of the economic needs test possibility.

Although still limited to highly skilled professionals and graduate trainees, this offer goes significantly beyond the status quo and is among the most generous ones submitted in the current round of negotiations. Shaped by the staff of DG Trade, the main motivation behind this offer has less to do with immigration policy however than with the desire to present something acceptable for the developing countries – thereby possibly opening the possibility for package-deals with other trade topics, e.g. market access under mode 3 (establishment) or even negotiations in agriculture. Nevertheless, if translated into binding commitments, this offer would have immediate implications for national and EU immigration law. For instance, some member states would have to introduce the category of graduate trainees into national law. At the EC level, the duration of stay for contractual service providers of six months exceeds the three months which are currently foreseen in the draft directive on admission for the purpose of employment and self-employment. Finally, the most incisive change might be the abolition of the economic needs test possibility which has traditionally played a central role in immigration control. In an attempt to limit the potential implications of this, immigration ministers have introduced the possibility to fix numerical ceilings at the national level.

Besides this offer, the EU's bilateral requests towards other WTO countries document its ›offensive interests‹ in the temporary movement of service providers. For instance, in its outgoing requests, the EU is asking Ecuador, India, Malaysia, Morocco, Peru, the Philippines, and other developing countries to extend their commitments under mode 4, in particular for intra-corporate transferees and for contractual service suppliers. However, it is very difficult to judge at the moment what the outcome of these negotiations will be. Not only have a majority of states not submitted any offers on mode 4 yet, but strong cleavages between the EU and the US as well as in ›north‹-›south‹ relations inhibit a rapid termination of the Doha ›Development‹ Round.

6. ›Mode 4‹ in Different Sectors

The importance attributed to the mobility of service providers varies not only according to national prerogatives but also across different sectors of the economy. This section reviews the commitments made with regard to the three sectors analysed in the PEMINT project, construction, health and ICT.

6.1. Construction

A total of 69⁵⁴ WTO members have made commitments on construction services. The most common sectors covered are general construction work for building and for civil engineering. In accordance with the United Nations Provisional Central Product Classification, construction and related engineering in the GATS cover the following sub-sectors:

- General construction work for building (CPC 512)
- General construction work for civil engineering (CPC 513)
- Installation and assembly work (CPC 514, 516)
- Building completion and finishing work (CPC 517)
- Other (CPC 511, 515, 518)

Given its central role in providing the infrastructure for all other industries, and its close links to public works, the construction sector has always been considered as a strategically important industry for creating employment and sustaining growth. Partly as a result of this, this sector is subject to many different aspects of domestic regulation, such as controls on land use, building regulations and technical requirements, building permits and inspection, registration of contractors and professionals, regulation of fees and remunerations, environmental regulations etc. Furthermore, these measures are frequently applied not only at the national level, but also at the sub-federal or local government level, with private sector associations playing an important role in standard setting.

In the GATS schedules, the commitments are normally on mode 3. This acknowledges the fact that the establishment of construction service suppliers near the site of construction projects is generally necessary. There are few MFN exemptions on this sector, but its strong regulatory density implies that there are substantial barriers to trade in construction services. Schedules contain limitations on a variety of issues. For example, on the type of legal entity (local incorporation or prohibition to establish branches); participation of foreign capital; limitations on the contract amount accessible to foreign firms; economic needs tests; limitations on the value of transactions or assets; restrictions on the temporary movement of natural persons; limitations on the national treatment on licensing, standards and qualifications of natural persons; requests for nationality and residency requirements, etc.

With its extensive use of skilled and unskilled labour, the construction sector is strongly affected by limitations on the movement of natural persons. With regard to mode 4, the EC schedule includes, in the horizontal commitments, temporary movement of intra-corporate transferees as well as contractual service suppliers (i.e. the service is supplied, on the basis of a contract, by

54 EC counted as one.

an employee of a company not established in the Member's territory, see above). A remarkable exception from a general limitation to high-skilled and academic workers contained in the EC schedule refers to the possibility to contract construction workers in the framework of preparatory studies for construction projects – however only as employees of a transnationally operating company without foreign branch.

The EU proposal for the GATS 2000 negotiations aims at engaging WTO Members in negotiations to reduce unnecessary trade-distortive barriers to the minimum while preserving the quality of the service, public safety and the rule of law. With regard to mode 3 liberalisation, the EC argues that it does not see justification for restrictions on forms of establishment (i.e. type of legal entity). Given that a local commercial presence is generally necessary to operate in this sector, it believes that there should be freedom of establishment i.e. restrictions which are currently maintained by Members on mode 3 should be eliminated. With regard to mode 4, the EC propose that, on the basis of its current commitments, further discussions are held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services, but makes no concrete proposals.⁵⁵

6.2. Health Services

The WTO has claimed that public services are excluded from the GATS, insofar as Article 1.3 exempts services which are provided »in the exercise of governmental authority«. The GATS defines such a service as one supplied »neither on a commercial basis, nor in competition with one or more service suppliers«. Notwithstanding the dual – social and economic – function of the health sector, the increasing presence of private service providers and their competition with public providers mean that most health services fall into the ambit of the GATS Treaty. Nevertheless, the sensitive nature of the health sector is reflected in the fact that so far most commitments made for this sector have no policy implications, since countries have either recorded the status quo of their trade regimes, provided partial information, or left sensitive aspects out of their schedules of commitments. The problem behind the opening of this sector to private international competition is the question of whether and how broader objectives such as equity, quality, social and distributional justice, and universal access may be reconciled with the logic of the market. However, future rounds of multilateral negotiations are likely to come closer to exerting pressure for change in the trade regime by seeking a higher degree of openness in specific areas of commitments in health ser-

55 See European Commission, DG Trade: »GATS 2000: Construction and related engineering services. Proposals from the EC and their Member States«, December 2000.

vices.⁵⁶ New technologies, the increased cross-border mobility of patients due to rising incomes and enhanced information, and cost pressures associated with ageing populations and a widening price-productivity gap in many OECD countries have underscored the importance of efficiency objectives, and act in favour of a greater opening of the sector.⁵⁷

In the GATS framework, health care services include the general and specialised services of medical doctors, deliveries and related services, nursing services, psychotherapeutic and paramedical services, all hospital services, ambulance services, residential health facilities services and services provided by medical and dental laboratories. In the multilateral negotiations, professional services of doctors and nurses were distinguished from those of hospital services and have been negotiated separately.^{58,59}

Of the four sub-sectors, medical and dental services are the most heavily committed. According to Adlung and Carzaniga, this suggests that it is politically easier or more economically attractive to liberalise capital-intensive and skill-intensive sectors than labour-intensive activities.⁶⁰ With regard to services provided by medical professionals, countries have been particularly cautious with regard to commercial presence (mode 3). The conditions listed under market access most frequently require foreign medical professionals to provide services as natural persons, i.e. relate to conditions defined in the mode of movement of natural persons (mode 4). Often conditionality to provide medical services as natural persons is followed by the requirement of authorisation by the relevant health authority, which according to the letter of the GATS, is the domain of domestic regulation. The same applies for the licensing, registration or conditions regarding qualifications, and membership of professional associations. A major instrument designed to safeguard medical services from foreign competition is the economic needs

56 Jolita Butkeviciene/David Diaz, *GATS Commitments in the Health Services Sector and the Scope for Future Negotiations*, UNCTAD-WHO Joint Publication, *International Trade in Health Services. A Development Perspective*, UNCTAD Geneva 1998, pp. 135–155.

57 Rudolf Adlung/Antonia Carzaniga, *Health Services under the General Agreement on Trade in Services*, in: *Bulletin of the World Health Organisation*, 79. 2001, no. 4, pp. 352–364.

58 Butkeviciene/Diaz, *GATS Commitments in the Health Services Sector and the Scope for Future Negotiations*, p. 137.

59 Medical and dental services as well as services provided by midwives, nurses, physiotherapists and para-medical personnel are included in the category of ›professional services‹ as part of ›business services‹. Hospital services and other human health services, by contrast, are dealt with under a special sector on ›health related and other social services‹.

60 Adlung/Carzaniga, *Health Services under the General Agreement on Trade in Services*, p. 356.

test. In the EU schedules, an economic needs test applies for medical doctors and dentists who are authorised to treat members of public insurance schemes. The criterion is shortage of doctors and dentists in the given region. In Germany, access is restricted to natural persons only. Italy also applies the economic needs test to services provided by nurses, physiotherapists and paramedical personnel. Belgium, Denmark, Ireland, Italy, Spain and Portugal also apply the test vis-à-vis pharmacists. In addition, national treatment of natural persons is limited by the requirement of knowledge of the local language, employment of local staff, restricted access to private practice, and necessary additional training.

As mentioned above, hospital services defined as medical services provided for inpatients in hospitals of various types, including rehabilitation services, are negotiated separately from the services provided by medical professionals. Commercial presence (mode 3) in the form of establishment of hospitals abroad is the most relevant mode to trade in these services. Market access measures include the economic needs test (Belgium, the Netherlands, Spain), limitations on the size of foreign capital participation, as well as other authorisation, permission, certification or licensing. According to Adlung and Carzaniga, this cautious opening of commercial presence may be interpreted as an attempt »to overcome shortages of physical and human capital, and to promote efficiency through foreign direct investment and the attendant supplies of skills and expertise.«⁶¹ In comparison, commitments with regard to movement of natural persons (mode 4) are very limited. To a large extent, specific commitments with respect to the movement of natural persons have provided very limited information, even with respect to the minimum requirements that foreign natural persons would face in order to be considered for obtaining market access.

In sum, the limited opening of the health sector in the GATS framework shows the proximity of this sector public services and the high degree of caution vis-à-vis foreign competition, especially in hospital services. The proposals issued by the EU for the new round of negotiations contain no additional provisions on the health sector.

6.3. ICT Services

In the ICT sector, labour market policies and other limitations to the mobility of natural persons have been identified as a major obstacle to growth and development. This is due to the rapid spread of the scope and intensity of the use of computer-related services in developed economies and the shortage of qualified specialists in domestic labour markets.

61 Ibid.

In the GATS Treaty, Computer and Related Services include the following sub-sectors:

- consultancy services related to the installation of computer hardware;
- software implementation services;
- data processing services;
- database services;
- other computer services.

Most ICT services are included in the broad category of Business Services which, as opposed to Professional Services (e.g. legal, accounting, architectural, or medical services), are usually much less regulated and the GATS commitments are more liberal than in many other services sectors. Not least for that reason, access to the EU market for third country Business Services suppliers is in general very liberal.⁶²

Concerning the existing commitments scheduled, remaining restrictions, are, *inter alia*, that not all forms of establishment under mode 3 are allowed (limits on equity participation, and the like). Mostly, however, countries have chosen to leave an ›unbound‹, without further specifications.

For the new round of negotiations, the EC proposes that it should be examined whether any restrictions would be justified regarding mode 3. In particular, restrictions on ownership, equity, form of establishment can usually be eliminated. Citizenship requirements, and residency requirements should, where possible and feasible, be substituted by other less trade restrictive requirements (i.e. appointment of representative agent, liability insurance, etc.)

Regarding mode 4, the EC schedule includes, *inter alia*, temporary movement of intra-corporate transferees as well as contractual service suppliers (i.e. the service is supplied, on the basis of a contract, by an employee of a company not established in the Member's territory). The new position proposes that, on this basis, further discussions are held on how to improve and facilitate the temporary movement of natural persons for the provision of specific services. No further specification is spelled out.

7. Conclusion

To sum up, the GATS is the first multilateral treaty to include binding multilateral rules on migration. Although the treaty allows for a great degree of flexibility, and does not, in practice, exceed the existing national commitments of the participating countries, it does have direct implications for na-

62 Consumer protection, quality of the service, and other public policy objectives motivate high levels of regulation of some business services, e.g. of investigation and security services, personnel placement services, aircraft leasing.

tional immigration systems and labour market regulations, especially since once adopted, these commitments cannot be unilaterally reversed. In addition, the WTO's dispute settlement system provides for a supranational enforcement mechanism to ensure compliance. In the longer run, the importance of these developments lies perhaps less in the current commitments than in the dynamics set free by the process of institutionalisation of multilateral rules. As shown in the case of the GATT and other multilateral negotiations, iterative negotiations tend to lead to both norm expansion and institutional consolidation over time. The current EC offer and the pressure of service industries on the one hand and of some developing countries on the other, point in this direction. In stark contrast to the broader phenomenon of immigration, where states have sought to maintain control and independence, the approach developed towards the highly skilled manifests both an orientation towards liberalisation and multilateralism.

The question which could now be posed is whether these developments can be discussed under the heading of immigration at all, and how they relate to other forms of migration. 'Mode 4' commitments cover only temporary mobility for specific purposes (i.e. service trade); are often confined to one sector; and do not normally include access to the labour market for the purpose of employment. Yet, temporary entry in the framework of the GATS may extend from short-term movements below three months to a maximum of five years. Furthermore, temporary movement can often turn into permanent residence and involve professional mobility. This is especially the case since the evolution of social rights associated with 'postnational citizenship'.⁶³

Thus, although the liberalisation of skilled mobility has so far been promoted by trade representatives rather than immigration officials, and – partly because of that – has often escaped the attention of migration scholars, both the contents of issues already negotiated and those which are currently on the negotiation table show that the liberalisation of flows of skilled professionals is very much an aspect of immigration policy. The fact that we tend to prefer to talk about these phenomena in terms of 'mobility' or, even more abstractly, 'mode 4', instead of immigration, is an instance of the growing differentiation – and perhaps also dissociation of immigration politics under the influence of globalisation. In the long term, the shift towards multilateral rules for specific categories of migrants may have repercussions on the way states deal with the broader phenomenon of immigration, eventually paving the way for a future international migration regime.

63 Yasemin N. Soysal, *Limits of Citizenship: Migrants and Postnational Membership in Europe*, Chicago 1994; David Jacobson, *Rights across Borders. Immigration and the Decline of Citizenship*, Baltimore 1996.

The Legal Framework of EU Migration

The purpose of this paper is to outline the legal framework of migration in the European Union (EU). While substantial references will be made to legal texts this paper is designed to be accessible to the lay reader. The European Community encompasses two very separate legal regimes relating to migration – on the one hand there is a highly developed EC legal framework regarding the right of nationals of the Member States to migrate and seek employment in any one of the other Member States – it will be this regime on which the majority of this paper will focus. There is a second regime which relates to nationals of countries outside the EU and which has very different rules which have less clarity and certainty to them. This second regime is itself divided into various sub-categories. The first sub-category in terms of level of rights is comprised of nationals of Iceland, Liechtenstein and Norway who enjoy free movement rights more or less equivalent to those of Community nationals as a result of the agreement between their countries and the EC (the European Economic Area Agreement). On the basis of other agreements between the EC and third countries, nationals of each party enjoy various privileged rights relating to labour access and movement on the territory of the other (I will return to this shortly below). The second sub category relates to the new powers inserted by the Amsterdam Treaty into the EC Treaty regarding borders, immigration and asylum. The Community now has responsibility for economic migration to the EU. However, it has not yet fully exercised its powers. The European Commission has proposed a directive on access by third country nationals to the territory of the Union for employment which is under consideration by the European Parliament and Council in Winter 2001. These rights will be considered in as far as they are relevant to this study.

This paper will be divided into eight sections each covering a different aspect of the right of movement and labour of individuals within the Union followed by conclusions. The sections will be as follows:

1. Community law and types of economic activity: workers, self-employed and service providers and recipients;
2. Community law and citizenship – extending residence rights;

3. Freedom of movement: the conditions on the right;
4. Privileged third country nationals: the European Economic Area, Turkish workers in the Union and nationals of the Central and Eastern European countries;
5. Posted workers: the rights of businesses to move workers;
6. Social security and social protection: the Community law rules;
7. Recognition of diplomas;
8. Conclusions.

Before commencing the specific discussion of Community law in the field, a few words about the nature of the Community legal order are called for. First, the European Community is a creature of Treaty. The powers of the Community arise exclusively from the Treaty and in so far as the Treaty does not provide powers for the Community to undertake certain tasks, it must not do so. This limitation of powers is a substantial difference between the Community and a state. For the latter, the powers are self described, most commonly in a constitution. While there is much discussion about a constitution for Europe¹ and the Charter of Fundamental Rights has been described as a prototype for a constitution, the aspect of a constitution as a limit and means of control of unlimited power of rules is lacking. Various doctrines of Community law do provide for the development of Community law beyond the strictest interpretation of the Treaty but always within those parameters. In the field of interest to this study, migration and work, the Member States closely guarded their competence over the migration of workers from outside the Community up until the Amsterdam Treaty changes.²

The 1985 attempt by the Commission to establish a mechanism for prior consultation regarding changes in national law on immigration resulted in a legal challenge by five Member States before the Court of Justice on exactly this point, the competence of the Community for third country national immigration.³ Although the Commission won virtually all the issues of competence before the Court, it withdrew from the field and left the Member States to act intergovernmentally until such time as the need for harmonisation via Community law instruments in the area became compelling.⁴ This happened in 1997 with the negotiations which led to the Amsterdam Treaty. It is ironic that in 2001 the Commission under its new powers in the EC Treaty has pro-

1 For instance Joseph H.H. Weiler, *A Constitution for Europe*, Cambridge 1999.

2 Elspeth Guild, *Immigration Law in the European Community*, The Hague 2001.

3 281-283-287/85 *Germany and ors v Commission* [1987] ECR 3203.

4 For a fully discussion see Guild, *Immigration Law in the European Community*; *idem*/Steve Peers, *Deference or Defiance? The Court of Justice's Jurisdiction over Immigration and Asylum*, in: Elspeth Guild/Carol Harlow, *Implementing Amsterdam. Immigration and Asylum rights in EC Law*, Oxford 2001, pp. 267-289.

posed a consultation mechanism on immigration very similar to that which it put forward in 1985. This time, however, the Member States are ready for the measure.

1. Community Law and Types of Economic Activity: Workers, Self-employed and Service Providers and Recipients

From the establishment of the European Economic Community with the entry into force of the EEC Treaty (as it then was) freedom of movement of persons was among the objectives.⁵ The Community is only entitled to pursue through legislative measures the objectives which are specified in the Treaty itself. The object of abolition of obstacles to the free movement of persons, was given particularity in Part III Title III Articles 39–49.⁶ Article 39 EC provides for the abolition of obstacles to the free movement of workers among the Member States. It is subject to two main limitations: first, on the grounds of public policy, public security and public health; second, Member States are permitted to restrict access to their civil services to own nationals. Both of these exclusions have been restrictively interpreted by the Court of Justice, a subject I will return to slightly later.

Article 43 provides for a right to non-discrimination for the self-employed – in Community law this is also known as the right of establishment. This incorporates a right to move for the purpose of self-employment to another Member State and to reside there. The right is in terms of non-discrimination and abolition of obstacles to the exercise of economic activities as self-employed in different Member States. Among the main obstacles are differences in regulation of professions and trades. All Member States have complex systems of regulation operated by state authorities, quasi state authorities and professional bodies. While most of the rules which excluded non-nationals directly on grounds of nationality have been abolished, indirect discrimination is still prevalent in the form of rules which fail to recognise skills and experience obtained in other Member States. The efforts to seek uniformity in recognition in this area would take substantial work. I will return to this theme in section 7.

Finally, Article 49 provides a right to provide services and through secondary legislation and the interpretation of the Court, it also incorporates a

5 Article 3 (c) EC.

6 With the entry into force of the Amsterdam Treaty the numbering of provisions of the Treaty changed. In this text I will only use the new numbering. However, where quoting texts which use the old numbering I will put the new number in square brackets next to the old one.

right for persons to move to receive services. This right is designed to recognise that of individuals to go to other Member States for economic purposes without the intention of setting up an infrastructure or staying a long period of time. It is this right which is most frequently invoked in the building trades where individuals move or periods of time defined by the job rather than their intention to remain on the territory of the other Member State.

The transitional period for the achievement of the rights ended in 1968. At that point the free movement of persons for economic purposes was to have been achieved. Just before considering the content of the rights and the secondary legislation which was adopted to give specificity to the rights, it is worth noting that the right to move as included in the original EC Treaty was designed for those exercising some sort of economic activity. Individuals are treated as economic actors only and have rights as such. The humanitarian reasons for permitting persons to move across borders which so occupy newspapers at the moment, asylum seekers, refugees and displaced persons, find no direct place in the Treaty as originally adopted. They will only be inserted later with the Amsterdam Treaty. Rather it is the right to work which is central to a right to cross a border. The type of economic activity is wide covering most situations, in particular as developed by the Court of Justice in its jurisprudence. However, the right of free movement for economic purposes is limited to nationals of the Member States. I will come back to this in the next section, for the moment suffice it to say that the privilege of rights to cross borders was granted on a reciprocal basis. The definition of the right is in terms of the treatment which Member States accord their own nationals.

1.1. Workers

Returning then to free movement of workers, at the end of the transitional period the Community adopted Regulation 1612/68 and Directive 68/360 to give effect to the right. In fact the Court of Justice held that the right of free movement of workers was directly effective and therefore the implementing legislation gives specificity to the rights already held by individuals rather than conferring rights on them.⁷ The treaty provision provides that the right of free movement for workers includes a right to non-discrimination on grounds of nationality as regards employment, remuneration and other conditions of work and employment. Subject to the limitations, it entails the right to accept offers of employment actually made, to move freely within the territory of the Member States for this purpose and to stay in any Member State for the purpose of employment subject only to the same rules as apply to own nationals. Articles 40–42 set out the mechanisms applicable during the

7 36/75 Rutili [1973] ECR 1219.

transitional period and the correct legislative process for the adoption of measures under the article.

As has been noted on numerous occasions, there is no definition in the Treaty or its subsidiary legislation as to who is a worker.⁸ It was left to the Court of Justice to determine the content. On the ground that the concept of a worker defines the scope of one of the fundamental freedoms granted by the Treaty, the Court provided a wide interpretation.⁹ Three constitutive elements were considered necessary for an individual to have the quality of worker:

1. the individual provides services over period of time;
2. for and under the supervision of another; and
3. receives remuneration.

Most importantly the Court excluded the possibility for a Member State to modify or define the term by reference to its national law.¹⁰ The nature of the work, whether part time or fulltime was held to be irrelevant to the rights of the individual as a worker. Similarly, the adequacy of remuneration is not a decisive factor regarding the exercise of the economic activity or the quality of a worker. In one case an individual received lodging and board as well as a little pocket money in return for his services to a religious community. The Court found this was adequate for the purposes of the definition.¹¹ In addition, the distinction between public and private employers is not relevant to the quality of a worker.¹² By placing control of the definition of the term in the Community's exclusive hands, the Court circumscribed the Member States power to exclude migrants from other Member States on the basis of national law determinations. The Member States powers of limitation to movement of workers were firmly placed in the context of the public policy provisos and the public service exceptions. Unless Member States could avail themselves of these exceptions they could not defeat an individual's claim to the exercise of the right of movement for the economic purpose. Thus the Community privileges the individual as against the Member State and by so doing strengthens its claim to the power of definition.

The rights of workers are set out in Regulation 1612/68. Work seekers are specifically included (and their right of movement was subsequently con-

8 Advocate General F.G. Jacobs, Case Law of the Court of Justice on Free Movement of Workers, in: Jean-Yves Carlier/Michel Verwilghen, *Thirty Years of Free Movement of Workers in Europe*, European Commission, Brussels 2000.

9 53/82 Levin [1982] ECR 103.

10 66/85 Lawrie-Blum [1986] ECR 2121.

11 196/87 Steymann [1988] ECR 6159.

12 66/85 Lawrie-Blum [1986] ECR 2121.

firmed by the Court).¹³ Briefly, the rights are to move to take up an activity as an employed person with the same priority as nationals of that state.¹⁴ Member States are not allowed to apply quotas or measures of similar effect against nationals of other Member States. Specific reference is made, however, to the possibility of applying a condition relating to linguistic knowledge as a condition for a post. The Member States must also make available their employment offices for nationals of other Member States. The Regulation prohibits that the engagement and recruitment of a national of one Member State on the territory of another be dependent on medical, vocational or other criteria which discriminate on nationality grounds. Only a vocational test carried out at the time of the offer of employment is permissible.

The Regulation differentiates between work seekers, who enjoy the rights set out above and workers who are entitled to a wider group of rights contained in the second part of the Regulation. Among the most important are the right to equal treatment in social and tax advantages which has led to substantial jurisprudence.¹⁵ This has been used by individuals and the Court as a tool to achieve the objective of equality with nationals of the host State. For instance, benefits as mundane as fare reductions on trains for large families have traditionally been reserved for own nationals on the grounds of social policy – as a measure designed to encourage large families. However, such benefits have been held by the Court to come within the scope of social advantages and thus must also be accessible to nationals of other Member States.¹⁶ In the particular case, the Court so held notwithstanding the fact that the complainant was the widow of an Italian migrant worker in France. She had not been a worker herself. Thus exactly where the benefit to the worker arises is unclear. Perhaps it is in reassuring migrant workers that should they die nonetheless their widows will still be entitled to fare reductions for the family. Equal treatment in access to vocational training, collective agreements and housing whether private or public is also required.

Articles 10–12 of the Regulation provide the critical rights of family reunification and the rights of family members once they have joined the principal in the host State. I will return to these rights in the next section. What is important to note here is that the provision applies to family members irrespective of their nationality. This is the first group of third country nationals to be incorporated into the Community law free movement framework.

The establishment of rights was not considered, in itself, sufficient to ensure their uniform application. So at the same time as the adoption of the

13 C-292/89 Antonissen [1992] ECR I-745.

14 Article 1.

15 Denis Martin, *Libre Circulation de personnes en Europe*, Brussels 1996.

16 32/75 Cristini [1975] ECR 105.

1968 Regulation, the Community adopted Directive 68/360 which sets out in clear and precise terms how the rights are to be exercised and the duties of the Member State to provide security to migrants as to how their rights must be given effect. The Directive applies to those persons to whom the Regulation applies – work seekers and workers and their family members. The Directive is somewhat out of date in so far as it makes reference to border controls and their application. This part of the rules are now only applicable for Ireland and the UK which have opted out of the new provisions on immigration and borders inserted into the EC Treaty by the Amsterdam Treaty. Entry onto the territory of a Member State may only be subject to production of valid identity document or passport (Article 3). Only third country national family members can be required to obtain visas – the exact extent of this obligation is under consideration by the Court of Justice at the time of writing.

Member States must issue residence permits to nationals of other Member States (as soon as possible and at least within six months according to Directive 64/221 which will be considered below in section 3) on presentation of a limited number of documents – for workers the document on which they entered the territory and confirmation of engagement or a certification of employment. While many Member States require more information from Community national migrant workers than this they are acting illegally in doing so. For family members the additional requirement is that they produce a document from the State of origin or whence they came proving their relationship (and other conditions, where applicable). Residence permits must be valid for five years at least (unless the job is for less than a year) and provided the individual has not been unemployed for the final year before renewal, automatically renewed. Breaks in residence of less than six months or for military service do not affect the validity of a residence permit. However, for shorter term workers the measures are simplified: where an individual will exercise an activity for three months or less as long as his or her presence is notified to the authorities, a residence permit is not required. There is a new proposal from the Commission regarding a right of residence for nationals of the Member States which would abolish the residence permit requirements. However, it has only just been proposed and is unlikely to be adopted for some years at least.

1.2. Self-employed Workers

The self-employed have been the subject of much less litigation than workers at the Community level. The right of establishment has been contentious mainly for persons in regulated professions – lawyers seeking to have offices in more than one Member State seem to have given rise to much of the jurisprudence. It appears likely, though the Court of Justice has yet confirm this, that the meaning of self employment is also controlled by Community law to

the exclusion of national law definitions. The main feature distinguishing employment from self-employment is the question of subordination. If an individual is not subordinated to another in the way in which the work is carried out then he or she is likely to be self-employed and in moving from one Member State to another for this purpose is exercising the right of establishment. This right also has direct effect in the Community legal order.¹⁷ Directive 73/148 sets out both the rights of the self-employed moving within the Union and the way in which those rights are to be exercised. In this sense the implementing legislation on the self-employed and service providers (and recipients who are included in it) is less elaborated than that for workers. Again the rights include a right to move for the purpose of exercising self-employed activities, including the intention to do so. Thus the individual has the right to move before he or she actually exercises the right of self-employment. This of course raises the question – at what point does the right come into existence, how developed does the intention of the individual have to be for it to found a right. This question has not been answered by the Court. As for workers, the system is based on the issue of a residence permit which must be issued on the presentation of documents showing that the right being exercised. Family members are included to the same extent as for workers and will be discussed below.

1.3. Service Providers and Recipients

Although the issue of service provision comes regularly before the Court of Justice it is more commonly invoked by legal persons (i.e. companies) than natural persons. The right to move for service provision includes both the right to move where an individual is employed by an enterprise and sent to provide services for the employer in another Member State and the self-employed individual who goes to another Member State to provide services on his or her own behalf. The difference between service provision and establishment is by no means a clear one, the length of time the activity will take is only one criteria as is the intention of the individual. Perhaps most decisive according to the Court is whether the individual acquires infrastructure in the host State.¹⁸ Many workers who use their free movement rights for short periods of time, for instance in the building trades are actually using this service provision right.

As regards recipients of services, they are included in the Directive and their rights confirmed by the Court.¹⁹ A particularly good example of the

17 2/74 Reyner [1974] ECR 631.

18 C-55/94 Gebhard [1996] ECR I-4165

19 286/82 Luigi & Carbone 377.

rights of service recipients is spelled out in the *Cowan* case. Mr & Mrs Cowan travelled to Paris (from the UK) for a short holiday. While in Paris Mr Cowan had his wallet stolen in the Metro. According to national law, while provision was made for compensation of victims of criminal attacks, this compensation was limited to nationals of the Member States. Mr Cowan brought an action not least claiming that the nationality restriction was contrary to Community law. He won, but in the process, in order to establish where the link was with Community law, the basis of his presence in France had to be determined. His right to non-discrimination on the basis of nationality arose from his rights as a recipient of services. The activities of purchasing meals, staying in hotels etc. are sufficient to trigger the right of service receipt. The jurisprudence here, however, is less than entirely consistent. When Community national migrant students started claiming rights to maintenance grants and other education benefits on the grounds of their entitlement to non-discrimination as service recipients in the host State the Court was, for a long time, reluctant to find in their favour.²⁰

In September 2001 the Court handed down a judgement which indicates a dramatic change to the rights of students to social benefits in a state other than that of their nationality however, the legal basis of the judgement is citizenship of the Union – a provision unrelated to service receipt. I will return to this judgement in the next section when considering citizenship of the Union.

2. Community Law and Citizenship – Extending Residence Rights

2.1. Movement and Nationality

The right of free movement of workers contained in Article 39 EC is not limited to nationals of the Member States but rather attaches to »workers«. The other two free movement rights are limited to nationals of the Member States. The secondary legislation made under all three rights is limited to nationals and their family members where family members may be third country nationals.²¹ As the question of third country nationals and the European Community moved up the political agenda in the mid 1980s with the project to complete the internal market – subsequently called the 1992 project after the final date by which time the internal market should be completed – there was increasing speculation about the degree to which third country nationals resident within the Union could be considered to have movement rights at

20 197/86 Brown [1988] ECR 3205.

21 See also Giorgia Gaja, *La Liberta di circolazione dei lavoratori subordinati profili generali*, in: Bruno Nascimbene, *La Libera Circolazione dei Lavoratori*, Milan 1998.

least as workers.²² The Court was finally required to address the point and in 1998 confirmed that third country nationals cannot benefit from Community law rights attached to free movement.²³ The decision on its facts leaves the Community open to substantial criticism on moral grounds though the legal argument may be correct.

Mr Ayowemi, a Nigerian national resident in the UK was charged and convicted of driving in Belgium without a Belgian driving licence. Mr Ayowemi did have a valid UK driving licence. He appealed against the decision on two grounds – first that he was entitled to rely on the Community directive on mutual recognition of driving licences, secondly that the penalty which he was subjected to was much more severe than that which would be applied to a Belgian national. It does not appear from the court record that he specifically alleged an element of racial discrimination in the severity of the sentence but the question looms over the case like nasty ghost. The Court confirmed that Mr Ayowemi, as a third country national was entitled to rely on Community legislation relating to recognition of driving licences as this related to the community competence for transport policy. However, it became apparent that the transitional periods which were relevant to his case had not expired thus the driving licences directive would not help him.

Secondly on the question of the severity of the penalty, the Court held »A national of a non-member country who finds himself in the same position as Mr Ayowemi may not effectively rely on the rules governing free movement of persons, which, in accordance with settled case law only apply to a national of a Member State«. As the right to non-discrimination is a right attaching to free movement, the Belgian authorities could not be challenged on grounds of Community law for subjecting Mr Ayowemi to penalties much more severe than those which are normally applied to Belgian nationals. Thus it was clarified that third country nationals, even if they are part of the national labour market of one of the Member States remain excluded from Community free movement rules.

A second challenge which could have made a difference to the position of third country nationals moving within the Union was the Wijsenbeek challenge. Among the promises of the 1992 project was the completion of the internal market by the abolition of obstacles to the free movement of persons including in the form of border controls on persons between the Member States. The complicated saga of the Schengen Agreements, reached between 1985 and 1990 among some of the Member States for the purpose of regulating in a common manner the external frontier and abolishing border controls

22 Nicole Guimezanes, *La circulation et l'activite economique des etrangers dans la Communaute europeene*, Paris 1990.

23 C-230/97 Ayowemi [1998] ECR I-7641.

among themselves and the 1992 project has been examined elsewhere.²⁴ Suffice it to say that these intergovernmental agreements removed to another forum the question of abolition of border controls, a forum subject to different considerations of a more directly security related nature. Mr Wijsenbeek refused to show his passport on his return from Strasbourg to Rotterdam after the end of 1992. He was charged with an offence in the Netherlands and the national court referred the question of the continuing legality of the border checks on persons to the Court of Justice. The Court held that the end of the deadline for completion of the internal market did not have automatic legal effects as the flanking measures relating to common control of the external border had not been achieved.²⁵

Thus intra-Member State border controls remained lawful. Of course the judgement was handed down after the Amsterdam Treaty had entered into force thus the new chapter on visas, immigration and asylum was already in place. Further the Schengen protocol to the Amsterdam Treaty had made possible the insertion of those agreements into the EC and EU Treaties. The Council decisions of May 1999 allocating a legal base to the Schengen acquis had done exactly this. So there was a lack of immediate consequence of the judgement, political will having replaced judicial interpretation. The result for third country nationals, however, was a final clarification that they cannot rely on the internal market provision for free movement rights in the Community. Visas and the crossing of intra-Member State borders are now subjects contained in Title IV EC. The Schengen provisions on a right to cross internal borders between the Member States are the application of this power. Third country nationals can rely on these provisions, though their exact legal effect is not entirely clear. However what is not included in this part of the Treaty is a specific right to non discrimination on grounds of nationality.

Who then is a Community national? This is a matter for the Member States which by declaration state who are considered their nationals.²⁶ The Court has consistently held that it is a matter for the Member State of origin to determine whether an individual holds its nationality or not. This determination may not be challenged by the host State.²⁷ Nor was the Court willing to entertain favourable a challenge to the nationality law of a Member State on the grounds of its failure to meet minimum human rights require-

24 Elspeth Guild, *Moving the Borders of Europe*, Inaugural Lecture, University of Nijmegen, 2001.

25 C-378/97 *Wijsenbeek* [1999] ECR I-6207.

26 The UK has made a number of declarations, see Ian A. Macdonald, *Immigration Law and Practice*, London 2001.

27 C-369/90 *Micheletti* [1992] ECR I-4239.

ments of a nationality.²⁸ In the particular case, a British Overseas citizen challenged UK law which fails to provide to persons with this status a right to enter or reside in any country or territory in the world, least of all the UK.²⁹ Her grounds were that this resulted in her exclusion from citizenship of the EU thus implicating Union citizenship in the irregularity. In the UK declaration on nationality, this type of British national is excluded from the definition for the purposes of Community law. The Court held that the UK's nationality declaration for the purposes of Community law was a matter of UK competence alone and it would not look behind that declaration on human rights grounds.

In 1993 the entry into force of the Maastricht Treaty amended the EC Treaty not least by inserting citizenship of the Union. The force of this new citizenship has been much discussed in academic circles³⁰ but was largely dismissed by practitioners as not extending the rights of persons within the Union. Citizenship of the Union is an automatic result of acquiring the nationality of a Member State (Article 17 EC). The principal rights which are attendant on it are the right to move and reside freely within the Union though subject to the conditions set out in the Treaty; the right to vote and stand for election in European Parliament and local elections wherever the citizen is resident in the Union and the right to diplomatic assistance when in a third state from the representatives of other Member States if one's own state is not represented in that third state. The right to petition the ombudsman while listed among the citizenship rights is in fact open to all persons not just citizens.

2.2. Citizenship of the Union

A reassessment of the value of citizenship of the Union began after the Court handed down judgement in *Martinez Sala* in 1998.³¹ In this case a Spanish national resident in Germany sought a child rearing allowance following the birth of her baby. The allowance was refused on the grounds that it is only available to German nationals and Community nationals in possession of a

28 C-192/99 Kaur [2001] ECR I-0000.

29 British Nationality Act 1981.

30 Marc Fallon, *La citoyenneté européenne*, JTDE 1994, p. 65; Rudolf Feik, *Unionsbürgerschaft und Aufenthaltsrecht*, in: Ewald Wiederin (ed.), *Neue Perspektiven im Ausländerrecht*, Wien 1996; Hans Ulrich Jessurun d'Oliveira, *European Citizenship: Its Meaning, Its Potential*, in: Jörg Monar/Wolfgang Wessels/Werner Ungerer (eds.), *The Maastricht Treaty on European Union. Legal Complexity and Political Dynamic*, Brussels 1996; Marco Martiniello, *Les ressortissants communautaires at la pratique de la citoyenneté de l'Union*, in: Paul Magnette (ed.), *De l'étranger au citoyen*, Brussels 1997, pp. 125-134.

31 C-85/96 [1998] ECR I-2691.

residence permit. Mrs Sala could not obtain a residence permit as she no longer qualified under the Community rules on the economically active. As she was not a worker, nor was she the member of a family of a Community national worker and she was dependent on some state assistance already, the German government argued that her residence did not have any basis in Community law. The Court however, found that as her residence was not disputed (although not rising from a Community law provision) she was entitled to rely on the Community law right to non-discrimination on the basis of nationality and thus the German government was required to provide her with the child rearing allowance. At this point practitioners began to pay more attention to the concept.

In September 2001 the Court gave judgement in *Grzelczyk*.³² Mr Grzelczyk, a French national was studying at a university in Belgium. For the first three years of his studies he paid the cost of maintenance, accommodation and studies himself mainly through part time work. In his fourth year he applied for a state benefit to assist him as his course work was so heavy as to make it difficult for him to continue to finance himself. At first he was given the benefit but then it was stopped on the grounds that he was a national of another Member State who did not enjoy a right to social benefits as he was not a worker, self-employed or service provider. He appealed against the decision. Four Member States intervened in the proceedings before the Court in support of the Belgian government's position. The Court took note of the fact that by virtue of three directives in 1990, the economically inactive nationals of the Member States had been given a right of residence on the territory of other Member States. However, in all cases the right is subject to the individual having sufficient resources to support him or herself and medical insurance for all risks.

The Court noted that in the case of *Brown*³³ it had held that students could not benefit from the right to non-discrimination as regards maintenance and training assistance for their studies. However, it stated: »since *Brown* the Treaty on European Union has introduced citizenship of the European Union into the EC Treaty and added title VII of Part Three a new chapter 3 devoted to education and vocational training. There is nothing in the amended texts of the Treaty to suggest that students who are citizens of the Union, when they move to another Member State to study there lose the right which the Treaty confers on citizens of the Union.« This in effect reverses the Court's finding in the previous student cases. The requirement to make a financial declaration for students as required in the student directive (93/96) could only be applied once – at the start of the studies and residence. Thus as

32 C-184/99, 20 September 2001.

33 197/86 [1988] ECR 3205.

there had been a change of circumstance after that time, Mr Grzelczyk was entitled to the benefit on the basis of his right to non-discrimination on grounds of nationality.

The Court went on to give its most penetrating statement about the meaning of citizenship of the Union: »Union citizenship is destined to be the fundamental status of nationals of the Member States, enabling those who find themselves in the same situation to enjoy the same treatment in law irrespective of their nationality, subject to such exceptions as are expressly provided for« (I will return to the exceptions in the next section).

2.3. Third Country National Family Members

It is now time to turn to citizenship of the Union and how it can provide for derived rights of movement and residence for third country nationals. There are two main categories which I will consider under this heading – third country national family members of a community national principal and third country national employees of a Community enterprise. First as regards family members, provisions permitting a right to family reunification were introduced in the first of the implementing regulations of the rights of workers. In the current regulation they are found in Articles 10–12. Similar provisions are also contained in the implementing directive regarding establishment and service provision (73/148).

The family members who are entitled to join a Community national exercising an economic activity in the territory of another Member State are:

1. Spouses: these are persons who are legally recognised as such under the national law of the state of origin (or residence). A spouse continues to be a spouse until such time as the marriage is ended in law. The fact that the spouses may not live together, so long as the marriage is legally subsisting the spouse continues to be such for the purposes of Community law and as such to have a right of residence on the territory of the host State.³⁴ The residence right of a spouse is only lost on divorce or when the principal leaves the territory of the host State permanently.
2. Children: these are defined as the children of either or both parents, thus the concept includes adopted children, children of one of the spouses but not the other etc. Children under 21 have a right to move and reside in the same host State as the principal, those over 21 must be dependent on the principal; the right of the children continues after marriage breakdown and indeed in light of the right of children to education in Article 12 of the regulation, the right of the children to continue to reside and at-

³⁴ 267/83 Diatta [1985] ECR 1283.

tend education on the territory of the host state survives even the departure of the Community national parent from the host State.³⁵

3. Dependent relatives in the ascending line: the parents, grandparents etc. of the principal or his or her spouse who are dependent on the principal have a right to join the family in the host State.
4. Other relatives: there is a duty to facilitate the admission of other family members not coming within the above definitions if they are dependent on the principal or living under his or her roof in the country whence he or she comes. The Court has not clarified what the extent of the duty to facilitate is nor the level of dependency which is required for a presumption to be activated.

These rights only come into existence when the principal exercises a right of free movement to live and exercise an economic activity in another Member State.³⁶ They do not apply to nationals of the Member States within their own state except in certain circumstances. Those circumstances are when the principal has exercised a free movement right (more substantial than service receipt for a couple of days) and enjoyed family reunification in the host Member State. On return to his or her country of origin the principal retains the right to family reunification under Community law.³⁷ The case which raised the question was that of Mr and Mrs Singh. Mrs Singh, a British national had moved to Germany to work. She was joined by her husband a third country national there. Subsequently they decided to return to the UK where Mrs Singh opened a shop. The UK authorities sought to deport Mr Singh when he stopped living with Mrs Singh on the basis of national law. He argued that national law did not apply to him as he was the spouse of a Community worker. The Court held that the UK could not apply its national law to persons in this situation. They retained the rights acquired under Community law by virtue of their exercise of a free movement right. The Commission has proposed a directive which would equalise to this level the rights of family reunification of all citizens of the Union whether or not they have exercised a free movement right. This proposal would put an end to the anomalous situation where by persons who cannot enjoy family reunification under national law of their home state have a non-economic incentive to exercise a free movement right.³⁸

The right to family reunification for the economically active is not subject to any requirement that the principal can support the family members.

35 389 & 390/87 *Echternach/Moritz* [1989] ECR 723.

36 35 & 36/82 *Morson/Jhanjhan* [1982] ECR 3723.

37 C-370/90 *Singh* [1992] ECR I-4265.

38 National laws in a number of Member States are more restrictive than the Community rules particularly in the scope of the family members entitled to join a principal.

Even if they become dependent on social benefits to which they are entitled only in their own right, the right of residence does not appear to be placed in question.³⁹ They are entitled to work (Article 11 Regulation 1612/68) and as mentioned above, they are entitled to access to education on a non-discriminatory basis with own nationals. However, the host State is entitled to apply a housing test (i.e. that the principal has housing available for the family) which is normal for workers in the region. The principal is entitled to equality of treatment in social housing thus lack of funds for housing should not be a reason for refusing family reunification so long as there is a system of housing assistance available to own nationals. In any event, the housing test can only be applied once at the beginning of the principal's residence and cannot be reassessed every time there is a change in the composition of the family.⁴⁰

To finish this section an example might be helpful. Let us take for instance, a German national who moves to the Greece to exercise a self-employed activity as a painter. She has a few contracts and sells some of her work locally to tourists. She is a self-employed national of a Member State and entitled to a residence permit. She has not got much resources and gets some help from the local authority with her housing. Her Tunisian husband is entitled to join her and does so. He takes a job in the local restaurant. His rights are regulated by Community law. His 23-year-old daughter from a previous relationship joins the family as she is dependent on them financially as does the husband's Tunisian parents. The family reunification rights and the conditions of residence of this extended family of third country nationals depend on the German woman and her self-employed activity in Greece. Should she decide to leave and abandon the family in Greece they would have no independent residence right.

2.4. Third Country National Employees

Another category of persons are also entitled to movement rights and at least short term residence rights on the territory of host Member States on the basis of their relationship with a Community national. These are third country national employees of a Community based enterprise which is providing services in another Member State. This right is retained by the enterprise – a right to send its personnel to another Member State – to pursue its economic interests irrespective of the nationality of the individual. This interpretation of the right of service provision was given by the Court in 1994.⁴¹ Mr Vander

39 316/85 Lebon [1987] ECR 2811.

40 205/84 Commission v Germany [1986] ECR 3793.

41 C-43/3 Vander Elst [1994] ECR I-3803.

Elst was the proprietor of a construction business in Belgium. He won a contract to demolish a building in France. He sent his work force which was mixed Belgian and Moroccan nationals to the site to undertake the work. The French labour inspectorate visited the site and fined Mr Vander Elst for employing in France third country nationals (i.e. the Moroccans) without French labour permits.

Mr Vander Elst appealed and the Court found in his favour. It held that the third country nationals were not gaining access to the labour market, thus provisions on movement of workers did not apply. Instead they were the means by which Mr Vander Elst could exercise his right of service provision and as such an extension of the enterprise, Mr Vander Elst was entitled to send his labour force to France for this purpose without seeking French labour permits for them. The French labour inspectorate was not entitled to fine Mr Vander Elst, therefore, on the grounds that he had employed workers without labour permits. All of the Moroccans had residence permits, it appears, in Belgium. The question did not arise on the facts whether the answer would have been different if the individuals had only tourist visas in Belgium or even no status at all.

A couple of points bear reflection here: first the right is one of service provision only. There has not yet been any clarification as to whether the right to send a third country national to another Member State would also apply to the right of establishment for instance if Mr Vander Elst had wanted to set up a permanent office in France and had sent one of the Moroccans to manage it on a long term basis – would the principle established in the case also apply and provide a right of residence for the Moroccan? This question has not been answered and in its absence a clear preference applies in law for the posting of third country national workers for short periods of time in the framework of service provision. Secondly, what about the status of the workers? While in France they are the tools of the enterprise's economic activity. They do not have a separate status as such. Thus they are completely dependent on the enterprise for their rights of entry and residence on the territory of the host State. If they seek to change jobs they will lose both the right to work and reside. In law they are *par excellence* tied workers.

The European Commission has proposed two directives under Article 49 EC (service provision) which would provide a mechanism for the posting of workers like those of Mr Vander Elst. It has recommended the system of a service card which the authorities of the country of residence would issue on request to the individual third country national (with the support of the business) and would have to be accepted by the authorities of the host State as evidence that the third country national has the right to exercise service provision for his or her employer. The second proposal would extend the right of movement for service provision to third country nationals self-

employed in the territory of the Union on the same basis of a card issued by the home State confirming the status of the individual as a self-employed person there and entitled to carry out service provision in the other Member States. There has been very little progress on these proposals in the Council as yet.

3. Freedom of Movement: the Conditions on the Right

The free movement right remains subject to two main limitations – the power of the State to exclude or expel an individual national of another Member State on the grounds of public policy, public security or public health and the right to exclude nationals of other Member States from employment in the public service. I will consider each of these exceptions in turn.

3.1. The Power to Exclude and Expel

Integral to the right of free movement of workers is the right of the State to control that movement where there are concerns of security for the State. This is expressed in the public policy, security and health provisos. The longest remaining directive in this field covers this aspect of the right of movement. Directive 64/221 sets out the meaning and limitations on the rights of states for security purposes to exclude or expel nationals of another State. It applies to all Community nationals who move from their home State to another for an economic purpose – i.e. workers, the self-employed and service providers and recipients. It applies to all measures of exclusion – entry onto the territory; issue and renewal of residence permits and expulsion. The directive sets out the limitations on the right of States to control the movement of persons on the proviso grounds. Thus rather than setting out what states can do, it focuses on what states cannot do. This is important from the perspective of the management of a civil service. It is much easier to indicate instructions to civil servants explaining exactly how they must act and what they are entitled to do rather than draft circulars and instructions on what they cannot do particularly when the limitations are subtle.

The first ground prohibited to the Member States regarding controls on movement is the service of economic ends. When the directive was adopted in 1964 the emphasis was on labour shortages. After the oil shocks of 1973, unemployment became a substantial consideration. Employment authorities sought to create or reserve jobs for own nationals to whom a duty of employment was owed. Foreign workers were encouraged to return home, not least Greek and Turkish workers in Germany. Measures to exclude Community national workers could not, however be taken on these grounds because of the protection provided to them by the Directive.

Secondly, a decision by a national authority to control or prevent movement for economic reasons must be based exclusively on the personal conduct of the individual. Specifically, previous criminal convictions in themselves do not constitute sufficient grounds. This means that general preventative measures cannot be taken against Community national workers. On this ground, an automatic ban on readmission to Greece as part of an expulsion order based on criminal conviction for drugs possession was held unlawful insofar as it was applied to an Italian national.⁴² The most common ground for exclusion and expulsion of nationals of the Member States from one another's territory is criminal convictions. The majority of the cases which come before the Court under the heading of exclusion and expulsion revolve around this question. The Court has narrowly interpreted the power of the Member States to expel on this ground: it must show that there is a genuine and sufficiently serious threat to the requirements of public policy affecting one of the fundamental interests of society.⁴³ In the leading case again drugs were central: a French national was convicted in the UK of drugs possession. He was fined and a deportation order was made against him. He appealed, providing the Court with an opportunity to clarify its jurisprudence on the limitations on the state's use of the provisos. The Court found that the likelihood of re-offending in addition to the seriousness of the offence was critical to the lawfulness of the exercise of the power.

The public health proviso is rarely relied on not least because exclusion or expulsion on this ground is limited to the conditions and illnesses listed in the annex to the directive. These include WHO quarantine diseases, tuberculosis in an active state; syphilis; infectious or parasitic diseases where subject to national protection provisions. Thus Community law prevents measures of exclusion or expulsion to be taken against migrant workers with Community nationality (and of course their family members of any nationality) on, for instance, the grounds of HIV infection or AIDS.

So far the introduction of citizenship of the Union has not had consequences for the right to be excluded or expelled from a Member State of which the individual is not a national. While Article 3(2) Protocol 4 European Convention on Human Rights provides a right to enter the state of which an individual is a national, citizenship of the Union has yet to be interpreted as giving such a right to its citizens. In *Calfa* (above) Ms Calfa, an Italian national, was convicted of a minor drugs offence in Greece while on holiday there. Part of the sentence was an expulsion and a ban on return. The case arose in fact after the introduction of citizenship of the Union and among the grounds on which Ms Calfa sought to challenge the sentence was her right as

42 C-348/96 *Calfa* [1999] ECR I-7637.

43 30/77 *Bouchereau* [1977] ECR 1999.

a citizen of the Union to access of the whole of the territory of the Union. The Court declined to deal with the issue, rather holding only that the ban on return was not compatible with Community law.

3.2. The Public Service Exception

The other main exclusion permitted to Member States as regards workers is the public service. Article 39 specifically states that Member States are entitled to refuse admission of nationals of other Member States into their public services. In times of low unemployment this may not be particularly important, but after 1973 when unemployment rose this became increasingly problematic. One of the tools used by many Member States in the 1970s and 1980s (though less so afterwards) to generate jobs was to create them in the public service. This strategy to reduce unemployment was in principle closed to nationals of other Member States even if they had been living and working in the host State for some time.⁴⁴ The first challenges to the width of the public service exception came after 1974. The case revolved around the strategy of Germany in the early 1970s to reduce costs in the public service by applying less generous working conditions to migrant workers than own nationals as happened in the post office.

An Italian worker in the post office appealed against the fact that he was entitled to a lower allowance in comparison with his German co-workers. The post office argued that this was a post in the public service and thus the right to non-discrimination in Community law did not apply. The Court disagreed stating that the exclusion cannot be used to justify discriminatory measures as regards remuneration or other conditions of employment against workers once they have been admitted to the public service.⁴⁵ By 1980 the Court went further in attacking the Member States reservation of the public service for its own nationals. Not only are nationals of other Member States entitled to equal treatment if employed in the public service but the Court found that they had to be admitted to most posts in the public service. The only posts which can be reserved for own nationals are those which »involve direct or indirect participation in the exercise of powers conferred by public law and duties designed to safeguard the general interests of the State or of other public authorities. Such posts in fact presume on the part of those occupying them the existence of a special relationship of allegiance to the State and reciprocity of rights and duties which form the foundation of the bond of nationality«. ⁴⁶ Member States have been reluctant to open up their

44 M. Esposito, *Libera Circolazione e pubblica amministrazione prassi nazionale e prospettive*, in: Nascimbene, *La Libera Circolazione*.

45 152/73 *Sotgiu* [1974] ECR 152.

46 149/79 *Commission v Belgium* [1980] ECR 3881.

civil services to nationals of other Member States. The Commission continues to take enforcement proceedings against them on this ground.

Again the question which remains unanswered is the role of citizenship of the Union in this equation. If the nationals of other Member States are excluded on the grounds that they fail to have a special relationship of allegiance and fail to enjoy the bond of nationality, what does this mean for the reality of citizenship of the Union? The relationship of allegiance is only to a part of the Union not to the whole of it though the citizenship applies to the whole of the territory. If as the Court has stated »Union citizenship is destined to be the fundamental status of nationals of the Member States«⁴⁷ then this limitation must be questioned. The question of rights and duties as the test for participation in the public service also becomes questionable when citizenship of the Union gives nationals of one Member State the right to vote and stand for election in local and European Parliament elections in their host State. At the moment it would appear that voting and representing the people requires a lower degree of allegiance to the state than to work in the higher echelons of the public service. A foreign national can hold the elected post but must be advised only by nationals of the state!

4. Privileged Third Country Nationals: the European Economic Area, Turkish Workers in the Union and Nationals of the Central and Eastern European Countries

The Community has power to enter into agreements with third countries which agreements may either be limited to matters within the exclusive competence of the Community or cover a wider mix of issues including areas of shared competence between the Member States and the Community. In the latter case the agreements must be ratified not only by the Community but also by the Member States. Three agreements (or in the last case set of agreements) are of particular interest regarding workers rights.⁴⁸ These are the European Economic Area Agreement between the EC and Iceland, Liechtenstein and Norway, the EC Turkey Agreement and the agreements concluded between 1991 and 1999 between the EC and the Central and Eastern European countries, the Baltic States and Slovenia. I shall deal with each agreement separately as it creates different rights.

47 C-184/99 Grzelczyk 20. September 2001.

48 One further group of agreements, those with Algeria, Morocco and Tunisia provide for equal treatment of workers regarding working conditions, dismissal and remuneration as well as social security. However, no rights are conferred regarding a right of entry or work.

4.1. European Economic Area Agreement

This agreement was originally settled in 1991 to extend the key provisions of Community law (excluding the common agricultural policy) to the countries part of the European Free Trade Agreement which were not already part of the EC. The complicating factor in the agreement was the inclusion of Switzerland whose people consistently reject closer alignment with the EU whenever asked. Thus in the referenda on the first EEA agreement the Swiss voters required substantial amendment of the draft to exclude Switzerland. The result was that by the time the revised agreement came into force for the other countries, Austria, Finland and Sweden were already well on the way to becoming Member States. That left Norway (whose people voted against joining the EU), Iceland and Liechtenstein as the effective non-EU part of the agreement. The agreement provides for free movement rights on economic grounds for nationals of the contracting parties on the territory of the others. In effect this means that nationals of those three states enjoy the same right to move to any of the Member States and remain there for economic purposes as do nationals of the Member States themselves. However rights which derive from citizenship of the Union are not extended to nationals of the three countries.

4.2. EC Turkey Association Agreement

In 1961 the EEC (as it then was) entered into an association agreement with Greece which, among other things stated the intention of achieving free movement of workers. This agreement was superseded in due course when Greece joined the EC in 1981. In 1963 the EEC entered into a similar agreement with Turkey which also foresaw the eventual entry of Turkey into the Community. This was extended by an additional protocol in 1970 which added more specific provisions relating to a number of areas including workers. The exact value of the Agreement and Protocol for individuals remained uncertain for many years. In 1986 the Court was finally faced with a question about workers rights and the agreement. A Turkish worker in Germany had been living and working in Germany for less than eight years. His wife came to visit him on a short stay visa and fell pregnant. The couple wanted her to remain in Germany at least until the birth of the child. An application for an extension of her permission to reside was rejected. In the land where they lived, a Turkish worker could not enjoy family reunification with his foreign wife and children until he had been resident and working there for over eight years. The couple appealed against the decision.

Among the arguments put forward on their behalf was that the provisions of the additional protocol of the Turkey Agreement provide for the gradual achievement of free movement of workers, and the agreement itself

provides that this will be achieved by the end of the second phase of the agreement (i.e. by the end of 1986). The Court found that it was competent to interpret the provisions of the agreement and that it would use the same interpretative tools as in respect of the EC Treaty. But it found that the wording of the relevant provisions of the agreement and its additional protocol were not sufficient clear precise or unconditional as to give rise to direct effect – i.e. a legal right for the Turkish work to rely upon.⁴⁹ As the case took a number of years to be heard and decided, by the time it came before the Court the couple had already had their child and the obligatory waiting period for the worker was completed so they had lost interest in the case, resolving their problem through national law. However, in the judgement the Court referred to the decisions of the Association Council established under the agreement and suggested that these decisions might have sufficient clarity, precision and unconditionality as to have direct legal effects.

Some enterprising Dutch lawyers sought copies of these decisions which had never been published in the Official Journal. On the basis of one of the decisions a second challenge came before the Court.⁵⁰ The key question related to Article 6 of Decision 1/80 of 1980. This provision states that Turkish workers duly registered as such have a right, after one year's employment in a Member State to a renewal of their permission to work provided that the job is still open to them. After three years they are entitled to change job within the sector and retain their right to work. After four years they are entitled to free access to the labour market. Provision is made in Article 7 for family members duly admitted to the state to take employment and at Article 14 there is protection against expulsion except on grounds of public policy, public security and public health.

The second reference to the Court revolved around the question whether a Turkish asylum seeker could rely on the provisions where he had worked for over a year when waiting for a determination of his asylum claim. The Court confirmed that the right to extension of a work permit was a directly effective one but stated that asylum seekers do not have a sufficiently stable and security situation in the labour market to come within the class of persons who could benefit from the provision. Thereafter a series of cases have come before the Court which confirm the rights of Turkish workers to security of residence and work once they have been admitted to a Member State.⁵¹ In short, Turkish workers have a protected position in the labour

49 12/86 Demirel [1986] ECR 3719; for further analysis see Rolf Gutmann, *Die Assoziationsfreizügigkeit türkischer Staatsangehöriger*, Baden-Baden 1996.

50 C-192/89 Sevince [1990] ECR 3461.

51 For a review of the case law see Kees Groenendijk, *The Growing relevance of Article 39 (ex 48) EC Treaty for Third Country Immigrants*, in: Carlier/Verwilghen, *Thirty Years of free movement*.

market once they have been admitted under national rules (not limited to national rules relating to migrant workers). However, these rights only apply in the Member State where they reside. They do not have free movement rights in the Union. They have protection against expulsion to a similarly high level as that applying to Community nationals.⁵²

4.3. Central and Eastern European Nationals

Between 1991 and 1999 the EC entered into agreements with ten countries in Central and Eastern Europe: Bulgaria, Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, Slovakia and Slovenia. All of these agreements are now in force. All include provisions relating to a right of self-employment for nationals of the contracting parties on the territory of the others. The right of establishment (as the self employment right is called in the agreements) is qualified as regards natural persons allowing Member States to apply their national laws on immigration. The question of the tension between a right to be self-employed in the territory of a Member State and the permission granted to Member States to apply their national laws led to four cases which were decided by the Court in September 2001. The decisions in the three cases were handed down together. In *Gloszczuk* two Polish nationals came to the UK and overstayed. Once the Poland Agreement came into force they applied to remain as self-employed persons, having established themselves in the construction business. In *Kondova*⁵³, Ms Kondova, a Bulgarian had entered the UK with a visa, applied for asylum and then established herself in business and applied to remain under the Bulgaria Agreement. In *Barkoci & Malik*⁵⁴, two Czech Roma arrived in the UK and applied for asylum at the border. While their applications were being considered they established themselves in business one as a gardener and the other as a domestic cleaner. In *Jany*⁵⁵ a number of self-employed prostitutes from Central and Eastern European countries had established themselves in business in Amsterdam and appealed against the refusal to provide them with residence permits.

The Member States argued that the provisions of the agreement permitted them to apply all their national laws including the requirement for persons seeking to remain in this capacity to return to seek a visa in their country of origin before travelling. The Court held that the right of establishment is directly effective and it carries with it a right of entry and residence. The

52 C-340/976 Nazli [2000] ECR I-4903.

53 C-235/99 judgement 27 September 2001.

54 C-257/99 judgment 27 September 2001.

55 C-268/99 judgement 20 November 2001.

Member States are permitted to apply their national laws but only to the extent that this is compatible with the right. Thus persons who entered or remained unlawfully on the territory could be required to leave and go back to their country of origin to get a visa but those who arrived lawfully must be permitted the chance to make an application at the border or if lawfully within the country to apply to change their status. As none of the CEECs are now countries whose nationals must obtain a visa to go to any EU state (except the UK which has opted out of the common borders policy), in theory at least it should be easy for nationals of these countries to go to any Member State as a tourist and then to remain for self employment.

The limitation of the movement and residence right to self employment has the effect of forcing CEEC nationals into self employment even where they might prefer another form of economic activity, for instance, employment. It is fairly simple for an economic activity to be recast either as employment or self-employment (one of the major irritants of many EU tax authorities). Depending on the legal relationship between the individual and the entity for which the work is being done many activities can be structured in one way or another. One of the shortcomings however, of self-employment is the relative lack of social protection in most EU systems where social insurance contributions are based on employer contributions in conjunction with employee contributions. The self-employed usually have protection systems which are more expensive and/or less effective in providing protection in times of need. In theory, then, there is little need for nationals of the CEECs to be irregularly employed in any Member State as they have a right to be lawfully self-employed in any of them. The difference between social contributions and the effectiveness of the protection for the individual however, may account for differences in take up rate as self-employed by CEEC nationals as a legal alternative to working in the black.

5. Posted Workers: the Rights of Businesses to Move Workers

»For building workers, moving from place to place is nothing new. It is an historical fact that they always made their migratory rules themselves and organised the way these were supervised [...] On the one hand, building workers have never belonged to the group of financially privileged employees, but, on the other hand despite this, they were always the professional group with a great deal of pride and high level of self confidence«. These are the words of Bruno Koebele, president of the European Federation of Build-

ing and Woodworkers.⁵⁶ The great concern of the Federation in 1994 was the posting of workers from one Member State to another for short periods to fulfil contracts. From the perspective of the Federation, in respect of social contributions, »it can be very financially advantageous for both the undertakings and the posted workers to make long term use of the posting regulations. To achieve this, ingenious workers and employers have looked for the loopholes in the posting regulations«.⁵⁷

I have already referred the judgement of the Court regarding the right of companies to post workers for service provision from one Member State to another (*supra*, re *Vander Elst*). This came at a time when the Community institutions were in serious debate about the question of posted workers. The Commission had submitted a proposal for a Directive on the posting of workers which was under discussion by the Council. It would be adopted in 1996 as Directive 96/71. The issue at the heart of the directive and the *Vander Elst* case was the same – to what extent is it compatible with Community social policy to allow enterprises to use differences in wage levels and social contributions to gain contracts in other Member States to the apparent detriment of enterprises based in that State? For example, if a company based in a low wage country as regards the construction industry such as Portugal or the UK bids for a contract in a State with high wages in the same sector, for instance France or Germany, the Portuguese or British company can bid lower than the local companies using as a sole factor of difference in cost the wage and social contribution differentials between the countries. This competitive advantage only exists though so long as the companies can send their workers from the home State to the host State for the period of the contract and during that period maintain the conditions of employment applicable at home.

Following the first landmark decision of the Court on posted workers, *Rush Portuguesa*⁵⁸, regarding the right of a Portuguese company to send its workforce to Spain to carry out a building contract, the building industry in particular has been sensitive to this issue. The right of businesses to use free movement of services as a means to increase their competitiveness had been confirmed. What had not happened was any compensatory measures on the other side to protect the workers either of the home or host State from exploitation. Two fields were particularly important. The first was wages and working conditions: could a company apply the wages and working conditions legislation of the home State even where the workers were actually car-

56 Bruno Koebele/Jan Cremers, *European Union: Posting of Workers in the Construction Industry*, Bonn 1994, p. 11.

57 Walter S.R. Ritmeijer, *Posting of Workers in the Construction Industry*, in: *ibid.*, p. 177.

58 C-113/89 *Rush Portuguesa* [1990] ECR I-1417.

rying out the work in a host State with a different level of wages and working conditions? Secondly, could companies avoid social contributions in high cost States simply by posting their workers from low cost states and retaining the individuals in the home state social security system? The second question was more easily answered from the legal perspective as the Community had long standing social security legislation which covered this point (amongst many others). I will return to this question of social protection in the next section.

The pressure to regulate posted workers came from high wage States and was resisted primarily by lower wage States. The venue for the debate was the Council discussions on the Posted Workers Directive which stretched from 1991 to 1996 – the period of most substantial unemployment in the Union. The result was a compromise (as all Community legislation ends up) reached after the period of high unemployment in Northern Europe had peaked. There is a complete exclusion for the merchant navy. The directive only applies where employees under a contract of employment are sent either to fulfil a contract or to work for a sister organisation in another Member State and to temporary employment agencies so long as there is a relationship of employment between the individual and the agency. So all forms of self-employment are excluded. Thus one of the bug bears of the German construction trades unions, the arrival of British self-employed builders in Berlin in particular and undercutting local standards was not dealt with.⁵⁹

The directive requires equality of treatment for posted workers under national law or collective agreements of the host State in seven areas:

1. maximum work periods and minimum rest periods;
2. minimum paid annual holidays;
3. minimum rates of pay, including overtime rates but not supplementary occupational pension schemes;
4. conditions of hiring out of workers;
5. health, safety and hygiene at work;
6. protective measures on employment of pregnant women;
7. equality of treatment between men and women and other provisions on non-discrimination.

Exemptions may be made for 2 and 3 (i.e. annual holidays and wages) where the length of the posting is no more than one month or where the amount of work is not significant (it is for the State to determine the meaning of significant). A further let out applies to first installation on supply of goods contracts in the building trades where for the first eight days 2 and 3 do not apply. The directive had to be implemented by 16 December 2001.

59 W. Weipert, Chaos and Loss of Control on Construction Sites, in: Koebele/Cremers, *Posting of Workers in the Construction Industry*, p. 241.

Before the end of the transitional period of the directive (but after its transposition into German law), an action was commenced by a German paid leave fund against a series of primarily Portuguese construction companies operating in Germany (one British company was also included) for failure to disclose and pay contributions to the fund for paid leave for the employees (the rate is 14.45 per cent of gross wages). The companies are required under German law to provide substantial information about wages and working conditions to the fund on a monthly basis so that the various liabilities can be assessed. The eight Portuguese companies and one British company had failed to provide any information although they were operating in Germany in 1997.⁶⁰ The British and Portuguese companies challenged the fund on the grounds that the requirements interfered with their right to provide services in Germany.

The Court began by confirming its previous jurisprudence that posted workers do not enter the labour market of the host State but remain part of the market in their home State. It also noted that the deadline for the transposition of the directive had not passed so it would limit its answers to the question of the correct interpretation of the right of service provision. Could the German government impose its national rules on holiday pay on companies exercising their right to provide services in Germany where those companies were based in other Member States and subject to the employment legislation applicable in the home State?

The Court stated that restrictions to the freedom to provide services can only be justified by overriding requirements relating to the public interest and applicable to all persons and businesses operating in the State and only in so far as that interest is not already safeguarded by the rules of the home State.⁶¹ Further any rules restricting the right must be appropriate for securing the objective and not go beyond what is necessary.⁶² It had been accepted by the national court that the application of the paid holiday rules have the effect of increasing the costs and administrative and economic burden on the defendant companies. Generally, the Court moved back to the national court the assessment of the public policy interest, in particular whether the rules of the fund actually do serve the purpose of protecting workers. As regards the question of additional administrative and economic burdens on the companies established in other Member States – this was also found to be a matter for the national court to assess taking into account that the restrictions must

60 C-49, C-50, C-52–54 and C-68–C71/98 Finalarte [2001] judgement 25 October 2001.

61 C-69/96 & C-376/96 Arblade [1999] ECR I-8453.

62 Here the Court referred to its previous jurisprudence in the area in particular C-165/98 Mazzoleni/ISA [2001] ECR I-2189.

be of the exceptional nature and the interests which they serve must be fundamental.

On the final question the Court gave an indirect but very practical answer to the whole matter. Under the German legislation, companies which are engaged in a variety of activities which include construction, are exempt from the duty to provide information and make contributions to the fund. Only companies exclusively involved in the construction trade are covered. Because of this exception the Court held that the rules could not be applied to companies based in other Member States. The judgement is particularly well written as it leaves to the national court the sensitive questions of an appreciation of overriding reasons of public interest. No doubt the Court had its suspicions as to how the national court would determine that question and thus provided a simple ending for the case – the discrimination between German and other EU companies on the grounds of exceptions for companies active in fields other than construction means that the fund cannot pursue the Portuguese and British companies for the information and the contributions. The right of service provision comes with a right to non-discrimination. That latter right provided the escape route for companies sending posted workers to Germany.

This was not the end of the Community's engagement in posted workers issues specifically with reference to Germany. In 1997, after the adoption of the Community Directive on Posted Workers, Germany amended its national legislation on employment⁶³ in three critical ways. It provided that construction businesses in other Member States:

1. may not provide transfrontier services on the German market as part of a consortium unless they have their seat or at least an establishment in Germany employing their own staff and have concluded a company-wide collective agreement for those staff;
2. may not contract out workers from another country to other construction undertakings unless they have their seat or at least an establishment in Germany employing their own staff and, as members of a German employers' association, are covered by framework and social welfare collective agreements;
3. may not establish in Germany a subsidiary recognised as a construction undertaking if its staff is entrusted solely with work on administration, marketing, planning, supervision and/or wages and salaries, but, in order to be so recognised, such an establishment must employ on the German labour market workers who spent more than 50 per cent of firm's total working time on building sites.

63 Arbeitsförderungs-Reformgesetz (BGBl. 1997 I 594).

This legislation in effect eliminated the competitive advantage which companies based in other Member States might have from differentials in wages and social contributions. As a result a number of construction companies based in other Member States complained to the Commission, which in 1999 brought an action against Germany for failure to respect Community law regarding the right to provide services.⁶⁴ The Court repeated its constant jurisprudence that a requirement to have a permanent establishment in a Member State is a negation of the right to provide services. It acknowledged that the German legislation was intended to secure social protection for workers but it confirmed its position that administrative restrictions, such as the keeping of records on the territory or the presence of a permanent seat, cannot make lawful a restriction on the right to provide services. Thus the Court condemned the German legislation.

6. Social Security and Social Protection: the Community Law Rules

The Community's provisions on social security are designed to give effect to free movement of workers. The fundamental differences in the social security systems of the Member States and the fact that these differences are particularly resistant to change means that co-ordination in the field was necessary.⁶⁵ Harmonisation of social security systems was not considered a realistic option though in 1992 the Council did adopt a recommendation setting out the basis for convergence of social security systems in the Union. Since that recommendation, however, there has been little political will to achieve harmonisation.

The major difference in conception of social security systems is often presented as being between the Bismarkian system of funds which are state controlled, financed by contributions (though the state contributes on behalf of those who are not financially able to do so) and provide insurance against specified risks such as unemployment, illness etc. The protection against the risk is calculated on the basis of income and contribution.⁶⁶ The alternative system is presented as the Beveridge model which is based on general protection of those resident on the territory rather than an insurance system. The

64 C-493/99 *Commission v Germany* judgement 25 October 2001.

65 For a detailed discussion see R. Cornelissen, 25 Years of Regulation (EEC) No 1408/71. Its Achievements and Its Limits, in: Swedish National Social Insurance Board/European Commission (eds.), 25 Years of Regulation (EEC) No 1408/71 in *Social Security for Migrant Workers*, Stockholm 1997.

66 The Special issue on social security of the *European Journal of Migration and Law*, 2, 2000, no. 2 contains a useful selection of articles on the national social security systems and how they fit, comfortably or not, into the EU framework.

only part of the UK social security system still to have these characteristics is the National Health Service. However, the other parts of the system continue to share some of the characteristics, as for instance unemployment benefits which are based on a flat rate system rather than a percentage of previous income or a relationship to amount (as opposed to number) of contributions made.⁶⁷

The EC enters into the framework of social security because of the consequences of national rules for migrant workers in particular.⁶⁸ Thus co-ordination of social security was one of the first areas to be the subject of secondary legislation in this field (now the main secondary legislation is Regulation 1408/71 which has been amended many times) and has given rise to very substantial amounts of jurisprudence from the Court. There are three main principles to Community social security legislation:

1. nationals of one Member State cannot be discriminated against in comparison with own nationals on the state; thus for instance qualifying residence requirements for social benefits are unlikely to be lawful as they will offend against the non-discrimination rule as own nationals are more likely to fulfil them than nationals of other Member States; a good example of this rule is to be found in the *Swaddling* decision of the Court of Justice. The UK introduced a test of habitual residence in the UK for access to a social protection benefit. The Court held this to be incompatible with Community law.⁶⁹ However, waiting periods can be valid, for instance where based on contributions. Here the aggregation rule is important.
2. an individual may be affiliated to only one social security system at a time – normally this should be that of the state in which he or she works but if the intended work in the host Member State is likely to last less than 12 months (with the possibility of renewal for a further 12 months) then the individual should remain affiliated in his or her home state (Article 14 Regulation 1408/71⁷⁰); thus contributions should be continuous

67 For a fuller explanation see Nicholas Timmins, *The Five Giants. A Biography of the Welfare State*, London 1996.

68 For a general discussion of immigration and welfare see Michael Bommes/Andrew Geddes (eds.), *Immigration and Welfare: Challenging the Borders of the Welfare State*, London 2000.

69 C-90/97 *Swaddling* 25 February 1999.

70 1(a) A person employed in the territory of a Member State by an undertaking to which he is normally attached who is posted by that undertaking to the territory of another Member State to perform work there for that undertaking shall continue to be subject to the legislation of the first Member State, provided that the anticipated duration of that work does not exceed 12 months and that he is not sent to replace another person who has completed his term of posting.

and only in one state at a time.⁷¹ To make sure that the contributions are effective, the Regulation requires that contributions made in different Member States be aggregated for the purposes of calculating the level of benefits. The aggregation rule has given rise to large amounts of jurisprudence and works more effectively in some areas, such as pensions, than others such as unemployment benefits.

3. An individual is entitled to export his or her benefits to any other Member State. The most commonly exported benefit is health benefits where individuals travel on holiday within the Union. While unemployment benefits are exportable in theory, in practice the mechanisms are complex and little used. Pension benefits are also widely exported.

The Community Regulation on social security only covers nine fields: (1) sickness and maternity; (2) accidents at work; (3) occupational diseases, (4) invalidity benefits; (5) old age pensions; (there has recently been an extension to supplementary pension schemes) (6) survivor's benefits; (7) death grants; (8) unemployment benefits, and (9) family benefits. The three rules apply to all these kinds of benefits whether or not they are financed by contributions, paid by employers, social insurance institutions or public administrations.

The Community rules do not replace different national social security systems they only seek to tie them together so that the individual does not lose out as a result of movement. The exercise of social security entitlements is premised on substantial documentation requirements. The whole system is highly technical and despite substantial efforts to simplify the system is barely penetrable by a non-expert. As a result many people moving within the Union do not manage to activate their rights.

The example of unemployment benefits is particularly instructive. Where an individual becomes unemployed the institution in the Member State in which he or she seeks to claim unemployment benefit is obliged to take into account periods of insurance or employment completed under the legislation of any other Member State if this is necessary to process the claim. The application of the non-discrimination rule means that the individual is entitled to be treated in the same manner as a national of the State where he or she is living and under the same conditions. But if this requires a specific number of contributions to be completed, then the aggregation rule comes into play. So contributions made in another Member State have to be considered as if contributions made in the Member State where the claim for the unemployment benefit is requested. But then there is the problem of the

71 It does not matter whether a person is employed in one Member State and self-employed in the other. If the social security system does not provide additional protection to the individual it is not permissible for the second state to demand social security contributions; C-00/00 Kemmler 15 February 1996.

amount. In many Member States the amount of unemployment benefit is based on the last salary. Where contributions are being aggregated from salaries at different levels in different Member States according to the rules only the last salary in the Member State where the benefit is claimed should be used to calculate the entitlement but only if the individual has been employed for at least four weeks in that State.

Again the problems are exemplified by access to unemployment benefits while looking for work in another Member State. Unlike some other benefits, unemployment benefit is not paid regardless of the Member State where the individual resides. A person who goes to another Member State to look for work can only access these benefits in the host State if:

1. The person has remained available for unemployment services of the State which pays the benefit for at least four weeks after becoming unemployed;
2. Within seven days of departure from the home State the individual registers with the unemployment services in the host Member State;
3. All measures relating to control have been fulfilled in the host Member State; the unemployment services in the host Member State will pay to the individual unemployment benefits for a maximum of three months and if the individual does not return home after that he or she loses all entitlement to unemployment benefit in both countries.

The mechanism is driven by a series of forms which the individual has to get from the home State before travelling on to the host State where he or she is looking for work or working. While the Commission has sought to set up systems whereby the social benefit authorities of the Member States remain in contact and work together to provide benefits to individuals, the reality is somewhat different.

7. Recognition of Diplomas

While recognition of diplomas has been associated in law with the right to exercise activities as self-employed persons (Article 43 EC) in fact it has substantial consequences for workers moving within the Union. Of the fields under consideration in this study, it is the medical field which is most susceptible to this issue. Free movement of persons cannot be achieved simply by the application of rules on national treatment as this does not deal with issue of obstacles other than those relating to non-possession of nationality of the host State and in particular resulting from the disparity of the conditions laid down by different laws for the acquisition of an appropriate professional qualification.⁷² However, by the end of the transitional period in 1968 no di-

72 271/82 Auer 2 [1983] ECR 2727.

rectives had been adopted on recognition of diplomas. Finally, in the 1970s some sectoral directives were adopted concerning medical and para-medical fields though they were far from complete. Finally the Commission proposed two directives on a general system of recognition of higher education diplomas in order to escape from the impasse which had occurred as regards the sectoral proposals.

The two directives, 86/48 on recognition of higher education diplomas and 92/51 on professional education and training have been amended regularly since their adoption respectively in 1989 and 1992. Most recently the second was amended in July 2001 not least to deal with problems relating to nurses in general care, midwives and doctors.⁷³ First, however, an explanation of the general system of recognition of diplomas. The directives apply specifically to diplomas obtained in the EU. The amendment to the directives in 2001 however require the Member States to examine diplomas and qualifications obtained outside the EU in cases where they have been recognised by at least one Member State in addition to the training and professional experience gained in a Member State. Directive 89/48 provided that the Member States must recognise for the pursuit of a regulated profession:

1. A diploma defined in the directive awarded within a Member State;
2. Two years professional experience full time (or equivalent part time) in the past ten years in a Member State which does not treat the profession as regulated and evidence of education and training as specified.

Where an individual applies for recognition of his or her qualifications the Member States are obliged to provide an answer within three months. In the event that the application is rejected reasons must be given and a right of appeal provided.

The technical rules depending on the profession can be quite complicated and the directive is supplemented by annexes setting out the training schemes in each Member State which qualify for recognition. Specific problems in the medical fields had to be addressed by changes to the Directive in 2001. These amendments include that the diploma must show that the individual has completed successfully a post-secondary course of at least three years duration or equivalent part time at a university or higher education establishment or equivalent. Further, amendments were needed so that people who qualified by reason of a diploma could not also be required to have more professional training than otherwise would be the case. Problems relating to the application of adaptation periods or aptitude tests by host Member States also needed to be controlled. Under the Directive Member States are entitled to require individuals to undergo an adaptation period not exceeding three years or take an aptitude test where appropriate. The choice of

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one or the other must be left open to the individual. These options relate to recognition of diplomas, certificates or corresponding education and training. However these periods/tests could only be applied after the Member State authorities have examined whether the knowledge which the applicant has already is not equivalent to that Member States requirements.

An adaptation period is defined as a period of pursuit of a regulated profession under the responsibility of a qualified member of the profession possibly accompanied by further education and training. The period is the subject of assessment. An aptitude test is a test on the professional knowledge of the individual assessing his or her ability to pursue the profession. It must be limited to essential knowledge and take into account the fact that the individual has already qualified in his or her country of origin.

For nurses and midwives, the diplomas which must be recognised are contained in an annex to the Directive (77/452). However, problems were created by some Member States where any variation in the wording of a diploma from another Member State was considered a reason to reject recognition. Thus in 2001 it was amended both for nurses in general care and midwives to include that persons whose diplomas, certificates or other evidence of formal qualifications in the field covered do not correspond to the names listed for that State in the annex to the directive, the diplomas etc. where accompanied by a certificate from the competent authorities in the State where acquired must be recognised. These certificates must state that the diplomas etc. have been awarded on completion of education and training that complies with the directive and are treated as equivalent in the awarding Member State. The Member States have until 1 January 2003 to change their legislation to bring it into line with the 2001 amendments to the directive.

8. Conclusions

This outline of Community law in the seven areas is intended to facilitate an understanding of the issues which will be important to an analysis of the realities of free movement of persons in three sectoral areas: IT, health care and construction. Each of these areas presents a different challenge to Community law and engages different problems. I shall seek to highlight the main issues in each area.

8.1. Information Technology

The key issues of Community free movement law in this field are found in the limitation of free movement rights to nationals of the Member States. As is apparent from the legal developments in immigration law in a number of Member States, specifically, Germany, Sweden and the UK, special relaxed legal regimes have been introduced for IT workers from third countries to

come to the territory to work. In the discussion around these regimes, officials have been clear that they are competing with other countries (implicitly of the EU) for the best and brightest workers in the field from third countries. Thus the Member States have an interest in keeping within their separate labour market these skills held by non-Community nationals and preventing their circulation to other Member States where higher wages or better working conditions may apply. Companies seeking to best utilise the skills of their employees, whether Community nationals or third country nationals, seek to deploy them on contracts throughout the Union.

8.2. Health Care

Here the key issue is access to better pay and conditions through the recognition of qualifications obtained in other Member States. Mobility in the nursing sector has been plagued by problems relating to recognition of qualifications. The interests of individuals in the health care sector have been to find employment and gain equality in wages and working conditions with nationals of the host Member State. The obstacles which have been encountered are the refusal of authorities in host Member States to recognise qualifications and experience or applying adaptation requirements and aptitude tests. Where persons in the health sector take employment in other Member States if their qualifications from their country of origin are not recognised then they are required to accept employment at lower levels of responsibility and pay than would otherwise be the case. Thus the mechanisms of Community law on recognition of qualifications are of vital interest here.

8.3. Construction

The key issue in this industry as regards the Community free movement regime relates to the application of wage and working condition legislation of the host State. This has two aspects first the definition of the economic activity and social contributions and secondly the posting of workers and application of national wage legislation. Where construction workers move as self-employed persons to carry out activities in another Member State for a short period of time they are entitled to remain affiliated to the social security scheme in their state of origin (normally at lower contribution rates). Some Member States, in particular Germany, have considered this an abuse of free movement rights. Officials in the trade unions have called for stricter regulation of the differences between employment and self-employment. As regards the second issue, companies based in Member States with lower wage and social contributions have used the posting of workers to avoid national legislation on wages and working conditions in the host Member State. This issue again revolves around movement of workers from Portugal and the UK

to Germany. The Court of Justice is becoming increasingly engaged in issues relating to this aspect.

In the empirical work which is being carried out in the context of this project, the degree to which Community law in the three fields is used or ignored by different actors in the attempt to increase the profitability of their activities or to control activities on the national territory will be of substantial interest.

So far in the three sectors, only the third has given rise to jurisprudence before the Court of Justice. The regulation of movement of third country national IT workers has not arisen before the Court. The problems relating to recognition of qualifications appear to be the subject of lobbying and negotiation at the Commission level with the adoption recently of legislation designed to resolve some of the problems occurring in the health sectors. It is not clear from an analysis of the legal texts why this is the case. The strength and organisation of the actors may be one variable – the German social funds have brought actions against Portuguese and UK employers regarding posted workers in the construction industry. The interests of the funds and the resources available to them to pursue companies are much greater than that available to some of the actors in the other two fields.

In the IT field, it may be that the lack of border controls in most of the EU territory means that third country nationals can be sent without difficulty from one Member State to another, for instance from Dusseldorf to Amsterdam, to carry out short projects without needing to get substantial amounts of documentation in order to successfully negotiate a border crossing. Thus the actors may find it easier to avoid regulatory problems and thus do not address them. In the medical field it would appear that legislation at the EU level is seen as the solution to regulatory problems at the national level. The relative weakness of the migrant workers individually may mean that they are not able to contemplate lengthy and expensive legal challenges to the refusal by regulator authorities in the host State to recognise their qualifications. It may also be that the application of adaptation periods is not so onerous that in weighing up the loss which may be encountered through having to work at a lower level of experience than that applicable in the country of origin it is compensated for by the generally higher wages in the host State. The issue then is one left to the professional bodies in the home States to press the Commission to adopt changes to the legislation which will allow their members to achieve higher wages immediately as a result of earlier recognition of qualifications.

Manuel Pedro Baganha

Taxation, Social Benefits and Migration

On the 26th of April of 2002 the Financial Times, with the title »Tax change forces Greeks to set sail from UK«, reported that the proposal made by the government in the pre-budget presentation, to change an article of the tax code that allowed overseas citizens living in the UK to avoid tax, would cause the departure of several Greek shipowners. According to the report there were 60,000 overseas nationals who qualified for the tax privilege but the shipowners were the most economically significant group and, although they were based in London for generations, the non-domicile status was seen as the key reason why so many have stayed in London.

On the surface this story may be seen as another example of the mobility of millionaires looking for residence in tax havens, but looking deeper we see an example of how taxes may affect the movement of individuals between countries. After all there were 60,000 individuals who were taking advantage of the tax privilege.

Following German reunification there was a surge of construction that attracted foreign companies and posted workers at a time of high employment among German construction workers. Pressed by the unions, the German government passed a law regulating posted workers that, among other issues, extended to them the wage agreements of German workers. There were several Portuguese companies carrying out subcontracted works and the new regulation meant an increase in the wages paid to the Portuguese workers displaced to Germany. However, the social security contributions supported by the firms were paid into the Portuguese system and were lower than those paid by German companies. The objective of the measure taken by the German Government, to avoid »social dumping«, was thereby partially offset by the difference in social security contributions.

Given that direct taxation is not harmonised, or even co-ordinated, an individual that spent all his active life in Germany and retired in Portugal would be subject to double taxation: during his working life his contributions to pension schemes would not be exempted and when he retires his benefits would also be taxed. But if he spent his working life in Portugal and retired

in Germany he will have his contributions exempted from taxation and his benefits would also be exempted.

These examples show that taxes and social security contributions have a direct impact on the flow of workers inside the EU, constraining one of the pillars of the Single Market as guaranteed by Article 39 of the Treaties, and the flows from third countries. The last example also supplies evidence for the statement of Richter that »the right to free movement was and still is a privilege of active persons. Non active persons such as recipients of social assistance are effectively constrained in their choice of residence till this very day«¹.

In this paper I want to discuss the possible implications of the current tax and social security systems for labour movement into and inside the EU. I will begin by discussing some of the results provided by economic theory on the impact of immigration. Then, I will present the main developments in the EU, emphasising the debate on tax harmonisation. Finally, using the results from previous sections I will present some conclusions relevant for policy making.

1. The Economic Debate on Immigration

The economic analysis of immigration has been developed along several research questions:

- What is the impact of immigration on host country labour markets?
- What are the determinants of the migration decision by workers in the source country?
- What is the fiscal burden of immigrants?

The discussion of the impact of immigration on host country labour markets has focused on an analysis of the changes in labour market equilibrium induced by the labour flows. Under a set of assumptions, as is usual in economic theory, several authors have shown that these flows help markets reach a more efficient allocation of resources thus increasing the output of the host country. As Borjas put it: »Economic theory implies that immigrants will generally increase the national income that accrues to the native population in the host country, and that these gains are larger the greater the differences in productive endowments between immigrants and natives«².

1 Wolfram F. Richter, *Social Security and Taxation of Labour Subject to Subsidiarity and Freedom of Movement*, IZA , Discussion Paper no. 490, May 2002.

2 George J. Borjas, *The Economic Analysis of Immigration*, in: Orley Ashenfelter/ David Card (eds.), *Handbook of Labour Economics*, vol. 3a, chapter 28, Amsterdam/Oxford 1999.

But the recent debate over immigration flows has revived the old paradigm that immigrants ›take jobs away‹ from the native population. This problem has been tackled by economic theory which has shown that in a competitive economy with market-clearing and full employment, immigration will have a distributional impact on native workers. Those with skills that complement those of immigrants will gain and those with skills that are a substitute of those of the immigrants will lose. As Borjas states: »natives who have productive endowments that complement those of the immigrants gain, while natives who have endowments that compete with those of the immigrants lose«.³

The decision to migrate, from a rational economic perspective, may be seen as a comparison between the differential in revenues in the country of destination and the country of origin and the costs associated with the displacement. Assuming that the costs of the migration process are irrelevant the individual will compare the income he is currently earning with the income he expects to get in the host country. But when making such analysis a rational migrant will compare disposable income thus taking into consideration wages net of taxes and social security contributions. If we take this into account the market equilibrium mentioned above will not promote allocation efficiency.

In a world with total freedom of migratory flows and no taxes, individuals would migrate until the wages in all countries are equal, which translates into equalising the marginal productivity of labour. The marginal productivity of any additional migrant, beyond this market equilibrium, would be greater in his home country than in the host country thus decreasing that country's output more than the increase in the output of the country of destination.

The inclusion of taxes on wages in the analysis completely changes these conclusions. When tax rates are different, net wage equalisation means different gross wages and this is relevant for calculating market equilibrium since this is the effective cost of labour. Thus, with a higher tax rate in the country of destination migration will stop at a level of wage higher for country of destination, which means a higher marginal productivity of labour. An additional migrant has a marginal productivity higher in the host country than in his home country, thus increasing total output. The opposite will happen if the tax rate is lower in the country of destination. This result clearly shows that taxation works as a limitation to an efficient allocation of resources between countries and, at the same time, it may be a blockage to immigration.

3 Ibid.

As described above immigration has substantial distributional effects. In the case of no taxation there will be an equalisation of wages between the two countries. This equalisation means a decrease in wages in the host country and its nationals will lose out.

In the case of taxation similar distributional effects occur but with different intensity depending on the relative tax rates. If the tax rate is higher in the host country the equalisation of net wages translates, as seen above, into wages higher in the host country. Thus its workers will lose less than in the no taxation scenario. The opposite occurs if the tax rate is smaller in the host country – its workers will see a decrease in wages larger than in the no taxation scenario.

The fiscal burden of immigrants has been discussed around the issue of the capability of the immigrants to pay their way through the system. The immigrants will pay (assuming they are not illegal) taxes and contributions to the social security system and will consume the public goods provided by the government and will be entitled to the benefits of the social protection system.

As we have seen above immigration will increase the output of the host country but the impact on government receipts depends on the tax system of the country. In the case that all production factors are taxed at the same rate, government receipts will clearly increase with national workers paying less than before immigration and the owners of capital supporting a higher share of the fiscal burden. When the taxes are different the final result will depend of the relative tax rates.

These results do not take into account the cost of providing public goods to the citizens. In the case of an equal flat rate for all production factors there will be, as described above, an increase in government receipts, but it remains an open question whether that increase is sufficient to support the provision of public goods to the immigrants.

In a very stylised model of migration as follows – two types of labour productivity (skilled and unskilled); every individual can acquire an education that makes him a higher productivity worker; a continuum of individuals varying in the cost of acquiring education; an egalitarian tax rate and the provision of public goods through a lump sum transfer to individuals – Razin and Sadka⁴ have shown that low skilled migration may lead to a lower tax burden and less redistribution.

Another issue related to the fiscal burden of immigrants is their impact on social security, the traditional argument being that immigrants are unskilled and generally at the lowest levels of the income distribution, these

4 Assaf Razin/Efraim Sadka, Tax Burden and Migration. A Political Economy Perspective, IMF Working Paper, WP/97/78, June 1997.

facts implying that they are net receivers of social security (health care, social assistance, unemployment subsidies and pensions). Using an overlapping generations model with two periods and assuming that immigrants' offspring will behave as the descendants of nationals, Razin and Sadka⁵ have shown that under a complete pay-as-you-go system the pension benefits increase with migration. An obvious result is that in the first period immigrants contribute to the pensions of the nationals of the host country (making them better off) and that in the second period their descendants provide for them. Thus the larger the number of immigrants the better off everyone is. If, as is often the case, immigrants have higher fertility rates than the native-born population then there is a possibility of an increase in pensions. This result is particularly relevant for EU countries facing budgetary pressures due to the ageing of their populations.

The results described in the previous paragraphs may be summarised as follows:

- Immigration increases the output (Gross Domestic Product) of the host country.
- Taxation will limit the level of immigration distorting an internationally efficient allocation of resources.
- Immigration may have substantial distributional impact.
- Taxation will limit the welfare losses of some groups of the host country.
- Lower skills immigration may hinder the distributional effects of taxation.
- Immigration may reduce the pressure of ageing populations on pensions.

2. Tax Reform in the European Union

The last years have seen a surge of tax reform in most European Union countries. These reforms are aimed at almost every field of taxation, but particular emphasis has been placed on individual and corporate taxes with the main objective of reducing the negative impact that high marginal tax rates have on labour, production and investment. These reforms are aimed at improving the supply side of the economy and they have been presented, by most of the governments, as one of the elements of the structural reforms needed to implement the Lisbon strategy of making the EU the most competitive economy of the world in the next ten years.

However this impetus of tax reform is occurring at a time of efforts towards a greater tax harmonisation in the EU, needed since there are interdependencies between EU Member States and, consequently, any decision on tax reform by one country will have spillover effects on other countries.

5 Idem, Migration and Pensions, IMF Working Paper, WP/98/165, December 1998.

Historically, the process of tax harmonisation was aimed at facilitating the completion and development of the Single Market which explained the efforts made in the harmonisation of the VAT system, a necessary condition for price convergence. In spite of these efforts, ten years after the launch of the Single Market, there are still large discrepancies in VAT taxes as table 1 shows.

Table 1: VAT Rates applied in Member States

Member State	Super-reduced Rate	Reduced Rate	Standard Rate	›Parking‹ Rate
Belgium	–	6	21	12
Denmark	–	–	25	–
Germany	–	7	16	–
Greece	4	8	18	–
Spain	4	7	16	–
France	2.1	5.5	19.6	–
Ireland	(0)/4.2	12.5	20	12.5
Italy	4	10	20	–
Luxembourg	3	6	15	12
The Netherlands	–	6	19	–
Austria	–	10/12	20	–
Portugal	–	5/12	19	–
Finland	–	8/17	22	–
Sweden	–	6/12	25	–
UK	(0)	5	17.5	–

To this large spectrum of taxes we must add that the basic system established under the Sixth VAT Directive is very complex including a large number of derogations, exemptions, options and special regimes. Note that the Commission's initial proposal, presented in 1987, aimed at two tax bands: a 14–20 per cent standard rate; and a 5–9 per cent reduced rate.

Source: Ben Patterson, Tax Co-ordination in the EU: the Latest Position, Econ 128, Economic Affairs Series, Directorate-General for Research, European Parliament 2001.

The system adopted by the council in 1992 agreed on:

- A minimum standard rate of 15 per cent;
- The option form Member States to apply either a single or dual reduced rate over 5 per cent (goods and services listed in Annex H of the 6th Directive);
- Derogations allowing the application of a zero rate, a super reduced rate or a parking (transitional) rate.

The large diversity of rates implies that the VAT burden will vary a lot among the countries of the EU as table 2 shows.

Moreover, there is still a long way to go in harmonising other consumption taxes. In spite of the efforts made in reducing the categories subject to excise duties (currently they only apply to alcoholic beverages, cigarettes, other manufactured tobacco products and hydrocarbon oils) decisions on rates have always been complicated by disagreements among Member States about the structure of the duties. Another area where the lack of co-ordination is evident is vehicle taxation. The background paper »Vehicle Taxation in the European Union« published by the Commission in 1997 did not induce the opening of a process aimed at co-ordination among the Member States. The main obstacle to start such process is that all Member States use a wide range of tax instruments to get budgetary receipts from road users. The overall impact of consumption taxes is illustrated in table 3.

Table 2: VAT in 1999

VAT in 1999 (% of GDP)	
Italy	5.4
Luxembourg	5.8
Spain	6.2
EU	6.7
United Kingdom	6.8
Germany	6.9
The Netherlands	7.0
Belgium	7.0
Sweden	7.2
Ireland	7.2
Greece	7.5
France	7.8
Portugal	8.0
Finland	8.4
Austria	8.5
Denmark	9.7

Source: Revenue Statistics, OECD 2001.

There are several causes for the delay in harmonising indirect taxation, but the main difficulty is the Treaty itself. Article 93 calls for the harmonisation of »turnover taxes, excise duties and other indirect taxes when necessary to ensure the establishment and functioning of the Internal Market«. But the same article states that any such measure must be adopted by unanimity in the Council. In all Inter-Governmental Conferences (negotiating the Maastricht, Amsterdam

and Nice Treaty revisions) changing this article to majority voting has been opposed by the national governments.

A completely different story occurs in the case of direct taxation since the Treaty does not provide any legal basis for tax harmonisation or tax co-ordination. Legislative action has always been presented as a means to a more general goal: free movement of workers (Art. 39), freedom of establishment (Art. 43), free movement of capital (Art. 56), functioning of single market (Art. 94) or preventing distortions to competition (Art. 96). Thus bilateral treaties have governed most of the co-ordination.

Table 3: Consumption Taxes 1999

Consumption Taxes 1999 (% GDP)	
Italy	10.5
Spain	10.5
Germany	10.6
Sweden	11.3
The Netherlands	11.5
Luxembourg	11.6
United Kingdom	11.7
Belgium	11.8
Ireland	11.9
EU	12.2
France	12.2
Austria	12.6
Greece	13.7
Portugal	14.3
Finland	14.4
Denmark	16.4

Source: Revenue Statistics, OECD 2001.

Given the lack of a legal basis in the Treaty, all the efforts have been developed outside the usual framework with most of the initiatives being resolutions from the Council and not the Commission. Moreover, most of the reforms of tax systems have been pursued through national independent initiatives. Any co-ordination derives from peer pressure in the Council (ECOFIN) and the economic policy co-ordination processes needed for the proper functioning of EMU: the Broad Economic Policy Guidelines⁶, the Stability and

6 The BEPGs have been adopted annually by the Council and their aim is to present an integrated set of recommendations on economic and structural policies providing a yardstick for ex-post assessment in the context of multilateral surveillance. Their bases are articles 2, 4(1) and 99(1) of the Treaty.

Table 4: Personal Income Tax 1999

Personal Income Tax 1999 (as percentage of GDP)	
OECD	9.8
United States	11.7
Canada	14.1
Japan	4.9
Greece	4.4
The Netherlands	5.9
Portugal	5.9
Spain	6.9
Luxembourg	7.8
France	8.3
Germany	9.4
Ireland	9.8
Austria	10.2
United Kingdom	10.5
Italy	10.7
EU	11.1
Belgium	14.1
Finland	14.8
Sweden	18.3
Denmark	25.7

Source: Revenue Statistics, OECD 2001.

Growth Pact⁷, the Luxembourg process⁸, the Cardiff process⁹ and the Cologne process.¹⁰

7 The SGP has as its legal basis article 104 of the Treaty and the Protocol on the excessive deficit procedure, annexed to the Treaty. It aims at maintaining the government deficit to GDP and government debt to GDP ratios below defined reference values. The justification for such values is the need that Member States comply with the principle of sound public finances and avoid excessive deficits in the third phase of the EMU necessary conditions to support price stability.

8 The Luxembourg process consists of the development of employment guidelines and has as its legal basis articles 125, 126 and 128. The objective is the development of a co-ordinated strategy for employment issuing guidelines that will later be used as a benchmark for evaluation of actions taken by Member States.

9 The Cardiff process evaluates annually the structural reforms being undertaken or envisaged by each member state and, using a set of structural indicators with the objective stated in article 98 that »Member States and the Community shall act in accordance with the principle of an open market economy with free competition, favouring an efficient allocation of resources«.

The tax reforms implemented, or in the process of implementation in the EU, have been directed towards corporate taxation, personal income taxation and social contributions. Most, if not all, of these reforms are supply side oriented aiming at reducing distortions in the tax systems and limiting the negative impact of high marginal tax rates on labour, production and investment. Their final objective is to raise factor supply and potential output. The great diversity in personal income tax among EU Member States may be seen in table 4, including the US, Canada, Japan and the OECD average.

The results also suggest that most of the countries in the EU have tax systems more favourable than the US. However this result must be complemented with the analysis of social security contributions, which we do in table 5.

Table 5: Social Security Contributions

Social Security Contributions (in 1999 as % GDP)	
OECD	10.2
United States	6.9
Canada	5.1
Japan	10.9
Denmark	2.1
Ireland	4.2
United Kingdom	6.3
Portugal	8.8
Greece	10.6
Luxembourg	10.9
EU	11.4
Finland	11.8
Spain	12.3
Italy	12.7
Sweden	13.3
Belgium	14.4
Germany	14.8
Austria	15.1
The Netherlands	16.0
France	16.6

Source: Revenue Statistics, OECD 2001.

10 The Cologne European Council decided to set up a Macroeconomic Dialogue at EU level that promotes a regular exchange of views between the Council, the Commission, the ECB and the social partners.

See Euro Paper 45 of the DGEF Co-ordination of Economic Policies in the EU: a presentation of key features of the main procedures for a description of all these processes.

Finally it should be stressed that almost all the EU countries have been promoting decreases in the lowest rates of personal income tax in order to create incentives for lower skilled participation in the labour market as a way of reducing the costs of social welfare.

A significant part of the ongoing tax reforms in the EU is devoted to corporate taxation. The measures taken have aimed at reducing tax rates (both statutory and effective) in order to promote investment and production. In spite of all these efforts there are large discrepancies among the countries of the EU as we can see when we compare effective average corporate tax rates in table 6.

All the EU countries are currently putting in place ambitious programmes of corporate tax rate reduction. However, these programmes have not been followed by decisions to fight harmful tax practices through tax co-ordination.

Table 6: Effective Average Corporate Tax Rates

Country	Overall 1999	Overall 2001	Intan- gibles Build- ings	Indus- trial Build- ings	Ma- chinery	Finan- cial Assets	Inven- tories	Retain- ed Earn- ings	New Equity	Debt
Austria	29.8	27.9	26.4	28.2	26.2	30.9	27.6	30.7	30.7	22.6
Belgium	34.5	34.5	30.7	36.1	31.0	39.2	35.3	39.1	39.1	25.8
Denmark	28.8	27.3	19.9	33.3	24.7	29.3	29.3	30.7	30.7	21.0
Finland	25.5	26.6	25.7	26.6	23.9	28.3	28.3	30.0	30.0	20.8
France	37.5	34.7	27.8	38.2	38.4	35.6	33.8	39.0	39.0	26.8
Germany	39.1	34.9	30.8	36.0	33.0	39.2	35.4	38.7	38.7	27.7
Greece	29.6	28.0	33.3	28.5	31.3	11.9	34.8	32.4	32.4	19.7
Ireland	105	10.5	8.9	15.8	8.2	9.8	9.8	11.7	11.7	8.2
Italy	29.8	27.6	22.5	27.1	24.9	35.1	28.4	28.7	28.7	25.5
Luxembourg	32.2	32.2	28.6	33.7	29.2	36.6	32.9	36.6	36.6	24.0
Netherlands	31.0	31.0	26.7	32.6	29.2	34.2	32.5	35.2	35.2	23.3
Portugal	32.6	30.7	31.3	30.1	26.9	34.4	30.9	34.8	34.8	23.0
Spain	31.0	31.0	31.1	31.8	27.4	34.2	30.7	35.2	35.2	23.3
Sweden	22.9	22.9	19.6	23.4	19.7	25.7	25.7	26.0	26.0	17.1
UK	28.2	28.3	24.2	34.0	24.7	29.3	29.3	31.8	31.8	21.7

Source: Ben Patterson, Tax Co-ordination in the EU: the Latest Position, Econ 128, Economic Affairs Series, Directorate-General for Research, European Parliament 2001.

Tax co-ordination has been a subject of debate for a large period of time both by economists and policy makers with each side presenting sound arguments. The defenders of tax competition claim that:

- Tax competition reduces the pressure for tax increases and consequently limits the possibilities of wasteful public expenditure (‘the profligacy of Princes’ in the words of Adam Smith).
- In the EU tax competition functions in accordance with the principle of subsidiarity and taxation will correspond more closely to citizen preferences. The tax burden is associated with the provision of public goods and national governments are close to the citizens.
- Tax co-ordination might provide incentives for the development of tax cartels.
- Tax competition allows smaller, poorer countries to catch up since co-ordination favours the larger countries.
- Tax competition is a more efficient process to narrow discrepancies between tax rates.
- The principle of ‘no taxation without representation’ is a cornerstone of democracy.

In defence of tax co-ordination we may argue that:

- Tax co-ordination avoids the export of public expenditure costs. Competition generates incentives to lower taxes to attract taxpayers (companies and individuals) from other countries, gaining a larger share of the world tax base.
- The decision of one country may have spillover effects on neighbours (e.g. pollution).
- Tax competition promotes a ‘race to the bottom’, eroding tax bases and undermining public services.
- Tax competition might shift the tax burden from the more mobile to the less mobile factors introducing distortions.
- The lack of tax co-ordination implies a large variety of tax systems, increasing complexity. Complexity is costly to companies operating in more than one tax jurisdiction, is an incentive to tax evasion and increases the costs of tax administration.
- There are other social and political objectives besides economic efficiency.

The EU has been discussing tax harmonisation for over 30 years. The larger steps towards that goal were in the area of indirect taxation and in the context of the launch and development of the single market. In corporate taxation there is the risk of competition leading to a race to the bottom.

3. Conclusion

The EU has made efforts in the last years towards the development of a common migration policy. This process has accelerated recently due to the enlargement of the EU and in the aftermath of the terrorist attacks of 11 September 2001.

Enlargement will turn some of the immigrants inside our borders into ›European citizens‹ with rights enshrined in the Treaty, in particular the freedom of movement. It will also bring a number of potential immigrants closer to the common border.

Economic policy, and in particular tax policy, impacts on these migratory flows, and given the large migratory flows occurring within and into the EU, we should expect policy-makers to be attentive to this impact when designing economic policies. In spite of this there has been no co-ordination between the policy-makers – either at national or European level – responsible for immigration policy and for economic policy.

Any policy reflects a political consensus that incorporates the conflicting desires of numerous interest groups. At national level, parliaments and governments are responsible for balancing those conflicts and defining a policy that better attains that objective. At the EU level, it is quite a different story. The Commission has, according to the Treaties, the right of initiative but the decisions must pass through the European Parliament and the Council. The Council is organised according to areas of intervention (Economic and Financial Affairs, Justice and Home Affairs, for example) what may lead to policies that only look at one side of the problem.

Recent efforts to reduce tax rates at the lower range of the income distribution may make the unskilled labour market more attractive to immigrants. As a result, the supply of unskilled labour might increase, lowering wages and enlarging asymmetries in income distribution, hindering the attainment of the original objective of such measures, which was to reduce unemployment among the unskilled and their burden on social assistance. At the same time, the need to control the increase of immigrant flows may lead the Justice and Home Affairs Council to take measures stricter than otherwise would be needed.

In the coming decades the size and age-profile of the EU's population will change dramatically. The main reasons for these changes are very low fertility rates in almost every country of the Union and an increase in life expectancy. One of the consequences of this evolution will be in the financial viability of the pensions schemes in place in the EU. As some predictions from economic theory show, migration may help reduce this burden. In 1999, the ECOFIN Council gave a mandate to the Economic Policy Committee to study the impact of ageing populations on the fiscal sustainability of public finances. Although demographic projections used in the final report include immigration flows there are no results comparing the potential benefits of migration as an escape valve for the pensions problem.

The definition of a common immigration policy has had as its main goal the control of outside borders and the flows of immigrants into the EU. No efforts have been made in co-ordinating the flows in a way better suited

for each country. Such co-ordination, allocating to each country the immigrants that better complement its internal resources, could increase significantly the potential output of the EU.

In conclusion, a better co-ordination of tax policy between EU Member States might be a powerful tool in the implementation of immigration policy, and a better co-ordination between the different formations of the Council, in particular ECOFIN and JHA, is a necessary condition for the definition and implementation of a coherent EU immigration policy.

Janet Dobson and John Salt

Review of Migration Statistics

This report collates and analyses the statistics contributed by participants in the PEMINT project in fulfilment of Work Package 2. It discusses the nature and quality of the data and draws out implications from the available statistics for the next phases of research. The objectives of this work package were as follows:

- To identify the relevant statistics on recent migration in the six participating countries, with a special emphasis on labour migration
- To identify the relevant statistics on employment of non-nationals in the six participating countries, with a special emphasis on the three sectors selected for this project
- To assess what statistical information is available on trends in foreign employment by skill levels in the six countries
- To identify studies on undocumented migration that are relevant for the project.

All PEMINT participants submitted statistics to the co-ordinating partner in the UK.

The present report combines these, together with some further analysis into a single document.

The PEMINT research teams in the participant countries come from different disciplinary perspectives and have different areas of expertise. The sharing of statistics and knowledge about statistics has enabled a common overview of the main sources of migration data and the picture they present to be developed at the outset. It has provided pointers to sources that may not previously have been considered. Finally it has been valuable in indicating some factors to be taken into account at the next stage.

The report is divided into five parts. Part One gives an overall review of the findings and their implications for the project. Part Two to Part Five present more detailed data, country-by-country and sector-by-sector. A statistical appendix is included at the end.

1. Findings and Implications

1.1. The Nature and Limitations of the Data

It is difficult to make valid comparisons in respect of stocks and flows of foreign workers in the six different countries participating in the PEMINT project because of wide differences in data availability, in sources and methods of data collection and in definitions and coverage. These are spelled out in some detail in Part Two.

For instance, a foreign worker may be construed as meaning a foreign national or as someone who is foreign-born, even if they have taken the citizenship of the country in which they work. Some definitions are very wide-ranging (e.g. relating to overseas birth of a parent) while others are limited to those holding certain types of permits. Total numbers recorded as foreign workers in any particular country may change over time simply as a result of people acquiring citizenship and the extent to which this occurs will differ from country to country. Undocumented migrants are likely to be undercounted in most official records and no hard statistical data has been identified on these. Taken together, these reservations mean that national comparisons should be treated with great caution.

It is particularly difficult to make comparisons about stocks and flows of foreign workers in each employment sector and even more so at the occupational level because data are patchy or non-existent. However, the exercise has pointed up the existence of useful statistical sources which are special to each of the sectors – for instance the registration records of professional associations in the health sector.

The following summaries of information on stocks and flows of foreign population and on the changing scale of foreign employment in the different sectors within each PEMINT country must be seen, not as definitive evidence, but as indicative of patterns and trends which require further investigation.

1.2. Stocks and Flows of Foreign Workers in PEMINT Countries

Most of the data on foreign population set out in the Statistical Appendix refer to *total foreign population* rather than *foreign workers*. The latest figures relating to the working population (Appendix Table 1) indicate that the six PEMINT countries, taken together, have a foreign workforce of around 7.4 million people. Germany has the largest stock with about 2 million foreign workers (or 3.5 using a different source and broader definition), followed by the UK and the Netherlands with over one million each. However, the Dutch figures are much inflated compared with the other countries by including persons with at least one parent who was born abroad (known as the al-

lochtonous population) – in 1998, a separate figure of 224,000 is given for foreign nationals. The latest Swiss figure is 830,000, which includes foreign workers with settlement, annual, cross-border and seasonal permits. The latest Italian figure is 1.34 million and that for Portugal 99,000.

Data on stocks of foreign *population*, as distinct from foreign *workers*, in each of the PEMINT countries (Appendix Tables 2 and 3) present a somewhat different picture from that given in the paragraph above. The aggregate foreign population in the six countries is double the total foreign working population at 13.94 million. Germany still has by far the largest numbers with 7.364 million and the UK is in second place with 2.68 million. Italy is third with 1.51 million. Switzerland is fourth with 1.45 million. The Netherlands has only 700,000 foreign nationals but the allochtonous population is 2.87 million. The latest figure for foreign population in Portugal is 239,000.

It can be seen from Appendix Table 3 that foreign population as a percentage of total population varies considerably from one PEMINT country to another – from 2.3 per cent in Portugal to 20 per cent in Switzerland. Germany, with 8.9 per cent, is the only other country close to double figures. However, it may be noted that there has been no substantial increase in the proportion of foreigners within the total population of most PEMINT countries over the period 1995–2002; the figures for the Netherlands indicate a declining proportion to 1999 then a recovery. Italy shows a continuously rising trend since 1995. The proportion in Switzerland has risen slightly while that of Germany has fluctuated without much change.

Data on inflows, outflows and net flows of foreign population 1995–2002 (Appendix Tables 4–6) show considerable variations between PEMINT countries and between different years. However, from the point of view of the present research, it should be noted that inflows increased in every country after 1998.

The statistics we currently have on the three employment sectors which are the focus of our research – construction, health and ICT – provide some indication of the nature and variation in patterns of foreign employment within these sectors in different PEMINT countries. These are sketched briefly below. It is important to remember points made above about the inadequacies and incompleteness of data and the lack of hard information on undocumented migrants.

1.3. The Construction Sector: A Comparative Analysis

The data so far collected indicate that in all countries apart from the Netherlands and the UK, construction is probably the largest employer of foreign labour among the three sectors. In Germany (with 112,337 in 2000) and Switzerland (with 85,962), the statistics show that the number of foreign workers in the construction sector consistently exceeds the number in the other two

sectors added together. However, in both of these countries foreign nationals working in construction have significantly reduced in numbers over the 1995–2000 period. The UK (with 73,943 in 2000) also has a foreign workforce of significant size in the construction industry and one that has increased since 1995 but the total number of foreign workers is currently less than in either of the other two sectors. In the case of the Netherlands, the total of 8–9000 foreign construction workers is significantly less than the numbers of foreign employees in the other two sectors.

Data from Italy and Portugal are more incomplete than those from the other countries. However, one Italian source suggests that the foreign workforce in construction has been increasing since 1995 and exceeded 50,000 in 1997, while forecast demand for non-EU workers is primarily from the construction industry and less so from the other two sectors. In the case of Portugal, one survey among companies with 20 or more workers found 22,591 non-EU foreign workers in 2001 but there is evidence that the number of undeclared workers is very high. Comparative figures for foreign employees in health in Portugal are much lower but there is no comparative data on ICT.

The composition of foreign workers in terms of nationality seems to vary considerably from country to country. For example, in Germany in 2000, the largest group (albeit much reduced since 1995) appeared to be from former Yugoslavia, followed by the Turks and then the Italians (both also declining). In the Netherlands, the split in the 1995–98 period seemed to be very broadly 50/50 EU/non-EU citizens, with Germany and the UK being the largest components among the former and the Turks and Moroccans the largest among the latter. In Portugal in 2001, EU citizens seemed to be a very small proportion of foreign workers, with East Europeans and citizens of non-European, Portuguese-speaking countries predominating. In Switzerland, on the other hand, the Italians were the largest group in 2000, followed by those from former Yugoslavia and Portugal. In the UK, nearly two-thirds of the foreign nationals in construction in 2000 were EU citizens (no national breakdown, but many will be Irish) but this represents a decline, while non-EU nationals were increasing. In Italy, the number of non-EU nationals seemed to have leapt up in the late nineties.

1.4. The Health Sector: A Comparative Analysis

The UK stands out from the other countries in respect of the numbers of foreign workers – foreign by country of birth, not all foreign citizens – in the health sector: 181,992 in 1995, 220,902 in 2000. Germany has the second largest number with 74,453 in 2000, but this is 10,000 less than in 1996. Swiss figures show a trend in the opposite direction, increasing from 40,290 in 1998 to 44,721 in 2000. Data on Portugal suggest that foreign employees in health in-

creased from 313 in 1994 to 2150 in 1999, and that there are many undeclared workers in this sector. No data was obtained on the stock of foreign health workers in Italy.

There seems to be a complex pattern of national origins among foreign workers in some countries, depending on their occupational roles in the system of health and social care. Overall, the largest group in the German health workforce in 2000 appeared to be from former Yugoslavia, followed by Turkey. In the Netherlands in 1995–98, Germany and the UK seemed to be the largest EU groups and Moroccan citizens the largest non-EU group, with indications of non-EU numbers rising. In Portugal, there was a big increase in Spanish workers but otherwise, non-European Portuguese-speaking countries appeared the main source of foreign labour (including 460 Brazilian dentists out of a total of 640 foreign dentists in 2001!). In Switzerland, EU countries were the main source, with Germany the most significant and Italians comprising the second largest stock in 2000 (though there were larger inflows from France in that year). In the UK, non-European countries have long been the primary source of foreign labour in health care but there is statistical evidence of increasing numbers both from outside and from within the EU. In Italy, statistics are not available but there is evidence of employer demand for non-EU labour, particularly for personal care and related occupations.

1.5. The ICT Sector: A Comparative Analysis

One dominant feature of foreign labour employed in ICT is common to all four PEMINT countries on which data have been obtained: that is, a rapid growth in numbers since 1995. In the UK, the increase in between 1995 and 2000 was 64.3 per cent (from 55,501 to 91,184); the increase in Switzerland was 59.6 per cent (from 6,986 to 11,149); that in Germany was 54 per cent (from 10,725 to 16,514). In the Netherlands, there was a 21.4 per cent increase (from 28,000 to 34,000) between 1995 and 1998, although numbers dipped in between. Because of differing occupational categories used in data collection, too much should not be inferred from the difference in total numbers between the different countries but the trend is unmistakable.

In terms of national origins of ICT workers, India and Turkey were both identified by more than one country. In Germany, the largest groups in the ICT workforce in 2000 appeared to be Austrian and Turkish, followed by UK citizens; however, India and Eastern Europe were the predominant origins of those obtaining work permits in 2001. In the Netherlands, under half of the foreign workforce in 1998 were EU citizens, with the UK and then Germany the largest EU groups and Morocco and then Turkey the largest non-EU groups; however, work permits to non-EU citizens rose enormously in the period 1996–2000. There was an accelerating increase in foreign citi-

zens working in ICT in Switzerland 1995–2000 but no data has so far been obtained on citizenship. In the UK over the same period, the proportion of non-EU citizens among foreign nationals increased markedly; by far the largest number of work permits in 2000 went to citizens of India. Italian data forecast employer demand for non-EU nationals. There are no Portuguese data on this sector.

1.6. Implications for the Next Stage of the Research Plan

The above summaries and the statistical data from which they are drawn indicate some facts which need to be borne in mind during the employer survey:

- There is evidence of changing patterns of labour migration and recruitment. The groups of foreign workers which comprise the largest stocks in each sector are not necessarily those which comprise the largest current flows. Where patterns are changing, we want to know how and why. In some cases this will be obvious – e.g. sizeable reductions in numbers from former Yugoslavia in Germany over the last few years – in others less so.
- The relationship between changes in total employment in a particular sector or occupation and changes in the employment of foreign labour will need to be examined carefully – that is to say, an increase or decrease in numbers of foreign workers may simply reflect trends in the size of the total labour force or may mean a significant change in the proportion of foreign workers employed.
- There is clearly a different pattern of recruitment of foreign workers in relation to different occupations within individual sectors and this is something that our survey can illuminate.
- Certain data suggest that small firms may be looking to recruit foreign labour as well as the larger organisations on which we are focussing and it is possible that the active recruitment of certain skills and expertise may be associated with stages of organisational growth. This is something we may want to explore further.
- We will have to try to maintain our focus on ›migration in an integrating Europe‹ whilst recognising that a high proportion of movement into, and foreign employment within, the six PEMINT countries is of non-EU citizens.

2. Overview of Migration Data by Country

2.1. Germany

German data come from three main administrative sources. The Federal Statistical Office (Wiesbaden) compiles official migration statistics every year on

the basis of data supplied by Germany's registration office. These statistics include the entries and departures of Germans and foreigners. The Federal Administrative Office (Cologne) maintains Germany's central register of foreigners. This register contains, in particular, data on foreigners who stay in Germany for a period of more than three months. This office also compiles statistics on the intake of ethnic Germans from Eastern Europe. The Foreign Employment Service (Nuremberg) compiles labour market, employment and unemployment statistics on German and Foreign workers.

How many foreign workers are there in Germany? In December 1999 there were 7.34 million foreigners legally resident in Germany, 8.9 per cent of the total population. The number has risen comparatively slowly in recent years after much steeper increases in the early 1990s. About 55 per cent were male. Nearly half were aged 21–45 years.

Two figures for foreign workers have been identified. One, 3.54 million in 1999, was calculated from microcensuses and appears to include the employed, unemployed and self-employed. The other, 2.03 million also in 1999, related to those employed and subject to compulsory insurance, 1.99 million of them in western Germany and 45,500 in eastern Germany. The share of foreign employees in the total number of persons employed was 8.9 per cent in the west and 0.9 per cent in the east. About a third of the total were women.

Where do foreign workers come from? Of the total of 7.34 million foreigners living in Germany, 1.84 million, about 25 per cent, were from other EU states. Turks were the largest group (28 per cent), followed by those from former Yugoslavia (10 per cent), Italy (8.4 per cent), Greece (5 per cent) and Poland (4 per cent). About a third of foreign workers were from other EU states. The largest national groups were Turks (28.7 per cent), Yugoslavs (16.7 per cent) and Italians (10.3 per cent). Although these three national proportions are broadly in line with those in the total foreign population, the last two nationalities are somewhat more important in the workforce.

What are the flows of foreign workers? In 1999 the total inflow of foreign population into Germany was 674,000, about 70,000 higher than the year before. With an outflow of around 556,000 the net flow in 1999 was about 118,000.

A total of 434,000 work permits for first-time employment were issued to foreign workers in 1999, 7.7 per cent higher than the year before. However, the number of work permits granted does not provide conclusive information on the evolution of the number of employment relationships existing with foreign workers. In total, in 1999 1.03 million work permits were issued to foreigners, down from 1.37 million in 1995.

What are the origins of the flows? In 1999 the largest flows by origin for all immigration were from former Yugoslavia (87,700), Poland (72,200) and Turkey (47,100).

2.2. Italy

Our Italian colleagues have provided a large amount of statistical information accompanied by very detailed metadata. There are different sources for stocks and flows, giving different figures. Adjustments should also be made to take account of the consequences of regular amnesties and of the large numbers of illegal migrants, especially in Southern Italy.

The detailed notes accompanying the Italian tables will not be rehearsed here but should be consulted by partners wishing to use the statistics. However, in what follows the main sources will be described briefly so that their implications for stocks and flows analysis can be understood. One of the main messages is that official statistics, particularly those forwarded to Eurostat, seriously underestimate the number of foreigners working in Italy.

How many foreign workers are there in Italy? There are no data sources which provide good data on the stocks of foreign population or of foreign workers.

There are two sources of data on the stocks of foreigners: those recorded on the municipal population registers; and those issued with permits to stay by the Ministry of Interior. The first of these measures authorised foreigners who apply to be listed in the municipal register of resident population and for whom ISTAT supplies periodic statistics. Data relate to the end of the calendar year. The second measures the number of permits to stay issued by the police to foreign citizens who can demonstrate an entitlement to stay in Italy for various reasons (work, study, tourism, health, refugee). Young children are registered on their parents' or relatives' permits. Permits to stay underestimate the actual foreign population. They relate to the beginning of the calendar year.

- Using municipal population registers, the number of foreigners registered as resident in Italy in December 2000 was 1,464,289, 2.6 per cent of the total. The importance of these varies regionally, proportions of the total population being lowest in the South, highest in the Centre. In December 1999 the number recorded was 1,270, 553.
- In January 2000 the stock of valid permits was 1,341,000.

Permit to stay data are available for 1993–98 broken down by region of origin and the number issued for work reasons. 1999 data are not directly comparable. However, this breakdown does not give the numbers of active foreign workers. It is merely a surrogate.

- In 1998 there were 1,090,820 valid permits of which 660,630 (60.6 per cent) were for working reasons.

Migrants who hold a regular permit to stay and who are regularly hired are registered at the National Institute for Social Security (INPS). Data on the number of non-EU nationals, for whom an additional contribution has to be made by employers, provide a source of information on the stock of non-EU migrants employed.

- According to INPS data there were 193,000 non-EU nationals registered as workers in 1999, compared with 108,000 in 1995.

There are separate INPS data for those in agriculture and domestic service. Data for the latter are affected by regularisation programmes

- In 1998 there were 103,000 non-EU foreign workers registered in domestic service and 52,000 in agriculture.
- Estimates of numbers of regular and irregular workers (Reyneri, 2001) suggest that in 1998 the total number of non-EU nationals in employment was 924,000, of which 100,000 were irregular workers without a residence permit.

Where do foreign workers come from? In 1998 62,964 permits to stay issued for work reasons were to EU citizens, 9.5 per cent of all permits for work reasons. The rest of Europe provided 24.6 per cent of all permits issued for work reasons. Africa provided 36.7 per cent.

What are the flows of foreign workers? If regularisations are excluded, the number of new permits to stay issued in 1999 was 130,765. Of these, 23,015 were issued for employment reasons, 17.6 per cent of the total. In 1995 there were 24,940 issues for employment reasons, 28 per cent of the total.

What are the origins of the flows? Data on the origins of non-EU nationals receiving new work contracts provide flow information. In 1999 there were 177,383 new contracts. In 1999 the three largest national group were Moroccans (20.5 per cent), Albanians (12.6 per cent) and former Yugoslavians (10.5 per cent).

2.3. The Netherlands

Statistics on the foreign population for the Netherlands are available from the population registers, those on the active population come from the Labour Force Survey (which, historically, has had a relatively low response rate).

Registration data include everyone living in the Netherlands for an indefinite period of time. People are recorded in the municipality where they usually spend the night; those who do not have a fixed residence are recorded in the figures for The Hague. The population registration system also provides flow data, including places of origin and destination.

The Labour Force Survey data record all persons aged 15–64 working at least 12 hours per week. The data are based on a monthly sample of 10,000 households.

Definitions are important in the Netherlands data. Some data are available by nationality and SOPEMI provides historical trend statistics on this basis. However, the Dutch Central Bureau of Statistics (CBS) has for some time recognised a category of population called allochtonous. The population has at least one or both parents born abroad. In summer 1999 CBS started a new definition of the allochtonous population in the Netherlands: »an allochtonous is a person of whom at least one parent is born abroad«. This definition allows for the following distinction between allochtonous belonging to the first and second generation. A first generation allochtonous is a person who was born abroad with one or two parents born abroad; a second generation allochtonous is a person who was born in the Netherlands with one or both parents born abroad. A person with both parents born in the Netherlands is regarded as Dutch.

CBS statistics are now provided on the basis of the new definition, resulting in numbers considerably higher than those based on nationality.

How many foreign workers are there in the Netherlands? The stock of foreign population by nationality residing in the Netherlands in 2000 was 651,500, 4.1 per cent of the total population. This compares with 757,100 in 1995 (4.9 per cent). The decrease is mainly because of naturalisation. The allochtonous population by country of origin (first and second generation) totalled 2,870,235 in 2000, 18 per cent of the total population.

Data from the LFS record nationality. A foreign employee is someone with a non-Dutch nationality working in the Netherlands for at least 12 hours per week. Statistics are available only up to 1998. In 1998 the total number of foreign employees was 224,000, 64.3 per cent of whom were male. In 1995 the total number was 221,000, 69.7 per cent of whom were male. In 1999 the total allochtonous population in the labour force was 1,130,000, 16 per cent of the total. The equivalent figures for 1995 were 981,000 and 14.9 per cent.

Where do foreign workers come from? The EU provided 103,000 foreign national employees in 1998, 46 per cent of the total. Belgians (24,000) and Germans (21,000) were the largest EU sources. From outside the EU the largest groups identified were the 27,000 Moroccans and 26,000 Turks. Amongst the allochtonous workforce, the largest single group identified was Surinamese, 135,000 in 1999, 12 per cent of its total. Turks were 90,000 (8 per cent) and Moroccans 74,000 (6.5 per cent).

What are the flows of foreign workers? There are no data on the flows of foreign workers. Some data are available on total population flows. There is some discrepancy between sources in the statistics of foreign population flows.

According to SOPEMI, the total inflow of foreign nationals in 1999 was 78,400. In the tables provided by CBS (after deducting Dutch nationals) the number is 94176. There is no SOPEMI figure for 2000. The CBS figure of foreign national immigrants for 2000 is 109,033.

What are the origins of the flows? Data are available only for total population flows. Those presented here are from the CBS statistics provided for us. There were 24,229 immigrants in 2000 from other EU countries, 22.2 per cent of the total. The largest EU group was from the UK (5,564). 20,636 came from non-EU European countries, 18.9 per cent. Turkey was the biggest source for this group with 5,393. Beyond Europe, the Dutch Antilles and Aruba was the largest source with 10,167.

2.4. Portugal

The Immigration and Border Department (SEF) of the Ministry of the Interior is the body responsible for controlling the presence of foreigners in Portugal and also maintains a database for statistical purposes. These data refer to the »stock« of foreigners, with legal residence, living in the country. A breakdown is available by nationality and gender, geographical residence and economic activity (labour force and non-economically active population, occupation and professional status).

The source has some limitations: it does not record foreigners residing in an irregular situation; it conditions the definition and cross-tabulation of variables due to the non-computerisation of the process or to the format of certain questions (for example, geographical residence is not obtained by NUTS regions); the demographic characteristics are not always collected (namely the age); a number of socio-economic characteristics are not collected, such as unemployment, sector of economic activity and level of education. Despite the disadvantages, this is the source most widely used for the study of foreigners in Portugal.

SEF also provides flow data (in and out) on foreigners by using applications for a permanent residence authorisation. The relevant date for counting the entry, which is automatically included in the stock, is the year of application, not that of authorisation. The stock figures are also corrected annually to take account of the cessation of permanent residence authorisation. Amongst the relevant information collected during the administrative process on the entries and cessation of the permanent residence authorisations are nationality, sex and age of the individuals.¹

1 From 1992 to 1997, INE conducted, through SEF, a survey of foreigners wishing to obtain a residence permit in Portugal, for the purpose of collecting the first statistics on immigration »flows«. The unreliability of the data led to the discontinuation of this survey and its substitution by the current methodology.

Using current sources, it is not easy to distinguish between *foreigner* and *immigrant*. SEF's foreign stock data (as well as the census) group together foreigners who immigrate and others who were born in the country (non-immigrants). Individuals of foreign nationality (first or second generation) who obtain Portuguese citizenship are no longer included in the statistics on foreigners.

How many foreign workers are there in Portugal? Data on the economically active population come from SEF and are broken down into three occupational status codes: employer and self-employed; wage earner; unknown/other. Between 1990 and 1998, on average 78 per cent of active foreigners were classed as wage earners and 22 per cent as employers or self-employed. Seven occupational categories may be identified: professional, scientific and technical; executive and managerial; clerical; sales workers and vendors; safety, protection, personal and domestic workers; farmers, fisherman, hunters and similar; miners, industrial, transport and construction workers. None of these categories allows identification of numbers in our three sectors.

There are no stock figures yet available by sector of activity. They have been requested from the 1991 census and from the Ministry of Labour but are still awaited. In 1999 there were 191,000 foreign nationals in Portugal, up from 168,000 in 1995 and 107,800 in 1990. In 1999 there were 88,600 active foreigners, compared with 84,400 in 1995 and 51,800 in 1990.

Where do foreign workers come from? It is not possible to produce a breakdown by origin to identify specifically the numbers coming from the rest of the EU or EEA. Statistics are available for continental regions and for selected origin countries. A survey of employers (DETEFP) in 2001 provides some information on the origins of non-EU workers by broad sector. It is a sample survey and does not present an accurate picture of the full foreign workforce.

With regard to the total foreign population, in 1999 56,700 came from other European countries, about 30 per cent of the total. Africa was the main source continent with 89,500, 47 per cent of the total. Cape Verde was the largest single national origin with 43,800 (23 per cent), followed by Brazil (20,900, 11 per cent).

There were 27,400 active foreigners in 1999 from Europe, 31 per cent of the total. Thus, Europeans were about the same proportion of both the total and the active population. Cape Verde provided 21,900 active foreigners (25 per cent of the total), Brazil 9,600 (11 per cent) and Angola 8,200 (9 per cent). Survey data on extra-community workers by economic activity and country of origin listed 43,255 foreign workers, of whom 17,549 were from Europe, 14,511 from PALOP countries and 6,666 from Brazil.

What are the flows of foreign workers? Flow data are derived from permanent residence authorisations, broken down by age and sex. Data are avail-

able according to major activity categories and by the seven occupational categories listed above, now collapsed into four groups. In 1999 there were 14,476 foreign migrant inflows, divided more or less equally into males and females. In 1995 the inflow was 5,025, again with a fairly even sex breakdown. The active immigrant population in 1999 was 4,246, of whom 2,843 (67 per cent) were males. The respective figures in 1995 were 2,227, 1,429 and 64 per cent. There were 4,048 immigrants by occupation. The first two of the seven categories listed above accounted for 1,341 entries (33 per cent); the next three accounted for 960 entries (24 per cent); farmers, fishermen, hunters etc numbered 61; the final category was the biggest with 1,696 entries, the majority of whom were male.

What are the origins of the flows? There is no breakdown for flows by citizenship or country of origin. However, some indication is provided by statistics from the legalisations of 1992 and 1996. PALOP foreigners accounted for three-quarters of amnestied migrants in 1992 and two-thirds in 1996. Brazil was the largest supplier among the rest.

2.5. Switzerland

Separate data are available for permanent, seasonal and frontier workers. The data below are the aggregate totals for all of these categories. There is a breakdown by sex, for individual Western European countries, selected countries of Eastern Europe, the US and Vietnam.

How many foreign workers are there in Switzerland? In 2000 the active foreign population totalled 885,759, of whom 556,118 (63 per cent) were male. In 1995 the equivalent figures were 895,735, 576,604 and 64 per cent. In 2000 the total active population contained 717,275 people who had annual permits and were permanent residents, 12,559 seasonal workers and 155,955 frontier workers. In 1995 the total active foreign population contained 728,672 people who had annual permits and were permanent residents, 16,080 seasonal workers and 150,983 frontier workers.

Where do foreign workers come from? In 2000 621,547 active foreigners were from EU and EFTA countries, 70 per cent of the total. 71 per cent of males and 69 per cent of females were from these countries. Of those from EU and EFTA countries, the largest group in 2000 was the 212,557 Italians, 24 per cent of all active foreigners. The next largest groups were the French (12.8 per cent), Germans (11.3 per cent), Portuguese (9.3 per cent) and Spaniards (5.7 per cent). Of those nationalities identified beyond EU and EFTA countries, the largest group was former Yugoslavs (9.3 per cent), followed by Turks (3.8 per cent). Compared with 1996, numbers of French and Germans increased, those of Italians, Portuguese and Spaniards decreased. Those of Turks changed little; data for former Yugoslavs are not available for 1996.

What are the flows of foreign workers? Data are available for 2000 by economic sector, type of permit, citizenship and sex. The total inflow (annual permits and permanent permits, including transformation of seasonal into non-seasonal permits) in 2000 was 87,448, of whom 44,222 (51 per cent) were male. Without this transformation the numbers were 85,582 and 42,884. The total number of seasonal permits was 49,284, 33,190 of which were for males.

What are the origins of the flows? Data are available for a limited number of national origins: Germany, France, Italy, Austria, Spain, Portugal, Yugoslavia, Turkey, Others. With this breakdown it is not possible to identify the numbers coming from EU and EFTA countries. The largest source for the total inflow identified is Germany with 12,516, 14.3 per cent of the total. This is followed by former Yugoslavia and France (7.7 and 7.6 per cent), Italy (6.2 per cent) and Portugal (5.6 per cent). The residual 'Other' category held 51.2 per cent of inflows. For seasonal workers the inflow was 49,284. The largest group was from Portugal (22,542, 52 per cent), followed by Italians (15 per cent) and Germans (11 per cent)

2.6. United Kingdom

The only source of data on stocks of foreign nationals is the sample Labour Force Survey. It also provides information by country of birth. For the UK the sample numbers by country of birth are almost double those of foreign nationals. The survey includes all UK and foreign citizens. The nationality question means that all foreigners are included, and the LFS provides the only source on EU nationals working in the UK. Data are available in the LFS on a wide range of variables, including nationality, age, sex, occupation, industry, region of destination and ethnicity. The decennial Census (latest figures available are from 1991) provides country of birth data but not nationality.

The Office for National Statistics (ONS) is fairly confident that migrant communities are suitably represented in the LFS (interpreters are provided for those who are not proficient in the English language, for example). However, as a voluntary survey, it is likely that the LFS has a lower response rate from illegal migrants. Owing to the nature of illegal migration and working, conventional data sources are likely to exclude the bulk of the illegal population. Those members of the illegal population who entered legally (for example, overstayers on work permits) may be well-integrated in UK society and thus more likely to be included in the conventional and administrative data sources.

Before 1992, about 80,000 addresses were surveyed in a spring 'boost' sample. The new quarterly survey, from 1992 onwards, consists of five 'waves', each containing about 12,000 households. One consequence of the change is that the data before and from that date are not directly comparable. The response rate is estimated to be of the order of 80–90 per cent.

A major drawback is the small size of the sample. The application of grossing factors means that one sample interviewee is aggregated up to about 300 people in total. In consequence, weighted figures below 10,000 are too small to be used with any degree of accuracy (even then the error is +/- 3,000). This constraint constitutes a major problem when dealing with foreign nationals whose numbers are relatively small. Stock figures may be below this threshold for individual nationalities, particularly when any disaggregation into migrant characteristics is attempted.

How many foreign workers are there in the UK? The LFS recorded a foreign national population in the UK in 2000 of 2.342 million compared to 1.948 million in 1995 and in 2000 foreigners constituted 4 per cent of the total population. At the same three dates the foreign workforce totalled 1.107 million, 862,000 and 902,000 respectively. In 2000 the foreign-born workforce was 2.190 million, 7.9 per cent of the total, in 1995 it was 1.832 million, 7 per cent and in 1992 1.929 million, 7.5 per cent.

Where do foreign workers come from? In 2000 865,000 citizens of EU and EFTA countries lived in the UK; they were 37 per cent of all foreigners. There were 846,000 citizens from other EU states, 36.1 per cent of the total. In the same year there were 452,000 citizens from other EU countries working in the UK, 40.8 per cent of the total working. Of those working in the UK in 2000, the main non-European nationalities were Indians (74,000, 6.7 per cent), Americans (61,000, 5.5 per cent), Australians (54,000, 4.9 per cent). Of those working in the UK in 2000, the main European national groups were Irish (206,000, 18.6 per cent of all foreign nationals), Italians (55,000, 5 per cent), French (48,000, 4.3 per cent), Germans (33,000, 3 per cent) and Spanish (30,000, 2.7 per cent).

What are the flows of foreign workers? There are four main sources of data on foreign worker flows: International Passenger Survey; Labour Force Survey; Work Permits; National Insurance.

International Passenger Survey

The IPS is a continuing voluntary sample survey conducted by the Office of National Statistics (formerly the Office of Population Censuses and Surveys) which covers the principal air and sea routes between the UK and overseas. Until 1999 the IPS did not cover routes between the UK and the Irish Republic. Previously flows between the two countries were estimated using other sources. It is the only demographic source, giving both immigration and emigration statistics: thus it has considerable value.

Most of those surveyed are short-term travellers, but a sub-sample of ›migrants‹ is identified. A migrant into the UK is a person who has resided abroad for a year or more and on entering has declared the intention to stay in the UK for a year or more. A migrant from the UK is a person who has re-

sided in the UK for a year or more and on leaving has declared the intention to reside abroad for a year or more. These definitions are coincidental with those of the United Nations.

Data are available on citizenship, country of origin, destination region, age, sex, and occupational status. Unfortunately, the sample size of ›migrants‹ is small, around 2,500 in all, making its use as an indicator of the detailed characteristics of migrants limited. Also, its definition is based on intention to stay, and there is no guarantee that those recorded as migrants do actually come or go for the specified period.

There is a breakdown into those who are in the labour force before moving and those who are not: the former are subdivided into two groups, professional and managerial workers and manual and clerical workers.

Labour Force Survey

The LFS provides transition data on immigrants to the UK, by asking for address one year ago. It does not provide flow data. Because of small sample size breakdowns showing the characteristics of individual nationalities are rarely possible. For only the major national groups (such as Irish) are total numbers of immigrants available.

Work Permits

The employment of people who are subject to immigration control is regulated by the granting of work permits from the Home Office's Work Permits (UK). Under the 1971 Immigration Act a work permit is granted to a specific employer for a named person for a specific job.

Work permits are granted to employers, not workers. There is no check on whether the nominated worker actually enters the UK, nor whether he/she stays for the full duration of the permit. Some people do take up work illegally, without a permit. Their number is not known, but they are likely to be concentrated in labour intensive and low-paid occupations such as catering and cleaning.

Not requiring Work Permits (UK) approval are certain permit-free categories (e.g. clergy), working holidaymakers (young Commonwealth citizens between 17 and 27), and dependants of work permit holders. These miscellaneous groups may, in fact, be quite significant in the short-term labour market.

Permits are issued for varying periods, but effectively they are either short-term (under one year) or long-term (one year or more). Most short-term permits go to entertainers and sportspeople, most long-term permits to managerial and professional staff. Data are available by nationality, occupation, and industrial group.

National Insurance

The data, produced by the Department of Social Security, have their origin in EU Regulations during the 1970s designed to collect homogeneous statistics on foreign workers, using social security records. They are based on the issue to all new workers, including those from overseas, of a National Insurance card. Until April 1997 tables were produced on the numbers of newly entering foreign workers paying at least one NI contribution during the year, broken down by national origin. After 1997 production of the statistics ceased.

An adjustment is made to the IPS statistics to take account of those (mainly asylum seekers) who claim on entering the UK that their stay intention is less than one year but who subsequently remain for more than a year. Some migrants who seek to enter illegally are detected and their numbers are published.

The numbers of foreign workers coming to the UK in 2000, according to the various sources, was as follows:

- According to the IPS there were 154,000 who entered the UK during the year and who had been working prior to entry. Around 83,000 who had been working left the UK, giving a net gain of 71,000 foreign workers.
- According to the LFS there were 87,000 foreign nationals working in the UK and who had been living outside the UK a year before.
- The number of work permits issued in 2000 was 64,741.
- In 1997, the last year for which there are national insurance data, the number of incoming foreign workers for each source was: IPS 79,000; LFS 59,000; Work Permits 42,433; National Insurance 130,300.

What are the origins of the flows? The statistics presented here relate to two sources only, the IPS and the LFS. Data from the IPS relate to the annual average during the five-year period 1995–99, those from the LFS for the year 2000. Because both are sample sources, a detailed breakdown by country of origin is not possible.

According to the IPS, the largest annual flow was from the Old Commonwealth group of countries (Australia, New Zealand, Canada, South Africa), 30,700. This was followed by EU/EFTA states, 27,000. Those from Other Foreign Developed Countries totalled 14,100, from the Indian Sub-continent 7,000, East and Other Europe 4,700 and Rest of the World 14,900.

According to the LFS the number of foreign workers entering in 1999–2000 from the rest of the EU was 28,000, with 59,000 coming from non-EU countries. Among the latter were 12,000 from Africa, 12,000 from North America and 15,000 from Australia and New Zealand.

3. Construction Sector

3.1. Germany

How many foreign workers are there in the German construction sector at present and what are their countries of origin? The stocks of foreign workers in the German construction sector are derived from statistics collected by the Federal Office of Labour. These are extensive and detailed. The data are divided into East and West Germany and have been aggregated. Figures for the former are very small. Federal Office of Labour data indicate the following:

- The total number of persons in the German construction workforce has declined over the period 1995 to 2000, from 1,456,595 to 1,080,292. The number of foreign construction workers has also declined from 1995 to 2000, from 180,172 to 112,337.
- There is a large disparity in the distribution of foreign construction workers between East and West Germany, approximately 95 per cent of the total being recorded in West Germany. This distribution has remained the same 1995–2000.
- The proportion of foreign workers in the total construction workforce in Germany has decreased, from 12.4 per cent of the total in 1995 to 10.4 per cent in 2000. The decline was more pronounced in West Germany where the proportion fell from 17.9 per cent to 14.2 per cent. This fall was largest in 1998–1999.
- The largest group of foreign workers in 1995 were from Yugoslavia with 65,617, declining steadily to 25,430 in 2000. (However, at the latter date, there were 3744 Croatians and 2703 Bosnians). The second largest was from Turkey, with 38,548 in 1995 declining to 27,565 in 2000. Italy was third, with 20,493 declining to 16,225 in 2000. Portugal was fourth in 2000 with 6570, having reached a high point of 7221 in 1998. Among source countries with more than 1000 workers in 2000, only Albania had shown a steady increase in numbers over the preceding five years, from 856 to 1235.
- The majority of foreign employees from PEMINT countries are in West Germany. The majority of those in East Germany are from Portugal (only 373).

3.2. Italy

How many foreign workers are there in the Italian construction sector at present and what are their countries of origin? As discussed earlier, there are no national statistics on the stock of migrants living in Italy or working in Italy. Data provided by EUROSTAT and ISTAT (National Statistical Institute) are not robust and are believed to seriously underestimate the number of foreign

citizens living and working in Italy. Some statistics on non-EU workers in the construction sector are available from administrative statistics held by the INPS (National Institute for Social Security). These data are taken from the firms' archive and may underestimate numbers, both because of non-notification by firms and because of delays in the procedure; delays are most likely to affect recent figures.

In 1996–97, the Industry and Services Interim Census took place, in which employers were asked about the number of foreign workers they were employing from both EU and non-EU countries. This is another source of information on the construction industry. It probably only includes the number of foreign workers regularly employed.

Statistics on foreign construction workers non-resident in Italy are available from ISTAT National Accounts data. ISTAT provides data on the number of full- and part-time workers (working positions) involved in the income-production process during the year, aggregating statistics from several sources. Among National Accounts data is a category defined as 'foreign workers non-resident in Italy'. Some Italian researchers consider these to be irregular workers but it appears that the great majority are registered employees that the Italian Labour Force Survey does not manage to count.

The INPS data indicate the following:

- From 1991 to 1995, the annual average number of non-EU citizens registered as dependent workers in the firms' archive within the construction sector was fairly stable. It then rose from 13,579 in 1995 to 24,385 in 1999.
- This change represents a 79.6 per cent increase in numbers, almost exactly the same increase as the 79 per cent rise in the total registered in all sectors over the same five-year period.

The Industry and Services Interim Census data indicate the following:

- Out of a total of 1,320,557 workers employed in construction on 31 December 1997, 19,608 were non-EU citizens – 1.5 per cent.
- This total can be compared to the total recorded in the INPS data at the same date – 21,477.

The ISTAT National Accounts data indicate the following:

- The number of foreign workers non-resident in Italy employed in the construction industry began to rise after 1995 from a total of 45,100 to 47,600 in 1996 and 52,100 in 1997.
- They represented 4.2 per cent of the construction workforce in 1995, 4.6 per cent in 1996 and 4.9 per cent in 1997. These proportions are very different from those derived from the Census but presumably include both EU and non-EU citizens.

- In 1997, foreign workers non-resident in Italy and working in construction comprised 7.3 per cent of all foreign non-resident workers in all sectors of employment.

How large are current migration flows of foreign workers in the construction sector and what are the source countries? There are no sources of information with which to answer this question. However, since the mid-1990s, the Italian Ministry of Labour and the Union of the local Chambers of Commerce have promoted a periodic enquiry among employers which asks them to forecast their future labour recruitment. In the two most recent surveys (forecasts to 1999–2000 and to 2001), they have been asked whether and how many new openings would be addressed to non-EU workers. These figures are likely to give an indication of patterns of foreign (non-EU) labour demand if not of actual labour migration. Potential seasonal job openings are also forecasted.

Forecasts of labour requirements indicate the following:

- The minimum number of potential job openings in construction for non-EU workers in 2001 was forecast at 19,408 and the maximum 21,149.
- ›Building frame and related trades workers‹ is the occupational category in which there is the third greatest requirement for non-EU foreign workers according to 2001 forecasts. Only domestic and related jobs and hotels and catering rank above it in terms of total numbers expected to be needed. 11,152 job openings for non-EU foreign workers are forecast for this occupational category (29.5 per cent of all job openings in this type of employment).
- Painters, building structure cleaners and related trades are also listed among the most required occupations, with a forecast of 4,711 job openings in 2001 addressed to non-EU foreign labour (36.8 per cent of all job openings in this type of employment).
- Overall, taking all occupational categories together, 20.9 per cent of job openings are forecast to be addressed to non-EU foreign workers. Construction can thus be seen as higher than average in this respect.
- Unlike in the health and ICT sectors, the forecast demand for construction workers who are non-EU citizens in 2001 came overwhelmingly from small firms – three quarters of the demand came from firms with less than 10 employees and only 8.6 per cent of forecast job openings were in firms with 50 or more workers.

3.3. The Netherlands

How many foreign workers are there in the construction sector in the Netherlands at present and what are their countries of origin? The Central Bureau for Statistics produces annual data on the total labour force in different sectors of economic activity and the number of foreign employees in each, broken down

by country of origin (methodology described earlier). Foreign employees are foreign citizens who work in the Netherlands for the government or a private company for at least 12 hours a week, for which they receive a wage or salary. Diplomats and people who work for international organisations are not included. Unfortunately, no data are available for 1999 and 2000. The Central Bureau also produces figures on vacancies by sector. In addition, statistics are available on work permits issued to non-EU foreign workers in each sector.

Central Bureau for Statistics data indicate the following:

- The foreign working population in construction in the Netherlands was fairly stable over the period 1995–98, with a total of 8–9000 workers. Of this total, 4000 were EU citizens – 5000 in 1998. The largest components during the period as a whole were from Germany and the UK.
- Turkish citizens were the largest component of non-EU workers, followed by the Moroccans.
- The total labour force in construction in the Netherlands rose steadily from 400,000 in 1995 to 441,000 in 1998 and 461,000 in 1999, dropping back to 456,000 in 2000.
- There was an accelerating increase in the number of job vacancies needing to be filled in the construction industry between 1995 and 2000.

Work permit data indicate the following:

- Work permits issued to non-EU foreign workers in the construction industry more than trebled between 1996 and 1999, from 50 to 176, before falling back slightly to 159 in 2000.
- Work permits to construction sector workers comprised about 1 per cent of all work permits in 1999.

3.4. Portugal

How many foreign workers are there in the Portuguese construction sector at present and what are their countries of origin? There are a number of sources which help to build up a picture of stocks of foreign workers in the Portuguese construction industry. Data from the INE give the size of the total construction workforce, Portuguese and foreign. Data are collected by DETEFP on foreigners working in enterprises with 100 or more employees by sector of activity, including construction. A survey in 2001, conducted by DETEFP among 15,000 companies with 20 or more workers also contains data on construction. The Census of 1991 and MESS (Quadros de Pessoal) 1991, taken together, provide data on undeclared workers.

The INE data indicate the following:

- There was a decline in total employment in construction in Portugal in the early nineties followed by a steady increase from 1995 to 2000, when there was a total construction workforce of 593,500 (Portuguese and foreign).

The DETEFP statistics on foreigners in enterprises with 100+ workers indicate:

- The total number of EU workers in construction is small: 99 in 1996, 100 in 1997 and 78 in 1998. The total number of PALOP workers is very much larger: 2383 in 1996, 2347 in 1997, 1470 in 1998.

The DETEFP survey found the following:

- In 2001, there were 22,591 non-EU foreign workers in the construction companies surveyed: 12,557 from Eastern Europe, 5678 from Africa (PALOP), 1953 from Brazil, 946 from Africa (other), 478 from South America (other) and 979 from other countries.
- Within the employment sectors covered by the survey, over half of all the non-EU foreign workers enumerated were to be found in construction.

The Census and MESS data indicate:

- Construction has one of the highest rates of undeclared workers (above 45 per cent or 150,000 in 1991). The overall rate of non-declared workers was 20.8 per cent.

3.5. Switzerland

How many foreign workers are there in the Swiss construction sector at present and what are their countries of origin? Detailed data on foreign workers in Switzerland are available from the Federal Office for Foreigners. Statistics are produced on total foreign working population with a breakdown by annual permits and permanent residents, seasonal workers and 'borderers' (persons living across the border but working in Switzerland). Data on citizenship of foreign workers by economic sector, excluding those with short-term permits, are also published.

Federal Office for Foreigners data indicate the following:

- The total foreign population (all categories) working in construction in Switzerland declined steadily from 108,987 in 1995 to 85,478 in 1999.
- Over the 1995–99 period, it diminished from 12.2 per cent to 10 per cent of the total foreign working population.
- The foreign working population in the construction sector in 2000, excluding those with short-term permits, was 84,200 (321 more than in the previous year).
- The principal countries of origin of these workers in 2000 were Italy with 26,307 workers (494 fewer than in 1999); F.R.Yugoslavia with 13,789 (11

fewer than in 1999); Portugal with 13,535 (295 more than in 1999); Spain with 6641 (406 fewer than in 1999); France with 4974 (307 more than in 1999); and Germany with 3554 (208 more than in 1999).

How large are current migration flows of foreign workers in the construction sector and what are the source countries? The Federal Office for Foreigners collects annual data on foreign workers entering Switzerland by citizenship.

Federal Office for Foreigners data indicate the following:

- Foreign workers who entered Switzerland in the year 2000 totalled 2011.
- Principal countries of origin of these migrants were Portugal with 424, Italy 408, Austria 310, Yugoslavia 212, Germany 208 and Spain 110.

3.6. United Kingdom

How many foreign workers are there in the UK construction sector at present and what are their countries of origin? The only national source of data on this is the Labour Force Survey (LFS). Its limitations are discussed earlier. In respect of identifying numbers of workers in construction, the small sample size precludes reliance on detailed figures by occupation, especially for individual nationalities. However, data at the 3-digit level have been amalgamated to produce statistics on the total foreign workforce in the sector, based on country of birth and on nationality.

The LFS data indicate the following:

- In Spring 2000, there were 73,943 construction workers in the UK labour force who were born in another country and 40,056 who were foreign citizens.
- In Spring 1995, there were 71,291 born in another country and 41,348 who were foreign citizens. There has thus been an increase in the former but a decrease in the latter in the 1995–2000 period.
- The total construction workforce in 2000 was 1,781,811: 2.2 per cent were foreign citizens. Comparable figures for 1995 were 1,687,927 and 2.4 per cent.
- Among those construction workers of foreign nationality, 62.1 per cent were EU/EFTA citizens in 2000, compared to 71.4 per cent in 1995.
- Actual numbers of EU/EFTA citizens working in construction fell to 24,870 in 2000 from 29,527 in 1995, while numbers of other foreign workers rose to 15,186 from 11,821.
- Within the construction sector, none of the separate occupational groupings contained as many as 10,000 foreign workers.

How large are current migration flows of foreign workers in the construction sector and what are the source countries? The LFS provides transition data on immigrants to the UK by asking for address one year ago but numbers are too

small to use in relation to particular employment sectors. Work Permit statistics are the only source to indicate the size of such inflows and these figures do not include people (e.g. asylum seekers) who may enter the country for another stated purpose but later join the labour force. As explained earlier, unpublished Work Permit data by nationality, SIC (industrial classification) and SOC (occupational classification) have been obtained and analysed.

LFS data on Work Permits (granted to foreigners resident outside the UK) and First Permissions (granted to foreigners already resident within the UK) are combined below:

- The number of Work Permits and First Permissions granted in the construction industry rose to 751 in year 2000 from 182 in 1995, an increase of 313 per cent.
- Total Work Permits and First Permissions granted in all sectors rose to 64,575 in 2000 from 24,161 in 1995, an increase of 167 per cent. Thus it can be seen that the increase in the construction sector was greater than the overall increase, albeit starting from a small base.
- As a proportion of all Work Permits and First Permissions, the construction sector accounted for 1.2 per cent in 2000, compared to 0.8 per cent in 1995.
- The Work Permit data does not reveal a particular source country or countries for construction workers.

4. Health Sector

4.1. Germany

How many foreign workers are there in the German health sector at present and what are their countries of origin? The stocks of foreign workers in the German health sector are derived from statistics collected by the Federal Office of Labour. These are extensive and detailed. The data are divided into East and West Germany and have been aggregated. Figures for the former are very small. Information on numbers of foreign doctors in Germany is recorded by the German Medical Federation.

Federal Office of Labour data indicate the following:

- The number of foreign health workers in Germany decreased between 1995 and 2000 from 80,971 to 74,453, though the total rose to 84,712 in 1996 and there was an upturn in 2000. This decrease in foreign workers occurred during a general trend of increase in the total health workforce to 1,994,358 in 2000.
- 98 per cent of the total foreign workforce in the health sector was recorded as being in West Germany throughout 1995–2000, whereas the equivalent

proportion of German health workers in West Germany was approximately 81 per cent.

- The percentage of foreign health workers to the total health workforce declined from 4.5 per cent in 1995 to 3.7 per cent in 2000. In West Germany, the figure was about 5 per cent, in East Germany 0.5 per cent.
- Yugoslavia made the largest contribution to the German health sector in 1995 with 17,586 workers. Their recorded numbers declined continuously to 9400 in 2000 but at that date there were 2978 Croatians and 1950 Bosnians. Turkish workers were the largest group in 2000 with 11,313 workers, having fluctuated throughout the period and reached a high point of 12,291 in 1998. Poland were third (4689) and Austria fourth (3504) in 2000.
- Dutch nationals have remained the largest group from a PEMINT country in the foreign health workforce with 3456 in 2000. Italian nationals increased from 2790 in 1995 to 3171 in 2000.
- The number of health workers from the remaining PEMINT countries all remained steady or decreased 1995–2000. Employees from the UK fell from 1400 to 993 and Swiss workers declined from 837 to 614.

German Medical Association data indicate:

- In December 2000, there were 14,603 foreign doctors in Germany, of whom 6581 were working in hospitals, 3390 were self-employed, 1680 were in other medical employment and 2952 were not employed/not working as doctors.
- 4019 (27.5 per cent of all foreign doctors) were from EU countries. The principal source countries were: Greece (954), Italy (525) and the Netherlands (498). Portugal provided 285, Great Britain 166.
- 5397 (37 per cent of all foreign doctors) were from the rest of Europe. The principal source countries were the Soviet Union (914), Turkey (726), Poland (683), Romania (540), Yugoslavia (519) and Russia (501). Switzerland provided 118.
- There were considerable variations in the proportion of doctors from different European countries who were not employed or not working as doctors. Portugal had a relatively high proportion (31 per cent), as did the Soviet Union (41 per cent).
- There were also great variations country-by-country in the proportion of European doctors working in hospitals, self-employed or in other medical employment. For example, nearly 97 per cent of Austrian doctors practicing medicine were working in hospitals, whereas doctors from the Netherlands, Portugal, France and Denmark were more numerous among the self-employed. Of the total numbers practicing medicine, around 56–57 per cent of EU and other European doctors were working in hospitals but the former had a higher proportion (31 per cent) than the latter (23 per cent) self-employed.

- 5187 doctors (35.5 per cent of all foreign doctors) came from non-European countries. The principal source countries were Iran (1514) and Syria (434).
- Iranian doctors were the largest group of foreign doctors from any source country working in German hospitals (637), with Greece in second place (511). Iranians were also the largest group of self-employed doctors (405), followed by those from Greece (245).

4.2. Italy

How many foreign workers are there in the Italian health sector at present and what are their countries of origin? As discussed earlier, there are no national statistics on the stock of migrants living in Italy or working in Italy. Data provided by EUROSTAT and ISTAT (National Statistical Institute) are not robust and are believed to seriously underestimate the number of foreign citizens living and working in Italy. Statistical sources used in respect of those employed in the Italian construction sector do not identify the health sector separately and therefore cannot be used to estimate stocks of foreign workers in health occupations.

The only exception to this are the statistics on foreign workers non-resident in Italy who are employed in private health services, derived from ISTAT National Accounts data. ISTAT provides data on the number of full- and part-time workers (working positions) involved in the income-production process during the year, aggregating statistics from several sources. Among National Accounts data is a category defined as 'foreign workers non-resident in Italy'. Some Italian researchers consider these to be irregular workers but it appears that the great majority are registered employees that the Italian Labour Force Survey does not manage to count.

The ISTAT National Accounts data gives the number of foreign workers non-resident in Italy who are employed in private health services as 500 for every year from 1990 to 1997 (and earlier).

How large are current migration flows of foreign workers in the health sector and what are the source countries? There are no sources of information with which to answer this question. However, since the mid-1990s, the Italian Ministry of Labour and the Union of the local Chambers of Commerce have promoted a periodic enquiry among employers which asks them to forecast their future labour recruitment. In the two most recent surveys (forecasts to 1999–2000 and to 2001), they have been asked whether and how many new openings would be addressed to non-EU workers. These figures are likely to give an indication of patterns of foreign (non-EU) labour demand if not of actual labour migration. Potential seasonal job openings are also forecasted.

Forecasts of labour requirements indicate the following:

- The minimum number of potential job openings in Health and Health Services for non-EU workers in 2001 was forecast at 3,482 and the maximum 6,453. In Other Care and Personal Services, the minimum was 2,212 and the maximum 2,736.
- Personal care and related workers are recorded in the list of most required occupations addressed to non-EU labour in the 2001 forecast – 3494 job openings.
- (38.8 per cent of all job openings in this type of employment). It's not clear how this figure relates to those given above.
- Overall, taking all occupational categories together, 20.9 per cent of job openings are forecast to be addressed to non-EU foreign workers. Personal care and related work can thus be seen as higher than average in this respect.
- The largest part (63 per cent) of the forecast demand for non-EU foreign workers in health in 2001 was from organisations with over 250 employees. Nearly 15 per cent came from firms with less than 50.

4.3. The Netherlands

How many foreign workers are there in the health sector in the Netherlands at present and what are their countries of origin? The Central Bureau for Statistics produces annual data on the total labour force in different sectors of economic activity and the number of foreign employees in each, broken down by country of origin (methodology described earlier). Foreign employees are foreign citizens who work in the Netherlands for the government or a private company for at least 12 hours a week, for which they receive a wage or salary. Diplomats and people who work for international organisations are not included. Unfortunately, no data are available for 1999 and 2000. The Central Bureau also produces figures on vacancies by sector. In addition, statistics are available on work permits issued to non-EU foreign workers in each sector.

Central Bureau for Statistics data indicate the following:

- The foreign working population in health and welfare (including medical care, veterinary service and welfare service) in the Netherlands declined from 22,000 in 1995 to 16,000 in 1998. The main drop was in 1998.
- 10,000 were EU citizens in 1995–97, 9000 in 1998. Germany accounted for 1–2000 of this total in 1996–98. The UK accounted for 3000 in 1996–97, then fell to 1000 in 1998. Among non-EU workers, Moroccan citizens were the largest component, accounting for 5000 in 1995–97 but only 1000 in 1998.
- The total labour force in health and welfare in the Netherlands rose steadily from 809,000 in 1995 to 940,000 in 2000. In health alone, the change was less marked, with 643,000 employees in 1995 and 694,000 in 2000.

- There was a steady increase in the number of job vacancies needing to be filled in the health and welfare sector between 1995 and 2000.

Work permit data indicate the following:

- The number of work permits issued to non-EU foreign workers in the health sector fluctuated in 1996–98 and then rose sharply from 187 in 1998 to 247 in 1999 and 386 in 2000.
- Work permits to health sector workers were about 1.4 per cent of all permits in 1999.

How large are current migration flows of foreign workers in the health sector and what are the source countries? There are no data on flows. Figures on stocks above may give some indication of these.

4.4. Portugal

How many foreign workers are there in the Portuguese health sector at present and what are their countries of origin? There a number of sources of data relating to stocks of foreign workers in the Portuguese health sector. Data are collected by DETEFP on foreigners working in enterprises with more than 100 employees by sector of activity, including Health and Social Work. The Census of 1991 and MESS (Quadros de Pessoal) 1991, taken together, provide data on undeclared workers. Many statistics on the number of foreign workers in the health sector come from the Ministry of Health. In addition, relevant data is also available from the Professional Association of Physicians, the Nurses' Professional Association and the Professional Association of Dentists.

The DETEFP statistics on foreigners in enterprises with 100+ workers indicate:

- The total number of EU workers in Health and Social Work was small up to 1998: 35 in 1996, 32 in 1997 and 27 in 1998. The total number of PALOP workers was very much larger: 424 in 1996, 432 in 1997 and 413 in 1998.
- The total number of foreign workers from all countries fell over this period: from 523 in 1996 to 515 in 1997 and 499 in 1998.

The Census and MESS data indicate:

- Among those activities with the highest rates of undeclared workers in 1991, the categories of 'Social services' and 'Personal services' were both included. The numbers of undeclared workers appeared to be about 47,500 (49 per cent) in the former case and 81,200 (75 per cent) in the latter, compared to an overall rate of non-declared workers of 20.8 per cent.

Ministry of Health data indicate the following:

- Foreign employees in health increased from 313 in 1994 to 1231 in 1998 and 2150 in 1999.

- In 1994, the main source countries were PALOP (i.e. African countries whose official language is Portuguese) with 127 and Brazil with 108. EU citizens were 47 in total.
- In 1998, 549 (44.6 per cent) were from PALOP countries, 408 (33.1 per cent) from the EU, 104 (8.4 per cent) from Brazil and 170 (13.8 per cent) from other countries.
- In 1999, 711 (33.1 per cent) were from PALOP countries. The number from EU countries had almost trebled compared to the previous year to 1,142 (53.1 per cent). 204 (9.5 per cent) were from Brazil and 93 (4.3 per cent) from other countries.
- The big increase between 1998 and 1999 was mainly of Spanish workers – from 325 to 1012. German workers increased from 25 to 52, while those from the UK (9), Italy (8) and the Netherlands (7) remained the same.
- About six out of ten foreign health workers were women.
- The number of foreign doctors increased from 232 in 1994 to 820 in 1998 to 1033 in 1999 but as a proportion of all foreign workers in the health sector, doctors declined from 74.1 per cent to 66.6 per cent to 48 per cent. However, they remained the largest group of foreign workers in health.
- The number of foreign nurses increased from 48 in 1994 to 236 in 1998 to 881 in 1999. As a proportion of all foreign workers in health, they increased from 15.3 per cent to 19.2 per cent to 41 per cent. Nurses can thus be seen to account for a significant part of the recent increase in foreign workers in the health sector.
- The number of foreign nurses from EU countries in 1999 was 597 (49 in 1998), from PALOP countries 196 (137 in 1998), from Brazil 72 (34 in 1998) and from other countries 16 in both years.

The Professional Association of Physicians data indicate the following:

- Among physicians practicing in Portugal in 2001, 30,036 were Portuguese citizens, 3 were Spanish, 7 were citizens of other EU countries, 179 were Brazilian, 155 were PALOP citizens and 47 were citizens of other countries.

Nurses' Professional Association data indicate the following:

- In 2001, there were 1,097 foreign nurses in Portugal, of whom 787 were Spanish citizens, 94 Brazilian and 51 from Guinea. 20 were English citizens and 15 German.

The Professional Association of Dentists data indicate:

- In 2001, there were 640 foreign dentists in Portugal, of whom 460 were Brazilian citizens. 27 were German and 24 Italian.

4.5. Switzerland

How many foreign workers are there in the Swiss health sector at present and what are their countries of origin? Detailed data on foreign workers in Switzerland are available from the Federal Office for Foreigners. Statistics are produced on total foreign working population with a breakdown by annual permits and permanent residents, seasonal workers and 'borderers' (persons living across the border but working in Switzerland). Data on citizenship of foreign workers by economic sector, excluding those with short-term permits, are also published.

Federal Office for Foreigners data indicate the following:

- The total foreign population (all categories) working in health in Switzerland increased from 39,562 in 1995 to 44,721 in 2000. Most of this increase occurred post-1998.
- As a percentage of all foreign workers, workers in this sector increased annually by 0.1 per cent from 1996 onwards.
- The foreign working population in health and physical care in 2000, excluding those with short-term permits, was 70,743 (2761 more than in the previous year). This is obviously a more wide-ranging grouping than the above.
- The principal countries of origin of these workers in 2000 were Germany with 12,144 workers (1080 more than in 1999); Italy with 11,805 (111 fewer than in 1999); France with 10,059 (739 more than in 1999); Portugal with 6560 (359 more than in 1999); Spain with 4972 (133 fewer than in 1999) and F.R.Yugoslavia with 4688 (42 fewer than in 1999).

How large are current migration flows of foreign workers in the health sector and what are the source countries? The Federal Office for Foreigners collects annual data on foreign workers entering Switzerland by citizenship.

Federal Office for Foreigners data indicate the following:

- Foreign workers in health and physical care who entered Switzerland in the year 2000 totalled 3312.
- Principal countries of origin of these migrants were Germany with 1439, France 448, Austria 209, Italy 118 and Portugal 61.

4.6. United Kingdom

How many foreign workers are there in the UK health sector at present and what are their countries of origin? There is more than one statistical source relating to employment of foreign workers in the health sector. As with other sectors, some data can be found in the Labour Force Survey (LFS), whose limitations are discussed earlier. Small sample size precludes reliance on detailed figures by occupation, especially for individual nationalities. However, data at the

3-digit level have been amalgamated to produce statistics on the total foreign workforce in occupations identifiably linked to health and social care, based on country of birth and on nationality. Some relevant information is also held by the NHS Executive but has not yet been obtained: the type of data required does not appear to be readily available.

The LFS data indicate the following:

- In Spring 2000, there were 220,902 health and care workers in the UK labour force who were born in another country and 127,970 who were foreign citizens.
- In Spring 1995, there were 181,992 born in another country and 96,822 who were foreign citizens. Thus it can be seen that there has been a large increase in numbers of both in the 1995–2000 period.
- The total health and care workforce in 2000 was 1,763,291: 7.3 per cent were foreign citizens. Comparable figures for 1995 were 1,575,761 and 6.1 per cent.
- Among those health and care workers of foreign nationality, 40.4 per cent were EU/EFTA citizens in 2000, compared to 43.1 per cent in 1995.
- Actual numbers of EU/EFTA citizens working in health and care rose to 51,706 in 2000 from 41,755 in 1995, while numbers of other foreign workers rose to 76,264 from 55,067.
- Within the health and care sector as a whole, those occupational groupings with more than 10,000 foreign workers in 2000 were nurses (38,556); medical practitioners (27,746); and care assistants (27,710). Comparable figures for 1995 were nurses (34,704), medical practitioners (21,066) and care assistants (18,481).

How large are current migration flows of foreign health sector workers and what are the source countries? The LFS provides transition data on immigrants to the UK by asking for address one year ago but numbers are too small to use in relation to particular employment sectors. Work Permit statistics are the only source to indicate the size of such inflows and these figures do not include some people (e.g. asylum seekers) who enter the country for another stated purpose but later join the labour force. As explained earlier, unpublished Work Permit data by nationality, SIC (industrial classification) and SOC (occupational classification) have been obtained and analysed.

Annual data on new nurse and doctor registration and on applications for registration are recorded by the UK Central Council for Nursing, Midwifery and Health Visiting or UKCC (recently replaced by the NMC) and by the General Medical Council or GMC. While this information provides valuable indications of international movements and source countries, it cannot be interpreted as annual inflows of nurses and doctors since some will already be working in the UK when application is made, while others may ap-

ply from overseas but never arrive. The national categorisation relates to the country where initial training was received.

LFS data on Work Permits (granted to foreigners resident outside the UK) and First Permissions (granted to foreigners already resident within the UK) are combined below:

- The number of Work Permits and First Permissions granted in the health and medical services sector rose to 14,516 in year 2000 from 1774 in 1995, an increase of 718 per cent. These data relate to *industry*, not *occupation*, and it would appear from the occupation statistics that they exclude some health and social care workers employed in other sectors.
- Total Work Permits and First Permissions granted in all sectors rose to 64,575 in 2000 from 24,161 in 1995, an increase of 167 per cent. Thus it can be seen that the increase in the health and medical services sector was far greater than the overall increase.
- As a proportion of all Work Permits and First Permissions, the health and medical services sector accounted for 22.5 per cent in 2000, compared to 7.3 per cent in 1995.
- Statistics on numbers of Work Permits and First Permissions by *occupation* show that in the year 2000, 15,526 were granted to health and health associate professionals, comprising 24 per cent of the total number granted. Of these, 11,897 were nurses and a further 56 were midwives. Only 322 were medical practitioners and 373 pharmacists.
- The main source countries for health and associate health professionals in 2000 were the Philippines (6344), South Africa (2056), India (1410) and Australia (602).

UKCC data show the following patterns and trends in registration of nurses and midwives:

- The largest number of decisions to overseas applicants for admission to the UKCC professional register in 1999/2000 were given to those from the Philippines (5,643), South Africa (2,298), Australia (1,473) and Nigeria (1,455). These countries also had the largest numbers in the previous year.
- Admissions to the register via European Community arrangements for nursing and midwifery in 1999/2000 totalled 1416. The largest components were Finland (279), Germany (259), Ireland (234) and Spain (213), with 79 from Italy, 52 from the Netherlands and 4 from Portugal. There were 16 decisions on applications from Switzerland.
- There has been a continuous increase in total admissions from the EU since the mid-nineties. Germany is the only country from which there have been annual registrations exceeding 100 since 1994/95. However, Finland became and has remained the largest EU source country since 1996/97. Sweden also became a significant source from that date onwards.

- Verification documents issued by the UKCC to other national regulatory bodies through European Community arrangements (827 in total) suggest a large outflow to Ireland in 1999/2000 and much smaller ones to some other EU countries, notably Germany.
- Verification documents issued to countries outside Europe suggest that the outflow from the UK to Australia, New Zealand and the USA at least balances the inflow.

GMC data show the following patterns and trends in doctor registration:

- Grants of full registration to EEA doctors totalled 1192 in year 2000, following a steady year-on-year decline in numbers since 1996 when the total was 2084. 188 obtained limited registration, which enables overseas qualified doctors to undertake supervised training posts in the UK.
- In 2000, the largest numbers gaining full registration by EEC country of qualification were Germany (244), Greece (203), Italy (197) and Ireland (188), with the Netherlands (57) and Portugal (12) in double figures. Germany has consistently been the largest source in the late 'nineties, though numbers have fallen continuously from a total of 631 in 1996. Numbers from the Netherlands have also dropped markedly, from a total of 233 in 1996. Numbers from Italy and Portugal have fluctuated around the same level.
- Grants of full registration to overseas doctors who qualified in countries outside the EEA totalled 833 in year 2000, with a further 1778 having limited registration and 153 provisional registration. These figures were considerably lower than in 1996, when the comparable totals were 1578, 2608 and 504.

5. ICT Sector

5.1. Germany

How many foreign workers are there in the German ICT sector at present and what are their countries of origin? The stocks of foreign workers in the German health sector are derived from statistics collected by the Federal Office of Labour. These are extensive and detailed. The data are divided into East and West Germany and have been aggregated. Figures for the former are very small. It will be necessary to check on this and other aspects. The only occupational category relating to ICT is described as 'experts in data processing' and employees in this category are the ICT workers referred to below.

Federal Office of Labour data indicate the following:

- Total employment in the ICT sector in Germany rose from 276,877 in 1995 to 339,616 in 1998 and 402,168 in 2000.

- Foreign ICT workers rose from 10,725 in 1995 to 16,514 in 2000, with the largest annual increase (of 2561) between 1999 and 2000. However, the percentage of foreign ICT workers in the total ICT workforce has remained steady from 1995 to 2000, staying at around 4 per cent throughout.
- In East Germany, foreign ICT workers made up around 0.7 per cent of the ICT workforce, whereas the equivalent statistic for West Germany was 4.4 per cent.
- UK nationals are the largest group from a PEMINT country in the foreign ICT workforce in Germany, with numbers rising throughout the period 1995–2000 to reach 1354 in 2000. Italy and the Netherlands provide the next largest numbers, reaching 995 and 659 respectively in 2000. ICT workers from Portugal and Switzerland numbered 193 and 164 respectively in 2000.
- The UK provided 11.4 per cent of the total ICT foreign workforce in 1995 which was the largest annual contribution from any of the PEMINT countries over the 1995–2000 period. In 2000, the UK provided the third highest number of foreign ICT workers to Germany, behind Austria (1467) and Turkey (1438).
- The numbers of employees working in the East German region were not significant in comparison to those in Western Germany – the majority from all PEMINT source countries were in the west. The UK, with 412 workers, recorded the largest number in the East in 2000.

How large are current migration flows of foreign workers in the ICT sector and what are the source countries? There are no data on total flows. However, statistics on work permits issued to foreign ICT specialists are available, covering such variables as country of origin, sex, permits to in-coming workers, permits to foreign graduates from German universities, university degrees, high salary earners and size of employing company.

Work permit data indicate the following:

- Between August 1st, 2001 and November 30th, 2001, a total of 10,415 work permits were issued in Germany to foreign ICT specialists.
- By far the largest single source country was India, with a total of 2210, while a high proportion of the rest came from Eastern Europe.
- A total of 1501 were foreign graduates from German universities. Many of these were not citizens of the major source countries. Only 118 were from India, 121 from Russia, Belarus, Ukraine and the Baltic States.
- North Africa (Algeria, Morocco, Tunisia) differed from the other main source countries in that a high proportion of the work permits issued to its citizens were to graduates of German universities – 215 out of a total of 343.

- Nearly nine out of ten permits went to men. The proportions varied by country of origin. The highest proportion of women was among South American migrants (24 per cent) and some East European groups (for example, 17 per cent of citizens of former Yugoslavia and 19 per cent of those from Bulgaria). However, this was not true of all East European countries: less than 5 per cent of ICT specialists from former Czechoslovakia were women. Nearly 8 per cent of Indian migrants were female but only 2 out of 159 Pakistanis.
- Nearly nine out of ten ICT specialists had university degrees. 13.5 per cent had salaries of 100,000 DM or more.
- 60 per cent of work permits went to those recruited by employing companies with 100 or less workers. Only 25 per cent went to those in companies with 500 or more employees.
- Refusals of applications for work permits were very small (207).
- Bavaria, Hesse, Baden-Wuerttemberg and North Rhine Westphalia, listed in descending order by number of work permits, were the principal states in which foreign workers were recruited. Berlin-Brandenburg accounted for only 377 of the total of 10,415. Over 95 per cent were in West Germany.

5.2. Italy

How many foreign workers are there in the Italian ICT sector at present and what are their countries of origin? As discussed earlier, there are no national statistics on the stock of migrants living in Italy or working in Italy. Data provided by EUROSTAT and ISTAT (National Statistical Institute) are not robust and are believed to seriously underestimate the number of foreign citizens living and working in Italy. Statistical sources used in respect of those employed in the Italian construction sector do not identify the ICT sector separately and therefore cannot be used to estimate stocks of foreign workers in ICT occupations.

How large are current migration flows of foreign workers in the ICT sector and what are the source countries? There are no sources of information with which to answer this question. However, since the mid-1990s, the Italian Ministry of Labour and the Union of the local Chambers of Commerce have promoted a periodic enquiry among employers which asks them to forecast their future labour recruitment. In the two most recent surveys (forecasts to 1999–2000 and to 2001), they have been asked whether and how many new openings would be addressed to non-EU workers. These figures are likely to give an indication of patterns of foreign (non-EU) labour demand if not of actual labour migration. Potential seasonal job openings are also forecasted.

Forecasts of labour requirements indicate the following:

- The minimum number of potential job openings in Information and Communications Technology for non-EU workers in 2001 was forecast at

1,509 and the maximum 2,515. In Advanced Business Services, the minimum was 1,739 and the maximum 2,599.

- Computing professionals are recorded in the list of most required occupations addressed to non-EU labour in the 2001 forecast – 3462 job openings (14 per cent of all job openings in this type of employment). It's not clear how this figure relates to those given above.
- Overall, taking all occupational categories together, 20.9 per cent of job openings are forecast to be addressed to non-EU foreign workers. ICT can thus be seen as lower than average in this respect.
- Over half of the forecast demand for non-EU foreign workers in ICT in 2001 was from organisations with over 250 employees but 42 per cent came from firms with less than 50.

5.3. The Netherlands

How many foreign workers are there in the ICT sector in the Netherlands at present and what are their countries of origin? The Central Bureau for Statistics produces annual data on the total labour force in different sectors of economic activity and the number of foreign employees in each, broken down by country of origin (methodology described earlier). Foreign employees are foreign citizens who work in the Netherlands for the government or a private company for at least 12 hours a week, for which they receive a wage or salary. Diplomats and people who work for international organisations are not included. Unfortunately, no data are available for 1999 and 2000. The Central Bureau also produces figures on vacancies by sector. In addition, statistics are available on work permits issued to non-EU foreign workers in each sector.

Central Bureau for Statistics data indicate the following:

- The foreign working population in Financial Institutions and Commercial Services (which includes computer services/ICT) in the Netherlands declined from 28,000 in 1995 to 25,000 in 1997. It then rose sharply to 34,000 in 1998.
- 12,000 were EU citizens in 1995–97, 15,000 in 1998. In 1998, the UK accounted for 4000 of the total and Germany for 3000. Among non-EU workers, Moroccan citizens were the largest component, accounting for 4000 in 1998, while Turkish citizens accounted for 3000.
- The total labour force in Commercial Services (including computer services/ICT) in the Netherlands rose steadily from 583,000 in 1995 to 859,000 in 2000. In computer services/ICT alone, the increase was more marked, from 47,500 employees in 1995 to 115,900 in 2000.
- In 1998, the number of job vacancies needing to be filled rose sharply and continued to increase more gradually to 2000.

Work permit data indicate the following:

- The number of work permits issued to non-EU foreign workers in the ICT sector rose enormously from 414 in 1996 to 2209 in 2000.
- Work permits to ICT workers comprised about 9.5 per cent of all work permits in 1999.

How large are current migration flows of foreign workers in the ICT sector and what are the source countries? There are no data on flows. Figures on stocks above may give some indication of these.

5.4. Portugal

How many foreign workers are there in the Portuguese ICT sector at present and what are their countries of origin? There are no national statistics on the number of foreign workers in the Portuguese ICT sector. INE, IEH data show total employment in the ICT sector as follows:

- Total employment in the ICT sector rose from 93,128 in 1996 to 94,893 in 1997 to 100,417 in 1998.
- The breakdown in numbers between different areas of employment in 1998 was: 28,061 in manufacturing, 21,817 in telecommunications and 50,539 in other ICT services. The fastest annual average rate of growth (4.7 per cent) was in other ICT services.

How large are current migration flows of foreign workers in the ICT sector and what are the source countries? There are no data with which to answer this question.

5.5. Switzerland

How many foreign workers are there in the Swiss ICT sector at present and what are their countries of origin? Detailed data on foreign workers in Switzerland are available from the Federal Office for Foreigners. Statistics are produced on total foreign working population with a breakdown by annual permits and permanent residents, seasonal workers and ›borderers‹ (persons living across the border but working in Switzerland). Data on citizenship of foreign workers by economic sector, excluding those with short-term permits, are also published. However, unfortunately ICT is not identified as a separate sector.

Federal Office for Foreigners data indicate the following:

- There was an accelerating increase in the total foreign population (all categories) working in ICT in Switzerland from 6986 in 1995 to 11,149 in 2000.
- As a percentage of all foreign workers, workers in this sector increased from 0.8 per cent in 1995 to 1.3 per cent in 2000.

How large are current migration flows of foreign workers in the ICT sector and what are the source countries? The Federal Office for Foreigners does not identify ICT as a separate sector in the data on inflows of foreign workers.

5.6. United Kingdom

How many foreign workers are there in the UK ICT sector at present and what are their countries of origin? The only national source of data on this is the Labour Force Survey (LFS). Its limitations are discussed earlier. In respect of identifying numbers of workers in ICT, the small sample size precludes reliance on detailed figures by occupation, especially for individual nationalities. However, data at the 3-digit level have been amalgamated to produce statistics on the total foreign workforce in occupations linked to computers or software engineering whether or not employed in ICT firms, based on country of birth and on nationality.

The LFS data indicate the following:

- In Spring 2000, there were 91,184 ICT workers in the UK labour force who were born in another country and 48,793 who were foreign citizens.
- In Spring 1995, there were 55,501 born in another country and 27,036 who were foreign citizens. Thus it can be seen that there has been a large increase in numbers of both in the 1995–2000 period.
- The total ICT workforce in 2000 was 863,744: 5.6 per cent were foreign citizens. Comparable figures for 1995 were 596,379 and 4.5 per cent.
- Among those ICT workers of foreign nationality, 33.4 per cent were EEA citizens in 2000, compared to 49 per cent in 1995.
- Actual numbers of EEA citizens working in ICT rose to 16,286 in 2000 from 13,261 in 1995, while numbers of other foreign workers rose to 32,507 from 13,775.
- Within the ICT sector as a whole, those occupational groupings with more than 10,000 foreign workers in 2000 were computer analysts etc. (19,311) and software engineers (10,699). In 1995, both groupings were recorded as having less than 10,000.

How large are current migration flows of foreign ICT workers and what are the source countries? The LFS provides transition data on immigrants to the UK by asking for address one year ago but numbers are too small to use in relation to particular employment sectors. Work Permit statistics are the only source to indicate the size of such inflows and these figures do not include some people (e.g. asylum seekers) who enter the country for another stated purpose but later join the labour force. As explained earlier, unpublished Work Permit data by nationality, SIC (industrial classification) and SOC (occupational classification) have been obtained and analysed.

LFS data on Work Permits (granted to foreigners resident outside the UK) and First Permissions (granted to foreigners already resident within the UK) are combined below:

- The number of Work Permits and First Permissions granted in the Computer Services Industry rose to 12,726 in year 2000 from 1827 in 1995, an

increase of 597 per cent. These data relate to *industry*, not *occupation*, and cannot be assumed to include ICT specialists entering other industries or to be made up wholly of ICT specialists entering the Computer Services industry.

- Total Work Permits and First Permissions granted in all sectors rose to 64,575 in 2000 from 24,161 in 1995, an increase of 167 per cent. Thus it can be seen that the increase in the Computer Services industry was far greater than the overall increase.
- As a proportion of all Work Permits and First Permissions, the Computer Services industry accounted for 19.7 per cent in 2000, compared to 7.6 per cent in 1995.
- Statistics on numbers of Work Permits and First Permissions by *occupation* show that in the year 2000, 10,470 were granted to computer analysts and programmers, comprising 16.2 per cent of the total number granted. Amalgamating them with the 2,736 software and computer engineers gives a total of 13,206 IT work permits, 20.5 per cent of all issues.
- Over 8000 of these work permits for ICT-related work were granted to Indian citizens and a further 1528 to citizens of the USA.

6. General Conclusion

The statistical summaries indicate a number of sectoral characteristics and trends.

First, there is evidence of changing patterns of labour migration and recruitment. The groups of foreign workers which comprise the largest stocks in each sector are not necessarily those which comprise the largest current flows. Where patterns are changing, other papers in this collection indicate why.

Second, the relationship between changes in total employment in a particular sector or occupation and changes in the employment of foreign labour need to be examined carefully, because an increase or decrease in numbers of foreign workers may simply reflect trends in the size of the total labour force or may mean a significant change in the proportion of foreign workers employed.

Third, there is clearly a different pattern of recruitment of foreign workers in relation to different occupations within individual sectors.

Fourth, certain data suggest that small firms may be looking to recruit foreign labour as well as the larger organisations and it is possible that the active recruitment of certain skills and expertise may be associated with stages of organisational growth. This is something explored in the sectoral studies.

Finally, it is apparent that a high proportion of movement into, and foreign employment within, the six PEMINT countries is of non-EU citizens.

Statistical Appendix

TABLE 1
STOCK OF WORKING FOREIGN POPULATION IN SELECTED EUROPEAN COUNTRIES, 1995-2000, (thousands)

	1995	1996	1997	1998	1999	2000
GERMANY (1)	-	-	3575	-	3545	-
ITALY (2)	434	657	660	661	-	-
NETHERLANDS (3)	-	1006	1055	1086	1130	-
PORTUGAL (4)	84	87	88	89	89	-
SWITZERLAND (5)	896	870	847	842	856	886
UNITED KINGDOM (6)	862	865	949	1039	1005	1107

1. Stock of foreign workers calculated from microcensuses
2. Permits to stay issued for work reasons (includes EU foreigners)
3. Persons who have a least one parent who was born abroad
4. Workers who hold a valid work permit (includes unemployed). Data include those regularised in 1996
5. Figures cover foreign workers with settlement, annual, cross-border and seasonal permits.
6. Data are from the National Labour Force Survey

Source: SOPEMI, 2001

TABLE 2
STOCK OF FOREIGN POPULATION IN SELECTED EUROPEAN COUNTRIES, 1995-2000 (thousands)

	1995	1996	1997	1998	1999	2000
GERMANY	7173.9	7314.0	7365.8	7319.6	7343.6	-
ITALY (1)	737.8	884.6	991.7	1116.4	1270.6	1464.3
NETHERLANDS (2)	757.1	725.4	679.9	678.1	662.4	651.5
PORTUGAL	168.3	172.9	175.3	178.1	191.0	-
SWITZERLAND (3)	1363.6	1370.6	1372.7	1347.9	1368.7	1384.4
UNITED KINGDOM	1948.0	1934.0	2066.0	2207.0	2208.0	2342.0

Sources: Eurostat, Council of Europe, OECD SOPEMI Correspondents, National Statistical Offices

NOTES

1. Foreign Population calculated from those registered as resident in Italy on 31st of December of each year, ISTAT on Municipal Population Registers
2. Centraal Bureau voor de Statistiek (CBS), Voorburg 2001
3. Numbers of foreigners with annual residence permits and holders of settlement permits (permanent permits). Seasonal and frontier workers are excluded.

TABLE 3
STOCK OF FOREIGN POPULATION AS A PERCENTAGE OF TOTAL POPULATION IN
SELECTED EUROPEAN COUNTRIES, 1995-2000, (percentages)

	1995	1996	1997	1998	1999	2000
GERMANY	8.8	8.9	9.0	8.9	8.9	-
ITALY (1)	1.3	1.5	1.7	1.9	2.2	2.6
NETHERLANDS (2)	4.9	4.7	4.4	4.3	4.2	4.1
PORTUGAL	1.7	1.7	1.7	1.8	1.9	-
SWITZERLAND (3)	19.3	19.6	19.4	19.0	19.2	19.3
UNITED KINGDOM	3.6	3.4	3.5	3.8	3.7	3.9

Sources: Eurostat, Council of Europe, OECD SOPEMI Correspondents, National Statistical Offices

NOTES

1. Foreign Population calculated from those registered as resident in Italy on 31st of December of each year, ISTAT on Municipal Population Registers
2. Centraal Bureau voor de Statistiek (CBS), Voorburg 2001
3. Numbers of foreigners with annual residence permits and holders of settlement permits (permanent permits). Seasonal and frontier workers are excluded.

TABLE 4
INFLOWS OF FOREIGN POPULATION TO SELECTED EUROPEAN COUNTRIES, 1995-2000(1) (thousands)

	1995	1996	1997	1998	1999	2000
GERMANY	792.7	707.9	615.3	605.5	673.9	-
ITALY (2)	89.0	73.9	83.1	119.9	130.8	-
NETHERLANDS	67.0	77.0	76.7	81.7	78.4	-
PORTUGAL	5.0	3.6	3.3	6.5	14.5	-
SWITZERLAND (3)	87.9	74.4	69.6	74.9	85.8	87.4
UNITED KINGDOM (4)	154.0	168.0	188.0	221.0	239.0	260.0

1. Asylum seekers are excluded.
2. The data represent ordinary first time permits and exclude the regularisation permits that were granted in each year.
3. Entries of foreigners with annual residence permits, and those with settlement permits (permanent permits) who return to Switzerland after a temporary stay abroad. Includes, up to 31 December 1982, holders of permits of durations below 12 months. Seasonal and frontier workers (including seasonal workers who obtain permanent permits) are excluded. Transformations are excluded.
4. Adjusted figures, Source: International Passenger Survey, OPCS.

Pt - from Estadísticas Demográficas, 1995-2000

TABLE 5
 OUTFLOWS OF FOREIGN POPULATION FROM SELECTED EUROPEAN COUNTRIES, 1995-2000 (thousands)

	1995	1996	1997	1998	1999	2000
GERMANY (1)	567.4	559.1	637.1	639.0	555.6	-
ITALY	8.4	8.5	-	-	-	-
NETHERLANDS (2)	28.5	29.6	29.0	28.4	28.2	28.5
PORTUGAL	-	0.2	-	-	0.4	-
SWITZERLAND (3)	67.5	67.7	67.9	59.0	58.1	55.8
UNITED KINGDOM	74.0	77.0	94.0	88.0	130.0	137.0

Sources: Eurostat, Council of Europe, OECD SOPEMI Correspondents, National Statistical Offices

NOTES:

1. Data include registered exits of asylum seekers.
2. These figures differ from Sopemi
3. Exits of foreigners with annual residence permits and holders of settlement permits (permanent permits).

TABLE 6
 NET FLOWS OF FOREIGN POPULATION TO/FROM SELECTED EUROPEAN COUNTRIES, 1995-2000 (thousands)

	1995	1996	1997	1998	1999	2000
GERMANY	225.3	148.8	-21.8	-33.5	118.3	-
ITALY	80.6	65.4	-	-	-	-
NETHERLANDS	38.5	47.4	47.7	53.3	50.2	-
PORTUGAL	-	3.4	-	-	14.1	-
SWITZERLAND	20.4	6.7	1.7	15.9	27.7	31.6
UK	81.0	92.0	94.0	133.0	108.0	124.0

Sources: Eurostat, Council of Europe, OECD SOPEMI Correspondents, National Statistical Offices

Notes:

See Table 4 and 5.

**ICT, Construction, Health:
Cross-National
Sector Reports**

Michael Bommès

A Note on PEMINT Methodology

The PEMINT project combined two different methodological approaches:

1. Analyses of statistical data on international migration that established the relevance of migration in the three PEMINT sectors.
2. An organisational study that sought to ascertain the relevance of international migration for organisations in the ICT, construction and health sectors and the extent to which these organisations decide to recruit and employ migrants.

Our organisational approach sought to reconstruct decision-making processes within firms concerning recruitment in order to improve the understanding of the implicit or explicit rationality of these processes.

We began from the assumption that international, European and national regulatory frameworks such as international treaties, tax systems, welfare regimes, migration policies and legal regulations of trade, services and employment (the PEMINT-variables) are relevant conditions that intervene in the decision-making processes of organisations concerning recruitment and employment. There is, however, no deterministic relationship between these conditions and the decision-making processes of organisations. Organisations and their decisions are not driven by their environments – although no doubt decisions are made in turbulent environments – but rather are determined by their internal structures. These internal structures are themselves the consequence of the histories of previous decision-making processes within these organisations. The meaning of broader environmental conditions such as regulatory structures is then made clear by internal processes of sense-making within organisations.¹ This leads to various ways in which international migration, i.e. both intra- and extra-EU-migration, becomes relevant for different types of organisations in different sectors of the labour market. The ways in which this occurs can best be understood by analysing how these different types of international migration become relevant within the decision-making processes of organisations concerning personnel recruitment and employment. This is the task that the PEMINT project set itself.

1 Karl E. Weick, *Sense Making in Organisations*, Thousand Oaks 1995.

Before we present some of the substantial results of our project we can present some preliminary methodological remarks on the relation between the chosen research approaches of PEMINT:

Quantitative data on international migration provide indicators of stocks and flows of migrants and show their relevance within different sectors of the labour market. Based on these data it can be shown that international migration is relevant in all three sectors in the six PEMINT countries, albeit in different ways. But like other individuals most international migrants do not find employment in labour markets² but within organisations that provide employment. Migrants thus operate within differentiated labour markets within which this organisational dimension is of paramount importance. In order to understand the reason for this we need to understand how intra- and extra-EU-migration and migrants of EU- or third country-origin become relevant for the recruitment and employment strategies of these organisations.

Our analysis of organisational decision processes and recruitment strategies does not intend to prove in a representative manner that international migrants are relevant in the three PEMINT sectors. In fact, our statistical and organisational analyses suggest a contingent set of outcomes dependent upon the characteristics of the three PEMINT sectors.

Our study asked how, why, when and in which ways migration becomes relevant in each of the PEMINT countries in the three sectors. We analysed a sample of organisations in each sector in each PEMINT country and then explored the ways in which they recruit. With this knowledge we are in a better position to ascertain the meaning and relevance of differentiated international migration in particular contexts.

In methodological terms the PEMINT variables define together with the analysis of the economic specificities of the three chosen sectors potentially relevant environmental conditions for the decision-making processes concerning recruitment. By analysing more closely the modes by which these organisations recruit staff and mobilise the potential of the migrants in this process we aim to identify various patterns of decision-making concerning recruitment and employment strategies.

These decisions and their underlying rationality were empirically accessible through interviews with decision makers, documents and statistics. The interview data that we gathered rendered visible to which extent our starting assumptions about the impact of regulatory variables become

2 Markets are a form of observation of prices paid for goods, labour and services which allow the building of expectations for future prices/wages either to be paid or received.

meaningful, how international migration can then come into play, and how organisations can consequently become reliant on international migrants.

Our results show that it was possible to identify such patterns. We found that these patterns vary in sectorally specific ways. By this we mean that the relevance of international, European or national conditions is articulated in the first instance within the three sectors in relation to their own specificities (which will be discussed in other sections). We discovered shared characteristics within each sector as the basis for the mode in which regulatory frameworks like international treaties, European law, national law, tax systems, welfare regimes, and migration policies are given meaning. On the other hand, we also found in each sector a high level of differentiation dependent on factors such as the size of companies, their position in markets and national specificities in each of the six PEMINT countries.

The internal differences within each sector and the differences between the three sectors allow comparative analyses that proceed in two directions. This also permits the identification of the highly context-specific and differentiated conditions under which international migration occurs even though the results of international migration are usually statistically represented as a homogenous and compact fact. As it will be demonstrated, international migration is based on highly differentiated conditions and implies very different social processes in differentiated social contexts.

The PEMINT project focused on patterns of decision-making in organisations concerning their recruitment and employment. We found some instances that follow different and seemingly ›idiosyncratic‹ strands with exceptions to the identified patterns in each sector and each country. Methodologically we do not claim that our analysis is based on a representative data set. Rather, we intended to identify patterns of decision-making in relevant organisations in terms of size, ownership and range of products in each of the three chosen sectors. The aim of this analysis is not to demonstrate *that* international migration is relevant in these sectors (this can be better demonstrated by statistics) but to gain insight into *how* international migration becomes relevant and is structured by those opportunities which are themselves the product of sense making and decision-making processes within organisations.

Holger Kolb, Susana Murteira, João Peixoto
and Catarina Sabino

Recruitment and Migration in the ICT Sector

The Information and Communication Technology (ICT) sector is by no means a conventional industry. To start with, its definition is problematic. ICT occupations, i.e. jobs that intensively use modern information and communication technologies, crosscut all economic sectors and can hardly be insulated within a single field. The sector is a young and extremely dynamic area of activity, with an unstable market. Its relative youth explains why it often displays ambiguous and ill-defined organisational structures and work profiles. To these characteristics we must also add short-term economic constraints to explain the evidence collected on labour recruitment patterns in this sector.

In this paper, the main characteristics and patterns of labour recruitment in the ICT sector will be presented.¹ First, general aspects of the ICT sector will be described. Second, the presence of foreigners in the sector will be examined, taking into consideration both general and survey-generated statistical data. Third, the main trends and issues concerning international labour flows and recruitment will be analysed. For this part, a description of the strategies and processes of recruitment in the ICT sector will be conducted: movements in the framework of internal labour markets of organisations; subcontracting and external labour markets flows; and some considerations about the relationship between skills, education and occupations. Finally, the fourth part is dedicated to the main constraints on mobility and to some general remarks about the special mode of mobility in the ICT sector with special emphasis on the comparison between ICT and construction.

1 This paper is based on the national reports elaborated by the following researchers: Holger Kolb (Institute for Migration Research and Intercultural Studies, University of Osnabrück, Germany), Ivana Fellini and Anna Ferro (University of Bicocca, Milan, Italy), Madelon den Adel (Erasmus University Rotterdam, The Netherlands), Susana Murteira, João Peixoto and Catarina Sabino (Technical University of Lisbon, Portugal), Philippe Koch and Sandra Lavenex (University of Berne, Switzerland), Janet Dobson and John Salt (University College London, UK).

1. General Aspects of the ICT Sector

The ICT industry is one of the most scientifically observed and analysed sectors in economic sociology and economics in recent times.² The rapid emergence of the sector and media-driven stories about the rise and fall of single entrepreneurs³ has attracted a great deal of media and scientific interest. The youth of this sector, however, introduces some methodological difficulties that need to be clarified before discussing specific aspects of recruitment and operational labour force development within the sector. For the main aim of this paper – the summary and analysis of the influence of variables on recruitment decisions of national and international companies (including variables derived from so-called ›incomplete European integration‹) – the specificities of the sector have to be taken into consideration in advance to provide a realistic picture of the economic conditions the relevant actors have to deal with. In the following section six sector-based characteristics are described to provide a first overview of the sector and those features that might play a special role in the display of specific recruitment patterns.

1.1. Low Degree of Institutionalisation of Professions and Occupations

First of all a clear and widely accepted definition of ICT occupations is hard to come by. ICT occupations crosscut nearly all economic sectors. But despite the widespread use of special ICT skills, these competencies are established to a comparatively low degree in education systems and vocational training. Thus, many companies have created intra-company assessment, evaluation and job description tools to deal with this low degree of institutionalisation of professions. Companies have built their own structures in terms of positions, careers and salaries related to their functional needs, i.e. specific tasks that need to be fulfilled and which do not seem to be ›copied‹ or ›imitated‹ structures taken from other organisational examples. This allows companies to reduce the complexity and uncertainty of how to define a position, the related tasks and competencies and the amount of resources (money, power, reputation) which need to be invested. There are of course common elements for all the economic actors in the sector. First of all, members of these organisations are usually highly qualified. The question, however, of whether they fit those

2 See also the special volume on the German ›Green Card‹ by Uwe Hunger/Holger Kolb (eds.), *Die deutsche ›Green Card‹. Migration von Hochqualifizierten in theoretischer und empirischer Perspektive* (IMIS-Beiträge 22), Osnabrück 2003.

3 For example the spectacular bankrupting of the American telecommunication company Worldcom, the takeover of Mannesmann by Vodafone or the dismissal of the chief executive officer of the German Telekom due to major economic problems.

positions created and if they are in that sense appropriately qualified, seems to be mainly clarified inside the organisation. A priori and externally defined occupations (understood as an outcome of the interrelation between organisations and the education system) had only minor relevance for understanding the positional structure of these organisations. In this way it becomes apparent that the institutionalisation of occupations can be understood as an outcome of a more or less dense (or loose) coupling between organisations and the education system.⁴ Positions in this sector do not seem to be ›occupationalised‹ yet. This has a special relevance to the problem of finding adequate staff for these companies and has a direct impact on their (internal) modes of dealing with this low occupationalisation.

The sector itself is also not easy to define.⁵ There are, however, common features that emerge as significant for the delineation of the sector. Most companies that define themselves as an ICT company are active in the development of software, the production of hardware, the provision of telecommunication services or IT consulting and implementation services. This rough definition proved to be a useful starting point to select several companies for the survey in each country.

1.2. Ups and Downs: Cyclical Amplitude and Frequency in the ICT Sector

A widespread misunderstanding with regards to previous analyses of the ICT sector is the rather undifferentiated extrapolation of an aggregated market. Also, due to the above-mentioned youth of the sector, company shares are less strictly allocated to single corporate actors than in many other sectors. Phenomena such as ›creative destruction‹⁶ appear more frequent and more intensive than in other sectors. A clear indicator for this is this specificity of a higher amplitudes and higher frequencies with regards to the economic cycle. This means, on the one hand, that in phases of boom and recession the cycle appears to be more extreme than in other sectors, and, on the other hand, the time between periods of boom and recession are shorter. Defining the sectoral economic cycle as the percentage utilisation of productive capacity, the ICT sector displays quicker changes between phases of growth

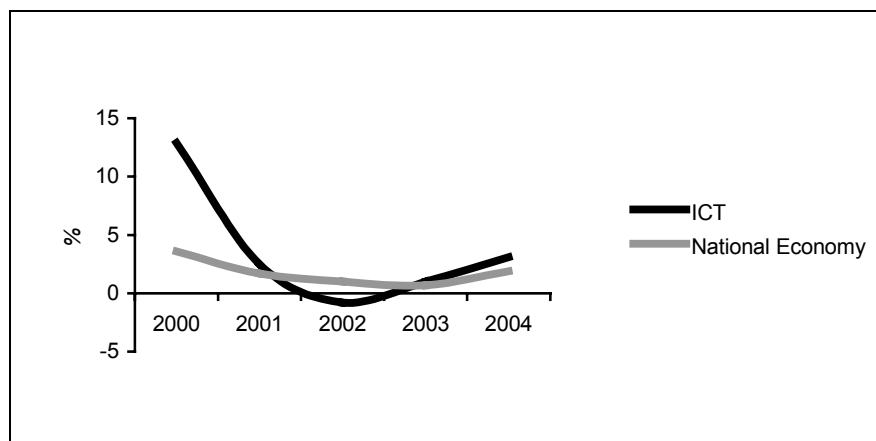
4 See for this relation Manfred Stock, *Arbeiter, Unternehmer, Professioneller. Eine theorievergleichende Analyse zur sozialen Konstruktion von Beschäftigung in der Moderne*. Habilitationsschrift (postdoctoral thesis), Freie Universität Berlin 2002.

5 In some definitions consulting and accounting and broadcasting activities are included, in others not. In many official statistics the whole ICT sector is still split up in the ›classic‹ sector definitions: ›Electronics‹, ›Communication‹ and ›IT Services‹.

6 Joseph A. Schumpeter, *Creative Destruction. From Capitalism, Socialism and Democracy*, New York 1942.

and decline and higher amplitudes within one cyclical phase. The sector experienced strong growth from the second half of the 1990s until 2001, then experienced a rapid decline in 2002 and 2003 and is anticipated to display lower positive growth rates again in 2004.

Figure 1: Market Growth in the Western European ICT Market/Overall Economy



Source: European Information Technology Observatory (EITO); estimation for 2004.

Figure 1 demonstrates the high amplitudes in the sector, especially in the year 2000, with a growth rate of more than 12 per cent, and in the year 2002, with even a negative growth rate. The comparison of the ICT sector with the overall economy points out the cyclical specificities of the sector. These specificities have to be taken into consideration when discussing the recruitment decisions of companies in the sector. Unstable cyclical patterns create a difficult economic environment for the actors in the sector necessitating extremely short reaction times and – derived from that – growing requirements for a flexible adjustment of the specific resource input.

1.3. Unexpected Accelerators: the Euro and the Bug

Directly linked to the unstable economic development of the last few years, two short-term factors have to be considered that acted as unexpected ›wind-fall stimulants‹ for the ICT industry. First of all in the late 1990s the so-called ›millennium bug‹ problem provoked additional inflation in the already booming ICT market. The term ›millennium bug‹ described the pervasive problem that many ICT applications were designed to handle only 20th cen-

tury dates that began with »19--«.⁷ This problem affected a vast amount of software, particularly accounting and database systems⁸ and brought additional orders and business relations for designed ICT companies. IT service companies especially found themselves confronted with an excessive demand surplus in these times. This additional demand for maintenance and consulting services forced many companies to expand their capacities at a single blow over a very short time. Meanwhile, the extra demand for labour intensive ICT services seriously challenged the Human Resource (HR) departments in these companies. After the unspectacular and smooth changeover to the year 2000 these inflationary factors disappeared quickly in the first months of 2000.

The same effect could be observed a short time earlier (before the millennium bug effect) during the preparation for the conversion to the Euro in four of the six countries under analysis.⁹ The currency conversion called for a comprehensive reconfiguration of e-procurement and e-business software applications in nearly all sectors of the economy and affected a special segment of the ICT sector, the service segment, in a similar manner as the millennium bug problem. These incidents, as singular distorting effects, created an additional but singular boost for the sector. During the conduction of the survey in 2002 these short time effects had already disappeared.

1.4. A Missing History: Institutions at the Fledgling Stage

The youth of the ICT sector also has to be taken into consideration when discussing the institutional development of the sector. Especially in countries with a long tradition of »social partnership« and collective bargaining agreements¹⁰, the young and newly emerged ICT sector differs from other sectors in terms of the relevance of institutional actors. In many countries relevant institutions have not yet emerged completely.¹¹ In general, the importance of

7 For example, most programmes represented dates in the form MM-DD-YY, so the date 15-1-1976 is January 15, 1976. The problem arose with dates like 10-5-05. There was no way to distinguish between the two possible dates October 5, 1905 or October 5, 2005.

8 A good example for the dimension of this problem was the U.S. Social Security Administration, that estimated that it will need to review about 50 million lines of code to correct this problem in its own system.

9 Switzerland is not a member of the European Union and the UK decided not to install the Euro until a nationwide referendum approved the introduction.

10 See for example the chapter on construction in this volume and especially the part on the German sector.

11 In Germany, for example, the trade unions could not agree on the competence of one union for the sector. Several trade unions claim responsibility for the ICT sector, especially the newly founded German services union and the union of metal workers

collective bargaining and, connected to that, the importance of institutional actors in the ICT sector is rather low. The majority of the companies in the sector are not members of employers' associations, but prefer company agreements on wages and working conditions¹², or bargain individually with every employee.¹³ So the influence of trade unions and employers' associations as important institutional actors is lower in the ICT sector than for the rest of the economy. Particularly in very 'institutionalised' countries like Germany and the Netherlands these 'missing institutions' characterise the ICT sector compared with other sectors of the national economy.

1.5. Who Comes after SAP and Siemens? Oligopolistic Tendencies

Another conspicuous statistical trend regarding the ICT sector has been almost completely neglected in scientific and public discourse. Despite the youth of the sector, oligopolistic tendencies have escalated. Multinational corporations such as SAP and Siemens in Germany, Philips in the Netherlands and Vodafone in the UK dominate the sector in their countries as far as sales and employees are concerned. A small number of companies in the ICT sector account for a very high proportion of the total market volume.¹⁴ The large number of small and medium enterprises (SMEs) only play a minor role with regards to sales and numbers of employees. These oligopolistic tendencies are aggravated by a growing amount of merger and acquisition (M&A) activity in the sector. A report by the consultancy Pricewaterhousecoopers on M&A activities in Central and Eastern European countries indicated its growing significance in the sector.¹⁵ Only in the manufacturing were M&A activities more widespread than in the ICT sector.¹⁶ The special emphasis of

(IG Metall). Both unions feel responsible and quarrel with each other about the right to bargain with the employers. The lack of clarification of competencies with regard to the matter of representation is used by companies in the sector to play one union off against the other. IBM (23,000 employees in Germany) resigned from the employers association in the 1990s to avoid the validity of the collective bargaining results and preferred to place a company agreement with the moderate union DAG. IG Metall took court action after feeling neglected by IBM. A tribunal, however, ruled that IBM, the world's biggest computer services company, must deal with the hard-line engineering union as well as the huge services union in negotiating pay.

12 In this case the company negotiates directly with the responsible trade union.

13 Especially local branches of American companies in Germany use this strategy.

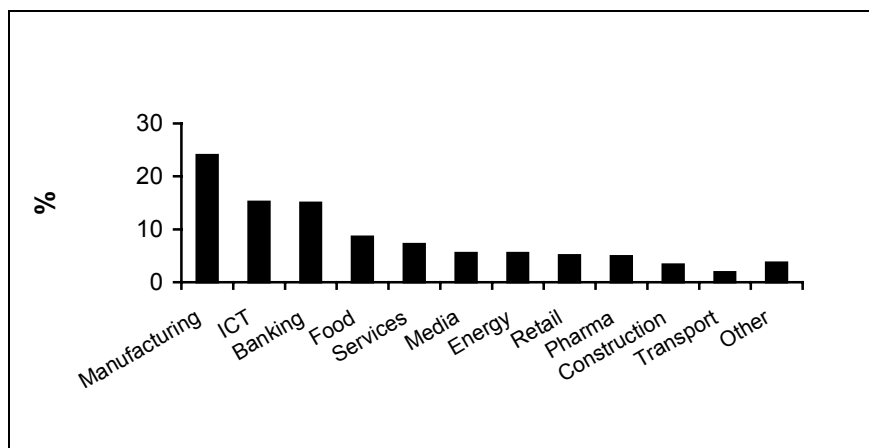
14 In Germany the 30 biggest companies generate more than 84 per cent of the total market volume.

15 Pricewaterhousecoopers, Central & Eastern European Mergers & Acquisitions Survey. *Weathering the Downturn*, 2002. Summarised as CEEC are Bulgaria, Czech Republic, Hungary, Poland, Romania, Russia and Slovakia.

16 The report keeps the single sub-sectors IT and Telecommunications separately. In this figure these two sub-sectors are summarised.

M&A in the ICT sector underlines the already mentioned oligopolistic tendencies. In the following more detailed analysis of the sector, the decision-making processes of these companies in the area of recruitment and personnel policy will be taken into account. The sector-specific bias in the form of a market dominance of multinational corporations must also be extrapolated to a sector specific analysis.

Figure 2: M&A Activities in CEEC 2001



Source: Pricewaterhousecoopers, Central and Eastern European Mergers and Acquisitions Survey. *Weathering the Downtown*, 2002.

1.6. Good-bye to the Blue-collar: the Highly Skilled Status of most Employees

A last important issue that should be borne in mind is the specific composition of the workforce in the ICT sector. The sector is very labour intensive and relies – like all other sectors – on different skill profiles. Using the rough differentiation between low, medium and highly skilled workers in a sector, it becomes apparent that the ICT sector is mostly dominated by highly skilled workers. This is due to the fact that the specificities of the product allow a quick and unproblematic separation of the production facilities from development laboratories and headquarters.¹⁷ As a result many ICT companies have used comparative cost advantages by relocating their production facili-

¹⁷ This is impossible, for example, for the construction industry and the health sector, where production and service provision are tied to a certain place. See also the chapters on the construction industry and the health sector in this volume.

ties and low skilled service activities, such as call centres, to low cost countries, while maintaining the research and development facilities and headquarters in Europe. This has involved the export of rather low skilled occupations from EU member states to low cost areas such as India or the Central and Eastern European countries (CEECs).¹⁸ The statistical percentage of the highly skilled workforce¹⁹ is thus higher than in most other sectors of the national economy.

These six rather general points were mentioned to clarify the economic environment in which actors in the ICT sector had and have to take their decisions. These circumstances and sector-specific particularities especially challenge human resource departments and their recruitment decisions. Their mode of functioning does not seem to be consolidated yet, because HR in the ICT sector does not rely on established patterns of recruitment and factor allocation to a great extent. They act instead as pioneers dealing with the specific sectoral circumstances described above. The few points picked up and described are only meant to be a rough sketch of the sectoral environment, but can be used as a first guide to understand the role of decision-making within this sector.

2. Presence of Foreigners in the Sector

The provision of valid comparisons with respect to stocks and flows of foreign workers in the ICT sector in six different countries is fraught with many methodological difficulties. Wide country-specific differences exist in data availability, in sources and methods of data collection and in definitions and statistical coverage.²⁰ In fact the provision of data for social scientists has improved in the last years, but nevertheless, methodological issues and problems of delimitation still aggravate questions of international comparability. The lack of data is thus often regarded as the main obstacle to international

18 Microsoft Europe produces mainly in Ireland because of the comparatively low wage costs for lower and medium skilled employees.

19 A widespread definition for 'highly skilled' in this context is the obtainment of an university degree.

20 Felicitas Hillmann/Hedwig Rudolph, S(Z)eitenwechsel – Internationale Mobilität westlicher Hochqualifizierter am Beispiel Polen, in: Ludger Pries (ed.), *Transnationale Migration. Soziale Welt. Sonderband 12*, Baden-Baden 1997, p. 245; cf. John Salt, *International Migration. A Spatial Theoretical Approach*, in: Michael Pacione (ed.), *Population Geography. Progress and Prospect*, London 1986, p. 166; cf. idem, *High Level Manpower Movements in Northwest Europe and the Role of Careers. An Explanatory Framework*, in: *International Migration Review*, 17. 1983, no. 4, p. 634; see also idem, *A Comparative Overview of International Trends and Types, 1950–1980*, in: *International Migration Review*, 23. 1989, no. 3, p. 431.

comparative migration research.²¹ The most striking problem with regards to international comparability is the country-specific definition of a foreign worker who might be construed as a foreign national or as someone foreign-born, even if the person has taken the citizenship of the country in which he or she works. Changes in the total numbers recorded as foreign workers in any particular country may change over time simply as a result of people acquiring citizenship, and thus do not necessarily indicate changing migration patterns.

The comparatively low numbers of highly skilled migrants also become a problem with regards to country-specific data protection legislation. A low statistical population base potentially involves the danger of being able to attribute data sources, so databases often only provide roughly aggregated data to prevent any commercial usability or any other abuse.

One of the main findings of the survey – the high proportion of internal labour market operations, which will be further described in the next sections – proves to be a major obstacle for a comprehensive and precise estimation of the foreign workforce in the ICT sector. Internal labour market (ILM) flows are defined as movements of personnel within the framework of organisations, in this case internationally operating companies. In the management literature this kind of mobility is usually labelled as assignment, delegation or secondment and may last from a matter of weeks up to two or three years. Depending on the legal design of these intra-company cross border transfers, most expatriates remain contractually linked to the payroll of the sending unit of their company.²² As a result, most of these intra company migrants are statistically invisible. This might be the main reason why these movements rarely appear on the monitors of migration research and are mainly neglected in scientific papers on highly skilled migration.

It became apparent from various surveys that the channel of intra company labour markets²³ is the most decisive one for multinational corpora-

21 Cf. John Salt/James Clarke, *International Migration in the UNECE Region. Patterns, Trends, Policies*, in: *International Social Science Journal*, 165. 2000, p. 314. For the American example see Anna Lee Saxenian, *Silicon Valley's New Immigrant Entrepreneurs*, in: Center for Comparative Immigration Studies. Working Paper no. 15. University of California, San Diego 2000, p. 3. Most recent based on demand-sided research Rainer Winkelmann, *Why Do Firms Recruit Internationally? Results from the IZA International Employer Survey 2000*, in: OECD (ed.), *International Mobility of the Highly Skilled*, Paris 2001, p. 133.

22 That means that they are obliged to pay taxes and social security contribution in the sending country; cf. Gerd Richter/Thomas Schanz, *Betriebliche Altersversorgung. Steuer- und arbeitsrechtliche Aspekte bei Personalentsendungen in der Europäischen Union*, in: *Betriebs-Berater*, 6. 1994, p. 397.

23 The ›Channel Approach‹ in the discussion about migration patterns of the highly skilled originates from Allan Findlay; cf. Allan Findlay, *A Migration Channels Ap-*

tions. In Germany and in the UK ILM movements within multinationals outnumber direct recruitment activity by far.²⁴ In Italy mobility patterns of multinationals are also dominated by intra company transfers.

Statistical differences in assessment and counting also aggravate the problem of comparability on a firm-by-firm basis. Some statistics and rough estimations obtained from the firms surveyed provide some indications. Based on our survey Switzerland proved to be the country with the most internationalised ICT sector. The Swiss sector displays an average of 26 per cent of foreign workers in the companies surveyed, varying between 6 per cent and 75 per cent. The Swiss case outnumbers the other countries by far. The second highest proportion is in Portugal (13 per cent), although both permanent and temporary foreign workers are considered. In German and Italian companies the stock of the foreign workforce is below 5 per cent, in the Netherlands lower than 1 per cent.

Another methodological obstacle is the existence of undocumented workers in some sectors. These are likely to be undercounted in official records. This brief mention of the subject should underline the necessity to treat all international comparisons based on nationally provided data with great caution.

Despite these methodological difficulties there is one dominant feature of foreign labour in the ICT sector. In all countries in which data are available there was a rapid growth in numbers since 1995. In the UK the numbers of foreign workers in the ICT sector rose by 64.3 per cent (from 55,501 to 91,184), the increase in Switzerland was 59.6 per cent (from 6,986 to 11,149) and in Germany 54 per cent (from 10,725 to 16,514). Also the Netherlands display a 21.4 per cent increase (from 28,000 to 34,000) in that period. There are, however, a number of differences in the occupational categories used in data collection, so that the validity of this data should not be exaggerated.²⁵ The indicated trend, however, is unmistakable.

proach to the Study of High Level manpower Movements. A Theoretical Perspective, in: *International Migration*, 28. 1990, pp. 15–22.

- 24 More detailed on the German case Holger Kolb, *Pragmatische Routine und symbolische Inszenierungen – zum Ende der ›Green Card‹*, in: *Zeitschrift für Ausländerrecht und Ausländerpolitik*, 23. 2003, no. 7, pp. 231–235; Holger Kolb/Uwe Hunger, *Von staatlicher Ausländerbeschäftigungspolitik zu internationalen Personalwertungsketten?*, in: *WSI-Mitteilungen*, 2003, no. 4, pp. 251–256. For a general theoretical discussion about the importance of internal labour markets for highly skilled migration cf. Salt, *A Spatial Theoretical Approach*, pp. 166ff.; idem, *High Level Manpower Movements in Northwest Europe and the Role of Careers*, pp. 634ff.
- 25 This might be the main reason why the recorded number of foreign ICT workers in the Netherlands is much higher than that in Germany.

A second solid indication given by the provided statistical material is the differentiation between existing stocks and flows of foreign labour. These statistics indicate that the groups of foreign workers which comprise the largest stocks are by no means necessarily those which make up the largest current flows. In Germany, for example, the largest stock of foreign workers is from Austria, Turkey and the UK, while the greatest flows (mainly on the basis of the newly established ›Green Card‹ recruitment scheme) come from India and the Central and Eastern European Countries (CEEC). The majority of those employees coming as intra company transferees to Germany also come from these countries. Another common feature is a slight shift with regards to the countries of origin, with non-EU countries gaining more and more relevance. In Germany the number of Indian and Eastern European ICT workers represent the largest group of foreigners in the sector. In the UK the majority of recent work permits were granted to Indian and US ICT employees. The activities of Dutch companies are concentrated upon the labour markets of India, Russia, Poland and Hungary, while the Portuguese ICT labour market relies on Brazilian ICT workers. In Italy multinational firms host foreign workers from EU and non-EU countries (such as India and Eastern European countries) transferred from other company branches, while smaller national software house firms have mainly established subcontractor relationships with countries like Moldavia, Romania and Serbia. There is clear evidence from the survey of a re-establishment of ›traditional‹ paths of migration that emphasise the weight of geography, along with links between neighbouring and culturally-related countries (Eastern Europe to Germany, Romania and Moldavia to Italy, Brazil and Spain to Portugal, India to the UK). In all countries the number of work permits granted to non-EU citizens has been rising sharply.

3. Recruitment Strategies and Processes

3.1. Internal Labour Market

Looking at recruitment patterns in the ICT sector the high proportion of internal labour market (ILM) flows amongst all international ICT flows, both currently and during the boom, is a very important phenomenon for our understanding of recruitment patterns in the sector. The quantitative volume was generally high, although variable according to different countries and firms. By ILM flows we mean the movement of personnel within the framework of organisations, in this case multinational companies. These flows display as one important feature the fact that they are mostly temporary: assignments or secondments may last from some weeks to 2–3 years. As a result, employees remain contractually linked to the sending firm. Permanent (long-term) movement in the framework of ILM appeared to be rare in most

of the PEMINT countries (Germany, Italy, the Netherlands, Portugal and Switzerland) and are frequently related to personal issues such as, for example, family formation in the host country. The importance of temporary flows however led the research to deal with a broader concept of ›mobility‹ instead the usual one of ›migration‹.

The underlying basis of the dominance of ILM operations is the advantage of scale on the part of large firms. The main rationale for ILM movements is the flexible use of existing staff in multinational companies, allocated according to functional and technical need. In other words, mobility is a tool to optimise the allocation of production factors. In theoretical terms, this interpretation can be linked with comments on the theoretical approach of human capital theory. The differentiation between company specific and general human capital indicates that the value of knowledge gained in a specific company (firm specific assets) appears to be more efficient for the functional tasks that have to be fulfilled than direct recruitment of non-members of the organisation from external, national or regional labour markets.²⁶ In this context, theorists working on internal labour markets like Paul Osterman have established a differentiation between an ›industrial subsystem‹ that requires a huge amount of firm specific assets and a ›craft subsystem‹ with a much lower degree of intra-company knowledge production.²⁷ Taken in detail, the reasons to move are the knowledge of the firm, products, technical infrastructure and tasks possessed by the assignees; the filling of local functional and technical temporary labour needs; and the aim of obtaining and giving training in the firm's products.

Another reason for ILM movements is the development of human resources, expressed by the role of careers that can be interpreted as a very important strategy to establish a permanent link between employer and employee. International migration of this type can therefore be seen as a normal part of the career paths institutionalised in these companies. In economic management literature this perspective is also interpreted from the companies' rationale. Thus, career development is an investment decision trying to

26 For human capital theory cf. Gary Becker, *Human Capital. A Theoretical and Empirical Analysis with Special Reference to Education*, New York/London 1975.

27 Paul Osterman, *White Collar Internal Labour Markets*, in: idem (ed.), *Internal Labour Markets*, Cambridge 1984, pp. 163–189, here p. 167. For this case study it is instructive to note that the occupational group of programmers were perceived as a part of the ›craft subsystem‹ until the beginning of the 1980s, but are now a core part of the industrial subsystem. Cf. Achim Wolter, *Globalisierung der Beschäftigung. Multinationale Unternehmen als Kanal der Wanderung Höherqualifizierter innerhalb Europas*, Baden-Baden 1997, p. 119.

boost the companies' assets of internal human capital.²⁸ Recruitment costs also seem to work in favour of internal vacancy filling processes.²⁹

By contrast to what occurs in local and national ILM movements, costs may become high in international ILM flows (between branches of different countries). In this case, a specific mobility package can be added to the labour costs of the home country, since the employee remains contractually linked to that country.³⁰ Consequently, other motives for flows prevail. One implication of this is that labour costs do not show up as a major reason for international migration, as occurs in ›classical‹ migration. Instead, the criterion for moving personnel is the one of optimal allocation of factors, even when the costs involved are high. ILM movements also seem to be relatively less affected by external economic constraints, including the recent economic downturn, than external recruitment. ILM flows seem to have acquired some stability over the years, being used whenever it is deemed necessary. In a sense, it may even constitute a means of restoring intra-company labour market equilibrium in difficult contexts. Significantly, in order to facilitate company internal mobility requirements, governments in all OECD member states may design special legal ways to facilitate this kind of mobility.³¹

28 Cf. S. Krippel/R. Vennen/K. Warrlich/M. Reusch,/P. Ludwig/J. Basten, Strategien der Auslandsentsendung von Führungskräften, in: Heinz-Dieter Hardes/Hartmut Wächter (eds.), Personalmanagement in Europa, Wiesbaden 1993, pp. 151–218, here p. 173.

29 In the theoretical literature another advantageous (for companies and employees) features of ILM operation are raised. It is argued that continuous mobility of executive personnel guarantees a rising identification and loyalty towards the company and provides international network structures among managerial and executive staff. The enhanced loyalty and these network structures enable companies to change their mode of management. Bureaucratic mechanisms of control can be reduced and rather decentralised managerial structures can be set up. Cf. Andres Edström/Jay R. Galbraith, Transfer of Managers as a Coordination and Control Strategy in Multinational Organisations, in: Administrative Science Quarterly, 22. 1979, pp. 248–263; Jay R. Galbraith/Andres Edström, International Transfer of Managers. Some Important Policy Considerations, in: Columbia Journal of World Business, 11. 1976, pp. 100–112.

30 Estimations of the costs of such ›relocation packages‹ for the UK, depending on the destination country and the age of the expatriate, range between 132.000 and 306.100 pounds. Cf. John Salt/Jill Mervin/Sue Shortland, The Cost of International Relocation, in: Relocation News, 26. 1993, pp. 4–7.

31 The presumed role model of a pragmatic immigration policy, the United States of America, set up the category of L-visa to organise intra-company personnel transfers. This ›intra-company transferee‹ category is available to individuals who either own or are employees of a foreign corporation in which they have worked for at least one of the prior three years, in an executive, managerial, or specialised-knowledge capacity. The L-1 visa carries a maximum approval of seven years. Within this category a distinction has to be made between managers and executives (L-1A) and

A ›recruitment preference chain‹, in which the ILM has priority over other forms of recruitment, is one major result that has to be borne in mind to understand personnel policy in this sector. Only when a suitable candidate is not found internally (within the context of the organisation) do external recruitment activities start. Furthermore, excluding the temporary assignment

specialised personnel who have a special knowledge about the company's operations abroad (L-1B). Unlike the L-1A visa, an L-1B beneficiary must undergo the labour certification process in order to obtain permanent residency. The initial L-visa for managers or executives is granted for a period of one year and may be renewed two times in increments of three years, the total period of stay under the L-1B visa is five years. On completing the maximum allowable period in L-1 status, the employee must be employed outside the USA for a minimum of one year before a new application is made for L status. Compared to the H-visa the procurement of the L-visa is regarded as more unbureaucratic. The Canadian government also supports the entry of foreign workers needed by employers to temporarily meet labour market shortages that they are unable to fill from the domestic labour force. The legislation is designed to regulate the admission of temporary foreign workers to Canada. In general, every foreign worker must be issued an employment authorisation in Canada. In order to obtain an employment authorisation, the Canada Employment Centre (CEC) must issue a ›confirmation of offer of employment‹ (also known as job validation). This job validation is usually issued for the period of employment and may be issued for a maximum period of three years. Many Canadian companies find it difficult and time consuming to obtain this job validation from the CEC. The job validation mainly corresponds to the German labour market test. However there are numerous exemptions for the requirement to obtain a job validation. Among others senior intra-company transferees are exempted for the requirement to obtain a job validation. This is an analogy to the German situation. This category applies to persons in senior executive or managerial categories seeking to enter Canada to work at a senior executive or managerial level as an intra-company transferee for a temporary period, for employment at a permanent establishment of that company in Canada. An employment authorisation under this exemption may be issued for a period of one to three years and may be extended for a total period of five years following entry. In the European context countries that mainly were considered as countries of emigration also set up special regulations to organise and facilitate intra-company transfers. In Ireland a simplified scheme exists for companies wishing to send existing employees to an Irish branch, subsidiary, sister or parent company for a maximum period of 4 years. The main facilitation in the Irish regulation is that intra-company transfers no longer have to wait for a full work permit to be issued. This simplified process is only available to assignees for a period of up to 4 years, then a regular work permit application will have to be made. In the meantime a simple ›letter of confirmation‹ from the home and host employer will enable the intra-company transferee to work in the new location. Thus a labour test also is not necessary. The Netherlands also established a facilitated access for certain categories of paid employment. Although the conditions to obtain a work permit might be eased, a work permit is still necessary. One category affects employees of multinational concern. In this case only a limited labour market test will be carried out. Very detailed on that Gail McLaughlan/John Salt, Migration Policies towards Highly Skilled Foreign Workers. Report for the Home Office, London 2002.

of foreign staff through the ILM, there is a systematic preference for the national labour force as against foreign recruitment. For Germany, the ILM is seen as crucial and only if its usage is not possible do companies move over to the external labour market (ELM). In the case of small and medium enterprises that cannot establish internal cross-border schemes, the ELM is the only realistic strategy. The use of recruitment agencies for special posts and positions and subcontracting are also other options. For Italy the main recruitment processes are the national and international ILM recruitment for multinationals firms; the national external pool for the national firms; the use of temporary work agencies for both multinational and national firms (for low skilled and temporary needs); and the common and growing decision to outsource activities (in order to concentrate on core activities and reduce costs). In the Netherlands internal mobility has a priority above that of external recruitment. Apart from the ILM and national labour market preference, internal training and subcontracting also represent other alternatives to the recruitment of foreigners. For Portugal, there is a clear preference for the national labour force, against the possibility of foreign external recruitment. The main alternatives to foreign recruitment are ILM movements, additional training and subcontracting, besides national external recruitment. In Switzerland, foreign external recruitment is not an important strategy for the majority of firms. Instead, the most common strategies are recruitment in the ILM (national and, more frequently, international), outsourcing in the international ILM and subcontracting at national level (this last strategy is particularly advantageous for temporary work, because the subcontracted employees do not appear on the salary list). In the UK recruitment is primarily directed at the ILM and at the national labour market. International assignments are widely used and constitute an alternative to foreign external recruitment. Subcontracting is another alternative but its use differs between companies.

Despite the general importance of ILM allocation in all countries under analysis, differences in recruitment exist according to company size and between multinational and national firms. The ILM is the most relevant channel in the case of multinationals. In other words, companies that have the structural preconditions to set up cross border internal labour markets rely on internal procedures. As seen above, the ICT sector generally consists of relatively few multinational corporations that dominate the market and many SMEs that are comparatively less significant, as far as sales volume and numbers of employees are concerned. Looking at different company sizes, a clear cleavage between large firms, particularly multinationals, and SMEs can be observed. The SMEs that lack the ›critical mass‹ as the necessary structural precondition for an internal labour market have to rely on external recruitment instruments. Nothing else remains to be done for this size of com-

pany. For example, in Italy, the ILM is the preferred source of recruitment for multinationals, representing a trusted and more convenient choice. National software houses, however, are more involved in international subcontracting operations or delocalisation (of some parts or their main technological activities) to reduce labour costs. Regarding Switzerland, three types of companies illustrated different channels of recruitment. First, the group of big multinationals, in which the ILM is the most relevant channel to recruit foreign labour, both for permanent and project work. Second, medium sized and specialised national or multinational firms, for which the ILM is not as important as for the first group; these companies are smaller and, therefore, the ILM is restricted to the national dimension. And a third group of small (multi) national firms in the software business, for which distinct forms of recruitment exist and range from subcontracting, networks, co-operation with universities, the national labour market and cross-border commuters. In synthesis, the ILM is the most ›convenient‹ option for multinational firms and the ELM the most ›realistic‹ option for national and small or medium firms.

Regarding channels for ILM recruitment, company intranets and personal contacts or networks are the most common methods used in the search. Usually the intranet represents the easiest way to announce a new vacancy worldwide: a worldwide intranet for job postings is very important because through the use of an internal website anyone from any world company branch can apply for an available position. Besides this, personal contacts are also well utilised as a way to fill a post internally with persons who fit the job or are interested in it. Regarding the interface between internal and external recruitment, special ›hire a friend‹ or ›find-a-friend‹ networks are gaining importance, especially in Germany and Switzerland, where these networks were mentioned as a recruitment strategy (the employees who find someone for a job receive a financial reward). This procedure can be seen as an institutionalised form of informal networks. Furthermore, these kinds of networks act as an enlargement of the ILM (or at least a good alternative): the new employee already knows somebody in the company, already has ideas and knowledge about the company (because of the friend inside the company) and usually stays longer than others.

The importance of the ILM for ICT companies is confirmed by the strategies of consolidating firms through mergers, acquisitions and the opening up of new branches, including cases of relocation of functions. Mergers and acquisitions reinforce the overall internal competencies of the firm, uniting a wide array of skills in a common hierarchy. Some cases of relocation of functions to foreign countries, either manufacturing facilities or software development centres (for example, India), must also be emphasised. The rationale is mainly the lower labour costs and perceived local surpluses of those countries. For example, Italian firms referred to the convenient la-

bour costs offered by their foreign partner companies and subcontractors that employ local staff with medium and low technical skills; these workers usually remain based in their country to develop parts of the business activity, because their work development does not imply a physical presence in Italy. Relevant for ICT is that a firm's competitiveness results not from importing labour but from using local labour. Indeed, after extending the firm's presence, accrued ILM flows may take place, for purposes of project implementation, problem solving and training.

Despite its wide use, international ILM movements present some disadvantages, the most relevant of which are the costs involved, mainly when assignments are longer in time. Indeed, benefits usually exceed costs: there is a high demand for software products and high prices are asked for them, since clients (organisations or individuals) view them as long-term investments. But some trends exist as a substitute for ILM flows. These include extended business trips (international commuting) and short-term assignments. All are still ILM movements, but of a different nature. Another possibility of diminishing ILM flows is substituting them for partnerships; international flows will take place amongst partners or contractors and subcontractors. Finally, when a job becomes permanent, the option is to recruit labour in the national external pool instead of maintaining foreign assignees.

Some implications may be derived from the role of the ILM in ICT sector migration. Firstly, the specificity of organisational migration must be underlined. Causes for migration ought to be observed from a specific angle, different to that which occurs in ›classical‹ migration: they result from a symbiotic intersection between macro (organisational) and micro (individual employee) motives.³² As ILM mobility is based on membership in organisations, this intersection also provides the conditions for social integration (housing, health, family, education). As a result, these ILM flows are typically not understood as ›migration‹, by policy-makers and other observers. Together with their temporary status, this explains why these flows are so often ›invisible‹ in migration studies.

Secondly, the importance of singular firms, or groups of firms, in the ICT field must be stressed. The existence of recent and very specific dynamic technologies or, in other terms, technological differentiation and specialisation, creates a strong link between employees and organisations. These links may be within singular firms or between groups of firms united by the same technology (for example, a software language). Constant technological development and accumulated training in firms insulate individuals within a technology. As a result, corporate culture, in the sense of identity within a

32 For a microeconomic perspective see Krippel et al., *Strategien der Auslandsentsendung von Führungskräften*; Wolter, *Globalisierung der Beschäftigung*.

firm, tends to result not only from ›classical‹ factors (career prospects, stability, reputation) but also (and perhaps mainly) from technological skills. This privileged link between organisations and employees has deep implications for labour recruitment. Preference for the ILM reveals the importance of ›internal observation‹ by the firms for recruitment purposes, i.e., the role of internal knowledge and networks; and reveals a scarce institutionalisation of occupations and qualifications in the ICT sector.³³

3.2. Subcontracting

Subcontracting patterns are variable and do not often lead to international labour flows. Despite the variety of subcontracting, some general trends have been detected during the survey. There seem to exist different volumes of subcontracting, according to business activities. Core activities of firms are less subcontracted: the aim is to preserve the firm's knowledge and competencies. This results from the technological differentiation and specialisation of firms as mentioned above, and the interest in keeping up an active core of complex skill profiles. Alternatively, non-core activities are more often subcontracted (call-centres, marketing, catering, etc.).

The level of subcontracting seems also to depend on firms' structure and size. Smaller national firms subcontract more often. They cannot benefit from advantages of scale (extended ILM) as in larger multinationals and thus must rely on the market. Subcontracting may here include some core activities, mainly for temporary needs, and occasionally implies partners in foreign countries. Conversely, larger multinational firms subcontract less often: they rely on their ILM and are interested in protecting their knowledge. However, a specific modality of subcontracting occurs in this case. There is frequently a link between large multinational firms and local partners to implement the former firm's technology. These business relations encourage stable inter-firm relationships, uniting ICT large players and several small and medium-sized local firms.

It must also be stressed that much subcontracting occurs at a national, or even local level. In this case, when it involves low-skilled jobs, it is common to appeal to already-established foreign migrants in the country. When subcontracting occurs with firms from foreign countries, for low or medium-skilled activities, the aim is often to benefit from local lower labour costs. A

33 A question for further research is whether project findings on the major importance of ILM flows may have been biased by the short-term economic situation (economic downturn leading to low external recruitment) or by the presence of many large multinational companies in the sample. Regarding this last point, the reason for choosing a majority of large multinationals to be surveyed was due to their economic importance (the ICT market structure is of an oligopolistic type) and the fact that they concentrate most of international labour flows.

situation of this type is frequent in small and medium firms of countries such as Italy. Again, as was evident in the case of the ILM (relocation of functions to lower wage countries), labour costs are not a reason to induce permanent migration. In this case, competitiveness results not from importing labour but from contracting with local firms. At the most, this link may give rise to some short-term international movements.

An observation of national cases may provide further clarification. In this respect in Germany, subcontracting as a general alternative to recruitment (as often occurs in the construction sector) is not significant for the core business of the companies (software production, hardware production, IT services, telecommunication). Subcontracting is an attractive option for ICT companies in Germany, but the majority of them state that their core business is ›too sensitive‹ to subcontract parts of it to other companies and competitors. Therefore, subcontracting can be found in support functions like security, catering, marketing, public relations, etc. and also in related technical aspects, but rather seldom in the core business.³⁴ In general, the reasons that firms decide to subcontract activities, especially in times of market negative trends, refer to the criteria of the core business centrality and to the question of cost reduction. In sum, the ›make or buy‹ dilemma³⁵ is differently faced by on the one hand firms that subcontract non strategic segments of business or make use of a range of partner companies to fill some company gaps and working needs (multinationals), and on the other, those firms that are prone to outsource activities or relocate their core business to other countries, in order to become more competitive in the national market (national software houses).

3.3. External Labour Market

Regarding the external labour market (ELM), the current panorama is one of limited recruitment, due to the economic downturn. However, strong recruitment existed during the boom. In all cases, some trends are significant.

First, the ELM is only tapped after recourse to the ILM (either local, national or international), has not produced the skills required. In all PEMINT countries a ›recruitment preference chain‹ exists where the ELM is normally the last alternative. There is a clear reason for this ›recruitment ranking‹. All

34 That is why joint ventures are frequently used and why M&A activities in the sector are still very frequent in spite of the economic downturn. In less sensitive parts of the product development cooperation, joint ventures are a common strategy for companies.

35 For a theoretical background on the ›make or buy dilemma‹ cf. Ronald Coase, *The Nature of the Firm*, in: *Economica*, 4, 1937, pp. 386–405; Oliver Williamson, *Markets and Hierarchies. Analysis and Antitrust Implications*, New York 1975.

external procedures (like the German Green Card for example) require individuals to be recruited on the basis of observable formalised qualifications and occupations. Since this only seems to be possible in the field to a limited extent (see above), organisations rely instead on ILM or on networks, i.e. they use the knowledge of their members about external individuals concerning their recruitability.

Second, the ELM is mainly used at the national level (national labour markets), both by national and large multinational firms. The reasons for the preference of national labour markets are several: practical difficulties of recruitment abroad (for example, costs of interviewing); better ›observability‹ of qualifications, leading to preference for recruitment through national networks; importance of generic and social skills, including language; constraints posed by the regulatory framework regarding foreigners (mainly non-EU); and the limited importance of labour costs as a rationale for flows.

Labour costs did not emerge as a strong motive to search for labour abroad for several reasons. First, ICT jobs, mainly the highly skilled ones, are inserted in the primary labour market (they possess higher wages, career prospects, stability, qualifications); as a result, vacancies targeted at ›vulnerable‹ migrants are unlikely. As seen above, ICT firms are generally characterised by a concentration of functions in the highly skilled domain. Second, and partially for the same reason, firms are interested in avoiding wage disequilibria amongst employees (native and immigrant ones). Finally, as already mentioned, there is a lack of ›observability‹ of international qualifications.

Regarding channels for external recruitment, the internet is the most widely used one. Advertising in newspapers and specialist journals and the use of recruitment agencies also represent relevant methods of external recruitment in some cases. For example, the majority of the companies under analysis in Germany do not rely on advertisement in newspapers and professional journals (quite expensive) and recruitment agencies are used for special posts and positions. However, advertisements and the use of recruitment agencies are some of the main methods of external recruitment for the Netherlands. For Italy recruitment agencies are also quite important.³⁶ By contrast, in Portugal specialised recruitment agencies did not appear as a regular

36 The presence of foreign workers in firms via recruitment agencies, even if found in very few cases, is related to ICT recruitment agencies that provide temporary consultants for medium technical skills. The temporary presence of such workers is due to the need for work on projects with a specific technical knowledge that the Italian firm does not possess and which would be difficult to find or would cost too much in the national market. Such recruitment agencies can be either foreign or Italian. In the case of recruitment agencies based in foreign countries (body rental firms), Italian firms use them to recruit and select workers directly in the local foreign market (Serbia is an example). Body rental firms are medium-small software houses that provide medium skilled workers for temporary works.

pattern, but advertisements in newspapers were preferred for recruitment purposes. For Switzerland, most companies use advertisements in the newspapers (only on the national level, but, in times of strong demand, a shortage of supply or when looking for cross-border commuters, some companies advertise in a foreign newspaper as well) as well as recruitment agencies. For the UK press advertisements and external agencies are the most used channels of external recruitment; however, cost free options are preferred and conducted beforehand. Finally, contacts with universities were also emphasised in Italy, Portugal and Switzerland as a channel of external recruitment.

Some further observations can be derived from the national experiences. In Germany, until early 2001 the ICT sector experienced strong growth in all parts of the sector (especially mobile telecommunication and IT services). During the survey, however, all companies were obliged to reduce the number of their employees. So, the question of active recruitment was a rather theoretical one. The very limited amount of active external recruitment was mainly organised with instruments of the sector itself. External recruitment as a major strategy for companies in the ICT sector in Germany is still the only realistic option for SMEs that cannot establish internal cross-border schemes. For multinational firms, external recruitment is only a relevant option in times of significant labour and skill shortage and will be started after failure to fill vacancies internally.

In the Netherlands, most companies do not have experience of the external labour market at an international level. The reasons for this are, among others, costs and language barriers. However, some companies turn to international recruitment when certain knowledge is not available in the Dutch labour market. The same trend is observed in the UK, where recruitment is primarily directed at the ILM and at the national labour market. Apart from a few cases, external international recruitment was very limited during the period of the survey. The case of Switzerland also revealed that international external recruitment is not an important strategy for the majority of firms and only comes after a range of other recruitment options. Since the rate of fluctuation is in all firms relatively high (15–25 per cent), the topic of bringing in new blood usually plays no role (only one of the firms mentioned new recruitment as a strategy, since the fluctuation rate is lower, especially at higher qualification levels).

In Italy the recruitment of foreign workers is a limited and reduced strategy in the ICT sector. However, an exception to this was found in the national software houses in Italy that have a process of external international recruitment in foreign countries. This is due to the practice of recurring to body rental foreign firms and to the outsourcing strategies of delocalising part of the activities (core and non core business activities). This may lead to some cases of mobility (real or virtual) of foreign workers with technical

skills. This was the case in some Italian software houses that went through the process of recruitment of medium-skilled foreign workers in Serbia, Romania and Moldavia in different ways. All in all, the convenience of employing a labour force in countries where the cost of labour is cheaper makes it understandable why such workers do not easily move to Italy.

Regarding Portugal, there is a systematic preference for the national labour force as against the international external market. Despite the fact that recruitment at the international level rarely occurs in practice, there are cases of some small national firms whose strategy is the active recruitment of workers and external consultants in Brazil. Two firms, which recruited often in this country, possess offices in Rio de Janeiro whose main function is precisely the selection and recruitment of Brazilian professionals. In the one case the selection and recruitment of Brazilians was made through partners in the ICT area before the office was opened. The national firm adequately rewarded this co-operation. The other case is similar, since it subcontracted Brazilian firms for the selection and recruitment of Brazilian professionals. Due to the bureaucratic problems of legalisation, the firm opened an office in Rio de Janeiro, whose function, besides selection and recruitment, is to deal with all legal aspects involved in the movements of Brazilians (through contact with the Portuguese embassy and consulates in Brazil).

In synthesis, the international ELM is activated mainly as a result of acute skill shortages, as Germany, Italy, the Netherlands, Portugal, Switzerland and the UK revealed. It is explored as an option because of local shortages and perceived external surpluses, i.e., the presence of international labour pools (for example, IT specialists in India). In some cases in the survey, active international recruitment did not occur due to the economic downturn. Whenever companies in EEA states activate international ELM recruitment, other EEA member-states are generally not targeted, since they will be likely to suffer from similar shortages. It is common to witness the re-establishment of 'traditional' paths of migration, now endorsing ICT related flows (for example, India to the UK, Brazil to Portugal). Also common is the significance of geographical factors that can explain the importance of neighbouring countries as a source (for example, Eastern Europe to Germany).

3.4. Skills, Education and Occupations

Skills needed to perform well in the ICT sector can be grouped into two categories. First, technical skills: these relate to the knowledge of particular technical aspects of ICT (for example, knowledge of the Windows operating systems). Second, generic skills: these include social and managerial competencies, including teamwork, communication skills and customer sensitivity. It must be noted that different types of skills correspond to different functional areas in ICT organisations: these include R&D, consulting, marketing, sales,

etc., which require different competencies. All areas experienced shortages, mainly during the boom. Furthermore, ICT activities frequently present a need for national or local re-specification of global products, mainly in the services domain.

Educational institutions have adjusted progressively to ICT growth, at least in terms of gross quantitative volumes. During the boom of the late 1990s, educational institutions were not initially prepared to meet the demand. With time, there was a rapid increase in the number of ICT-related degrees and students, which allowed a progressive match between demand and supply. Still, some inconsistencies of growth may re-occur in the future. The boom in the ICT sector gave rise to larger inputs and outputs in ICT degrees in educational institutions. However, the recent decline has led to a relative surplus of workforce and some decrease in educational inputs. This may lead to a renewed divergence between training and skill requirements.

In detailed or qualitative terms, a structural mismatch may remain between education and the ICT sector. In other terms, a loosely coupled relationship seems to exist between educational institutions and ICT organisations. This occurs because the education system does not provide the precise qualifications used in firms (technical skills and qualification labels) and firms develop their own technical knowledge (through R&D, training and practical experience). In particular, the high levels of training conferred by most ICT organisations attest to the sector's autonomy from standard education. In a related perspective, professions and occupations in the ICT sector are not standardised, not being based in standard educational training. Usually, the educational system is linked to specific occupational qualifications. However, in the ICT sector occupations are not yet institutionalised; instead, they are specifically defined in each organisation (for example, specific job names). There is also a lack of formal legislation governing qualifications in the sector.

There are some consequences of this loose coupling between education and organisations in the ICT sector for labour recruitment. The main ways for a firm to regard an individual as qualified are, on the one hand, the previous or current link to the organisation, (i.e., his/her presence in the ILM, which explains the preference for internal flows) and on the other hand, reference by networks, either at the national or the international level. The importance of social networks, either formal or informal, for recruitment was a finding of the survey. This also explains some possible reluctance to recruit in insufficiently understood external labour markets.

4. Obstacles to Mobility

One of the main aims of the survey was to find the most relevant obstacles to labour mobility in the ICT field. Political factors were often cited as a relevant barrier.³⁷ Migration policies aiming to ease ICT flows or, in other terms, to facilitate ICT labour circulation channels, exist in several countries. Germany, the UK, the Netherlands³⁸ and Italy display (or displayed) special schemes for ICT, either in the form of specific work permits or other schemes. In Switzerland and Portugal no explicit policies towards ICT labour migration exist, but some tolerance was found towards these flows. Policies may apply to ELM and ILM movements, depending on nationality, visa requirements and duration of stay.³⁹ An interesting case with respect to both types of channels is the one of Germany. Shortly before the start of the survey, the German government set up the IT-ArGV (›Green Card‹) as a special recruitment scheme specifically for the ICT sector. The Green Card, introduced in 2000, is addressed to ELM movements (immigration of IT specialists to the German labour market). For multinational firms the government set up in 1998 a rather little-known method for internal labour market allocation which is legally privileged compared with other means of recruitment under German

37 This, however, does not seem to be a new phenomenon. In one of the most influential books in the history of economic theory, »The Wealth of Nations«, Adam Smith reports about an incumbency of King George I, that punished everybody who instructed somebody to go to a foreign country to take up work there with 100 pounds or three months in jail. Political obstacles seem to have remained a relevant point for centuries.

38 In the Netherlands this policy concerned the somewhat liberalised procedure with regard to authorisations for temporary stay of ICT professionals, which came into force on 11 May 2000 and lasted till 1 January 2003 (it was reversed because of the economic recession). On 22 February 2001 this liberalised procedure was formally laid down in a special regulation (AD-regeling): employers were exempted from the duty to notify vacancies for ICT jobs at the higher vocational education level. This special agreement was a small change (more tolerance) in the legal procedures, but gave rise to some misunderstandings on the part of employers. Since 1 January 2003, the rather restrictive Dutch labour migration policy also refers to the ICT sector.

39 A question for further research is whether current policies towards ICT reflect pressure from firms or ›unilateral‹ programmes created by governments. The weak institutionalisation of the sector – firms and employers' associations, professional associations and trade unions – may lead one to wonder if any type of consistent pressure could have been exerted on governments. Instead of collective agents, it may have been individual multinational firms demanding action. It is known that firms may tend to overestimate their labour shortages, as a means of overstating their economic potential (for marketing or symbolic reasons) or to put pressure on governments (to increase supply, by education or migration). Alternatively, governments may have wanted ›unilaterally‹ to increase supply, by education or migration, to keep pace with ›modernisation‹. This would reflect the role of political agency or symbolic politics.

law (§ 4 (7) and (8) ASAV, § 9 Nr.2 ArGV). Some companies proposed detailed corrections for the ILM schemes (i.e. increase of the maximum period of stay). The Green Card (although use is quite limited) is regarded as a very useful complement for the companies that is handled in a very flexible and unbureaucratic way. On the whole, the entire work permit issue is regarded as unproblematic and unbureaucratic.

Despite the existence of special schemes and greater tolerance towards ICT labour flows, firms in Italy, the Netherlands, Portugal, Switzerland and the UK often complained about political obstacles. These included bureaucratic difficulties in obtaining permits, i.e., the time and effort required to legalise situations; excessive time requirements, which contrasts to a very dynamic market; and, when applicable, the unavailability of special measures towards ICT. It must be stressed that this concerns only non-EU and, generally, non-EEA citizens: difficulties in obtaining permits for professionals with these nationalities (either in ELM or ILM movements) were viewed during the survey as one of the major obstacles to ICT international mobility, either of a permanent or temporary type. In this regard, the ease of labour circulation in the EU internal space was always viewed as a positive asset. One result of bureaucratic difficulties in moving personnel is the spread of ›informal‹ and even irregular practices: these are common, mainly at the ILM level, whenever legal constraints are too hard, or too lengthy, to overcome (for example, the use of tourist visas and the practice of overstaying is common in firms).⁴⁰

Particularly under observation were also the variables related to specific national regulations in the EU: the hypothesis of ›incomplete European integration‹ was one of the driving forces of this project. However, regarding institutional obstacles, variables related to fiscal systems and social security regimes in the EU countries were considered, by most of the interviewees, as not very relevant as constraints to mobility. They certainly play a role in this field: for example, different tax systems and costs of living imply a need to provide modes of equalisation for international staff transfer in multinational ICT firms. However, adding some financial resources to the movement easily solves any problems.

Taking the national cases into account, variables such as pensions, national security, taxation and welfare benefits were not regarded in Germany, Italy, the Netherlands, Portugal, Switzerland and UK as a relevant barrier to mobility. However, some German firms stated that taxation is the issue that appears to be a critical obstacle to mobility. In this sense a distinction is

40 However it should be remarked that complaints about and criticism of ›political obstacles‹ are habitually exaggerated by companies. Lodging complaints about regulations from this perspective is a daily business of all companies that need not be empirically examined.

needed between ILM assignees and externally recruited employees that appear on the payroll of the destination country. For the first group, the comparatively high income tax rates and tax burden can contribute to an additional financial burden for the companies, especially in cases when an employee comes from a low-tax, but high-wage country. The different tax rates and burdens can necessitate individual tax-equalisation. One company stated that it is impossible to transfer a company employee from a Swiss branch to the German headquarters, because the company has to equalise the difference in wages (Swiss wages are higher) and the different tax burdens (the Swiss tax burden for highly skilled and well paid employees is lower). In Portugal some firms also described some problems related to differences in fiscal and social security regimes. This was the case for one multinational firm which admitted a higher cost associated with foreign workers, since it was necessary to subcontract a firm to deal with those issues. Also a national firm referred to problems with employment insurance of Norwegians assignees in Portugal (despite the fact that Norway is not a EU member, difficulties in getting contracts with Portuguese insurance firms, due to administrative and formal reasons, were mentioned).⁴¹

Conditions of employment, particularly wage levels and contractual rules, constitute, in some cases, a factor affecting foreign recruitment. In the Netherlands, one firm stated that it could be a problem when foreigners have higher salaries than the Dutch employees in the same kind of jobs. However, this depends on their country of origin. For example, German ICT employees have higher salaries, but those from India, Russia and Poland are cheaper. Regarding Portugal, one of the main obstacles to mobility within the EU is the labour costs disparity between Portugal and other EU countries. Generally, one might say that higher wages paid in other EU countries represent an obstacle to the entrance of aliens in Portugal, because they must be paid under Portuguese firms' terms. These obstacles must be differentiated according to the type of movement. For temporary movements, international assignments and expatriations always involve high costs. With permanent movements, the differential in labour costs appears in a stricter way. For the UK no company thought that EU regulations were important. However, one company did say that a European contract of employment within the company (instead of individual national-based contracts) would put its UK operation out of business because such a contract would have to be based on more gen-

41 In the Netherlands, only one company signalled problems with taxation, which was to do with institutional arrangements. More specifically, it concerned Belgium and the frontier worker regulation. Before 2003, Belgians who live in Belgium but work in the Netherlands paid double taxes. However, since January 2003 these constraints have become irrelevant: the new Tax Treaty between the Netherlands and Belgium prevents the Belgian frontier worker from paying double taxes.

erous German and Belgian costs and conditions. Regarding the recruitment of non-EU nationals, there was no general feeling that general labour costs and conditions played a significant role in mobility. However, one company said that the US was not regarded as a potential area for recruitment because salaries in the UK are lower and living costs higher.

Concerning the recognition of qualifications and diplomas, this was almost consensually described as non-relevant; what counts seems to be the practical experience in the field. As referred to above, the ICT sector is less formalised with regards to job profiles. Skill and qualification compatibility between nationals and foreigners are related to the fact that many qualifications in the ICT sector do not require diplomas or authorisations from a professional board, as, for example, in the case of doctors. Even so, Switzerland admitted to have some skill and qualification constraints: the recognition of diplomas plays a role in so far as there are no formal regulations (some difficulty in determining wage levels according to qualifications were referred to). Also in the UK one company did point out that there are different qualification titles and this can be confusing when comparing individuals in different countries. Another point raised was the quality of degrees from different institutions: it can be very difficult for an employer to evaluate degrees, particularly those from universities in Central and Eastern European countries and Asia.

Social obstacles, including national language and culture, were considered relevant in several (although not all) PEMINT countries. Here, some main trends were detected. The role of social obstacles seems to increase with the predominance of services in a national ICT sector (for example, product implementation, consulting and telecommunication services). Manufacturing and research and development are more likely to be exempt from social constraints. Whenever social interaction represents a significant part of ICT activities, for example, contacts with clients, social variables and particularly language, become relevant. By a similar motive, whenever the skills engaged tend to be less technical and more generic, social variables acquire significance. In some cases, the role of inter-personal trust and social capital (for example, acquaintances with suppliers and clients) was also considered relevant as a constraint to mobility.

Language is often cited as one of the main obstacles to mobility in the ICT field. The Italian case demonstrates that the language issue and the specificity of the ICT sector act as a clear blockage in the decision to recruit foreign workers. With many multinational firms in Italy being commercial and client oriented – instead of having strong research and development centres – the importance of dealing with local Italian clients requires an ability to speak Italian which discourages any decision to recruit foreigners. In the Netherlands, the most important mobility constraint was said to be language. But

the importance of the Dutch language differs between companies and is related to the kind of job involved. For example, it is important to speak Dutch for managers or when contacts with clients make up a large share of the job, a situation common in the service-oriented multinationals surveyed. Besides language problems, four companies mentioned culture as a possible mobility constraint in the sense that different mentalities can create conflicts. In the case of Portugal, almost all firms referred to the issue of language as the main obstacle to mobility. This problem was always derived from the necessity of contacting the clients. As a national software consultant firm put it, »it is not possible to force the client to speak English«. Besides linguistic problems, a large part of the firms reported cultural problems concerning the inflows of foreigners to Portugal.⁴² Although not viewed as a major obstacle, Switzerland also mentioned language as a constraint: besides English, German and French are also necessary for contact with clients.

However, the role of social variables is less important in some countries, and may be reduced in others. This is due to several factors. First, one theme of continuing significance for global recruitment patterns is the general use of the English language in the industry. As a representative of a firm in the UK said, language in the workplace is not normally a problem as far as recruitment and assignment are concerned (though it could be an issue where families were moved). As referred to above, the main exception to this rule is the local embeddedness of services. Second, some ICT activities (for example, software production) may require relatively little social interaction, and occur in a context mostly free of the manipulation of symbols. Third, inter-personal trust and social capital can be substituted by confidence in a company brand or product. If all these trends were to be dominant – and they are far from it – conditions for the fulfilment of the international character of the sector, and an increase of labour migration, could be verified.

5. Conclusion

Some central points can be derived from the survey results. First, the ICT sector is the most ›international‹ of the sectors surveyed in the PEMINT project (the others being construction and health). The international character of the ICT sector is a corollary of the fact that firms' behaviour towards labour re-

42 This is in line with a hypothesis about the ›social nature‹ of many ICT skills. Indeed, it was once referred to the relevance of the different layers of ICT occupations, the upper one being probably the most embedded in the national cultural environment. Migration would occur at the most, at the medium level such as software programmers. However, even production of software does not seem prone to foreign workers. On the contrary, most foreign flows were found at consultancy level – but usually reporting to Portuguese local executives, or Portuguese-speaking Brazilians.

cruitment does not vary deeply by country. On the contrary, the main variations result from the type of firm, which present regular behavioural patterns across the countries. The reasons for the sector's international scope are the weak embeddedness of ICT firms in national frameworks compared to other sectors and, in a related sense, the greater weight of large multinational firms.

Second, a typology is needed to address variations in labour recruitment patterns. The main vectors detected were size (large firms, particularly multinationals, and SMEs) and type of product (production and services). The use of international ILMs is characteristic of large multinational firms, which have the adequate dimensions and resources. In these organisations the temporary allocation of personnel is used to fulfil concrete tasks and to provide or receive training. Added to this, mergers and acquisitions and the relocation of services to lower labour cost countries allow for a better performance of companies. National SMEs resort more often to subcontracting and the ELM. Again, partners in lower labour cost countries may be used to increase competitiveness, and preventing migration occurring. Regarding the type of product, the relative preference of some companies for the national labour force, instead of foreign migrants, can be explained. This is mainly true for those types of organisations whose main task is the national re-specification of generic products.

Third, some general considerations may be derived from the international flows common in the sector, particularly those within the ILM. On the one hand, migration must now be understood as one form of mobility, transcending the ›classical‹ model of international labour movements. Most international ILM flows are temporary, short to medium-term, and proceed within the framework of a given organisation. On the other hand, organisational migration has specific features, leading to different problems for individuals and organisations, and creating different constraints for national policies. As a number of ICT organisations are multinationals, the role of global trends is evident in the field: global firms and global strategies cause global labour movements. Finally, since the ICT sector reveals a loose coupling with educational institutions and, as a consequence, with national regulatory frameworks, it acquires an international dynamic in itself, explaining why it is so important for firms to control their expertise and why international networks of professionals trained in a given technology are so effective.

Fourth, certain obstacles acquire a greater relevance for ICT international labour movements. The PEMINT variables (pensions, national security, taxation and welfare benefits) were not considered by those surveyed to be very significant as a constraint to mobility. They constitute a minor friction that can be overcome by administrative or financial efforts. The same level of relevance was attributed to rules on the recognition of qualifications.

Political variables however were considered as major obstacles, particularly regarding non-EU citizens. These were expressed as bureaucratic difficulties, time delays and, in some cases, the lack of special immigration schemes for the ICT sector. Social and cultural variables, including language, were viewed in some cases as a major obstacle, particularly when ICT firms were dedicated to services and more deeply rooted in their local environments. Despite the fact that ILM movements constitute a very fluid form of international mobility, these remaining constraints to migration explain why the internationalisation of the sector, and the international ambitions of many companies, is far from being fulfilled.

The analysis of the ICT sector and particularly its comparison with the construction sector can be very instructive for theorising labour migration. It becomes clear that labour migration is not a discrete event or a simple result of different wage or unemployment situations in the source and destination countries⁴³, but refers in each case to different needs and problems. The analysis of the construction sector in this volume made it very clear that the attraction of foreign labour can be used as a central strategy to reduce wage costs under certain circumstances. Thus migration in this sector is mainly cost driven. The situation in the ICT sector appears to be completely different. As has already been indicated, the ICT sector is dominated by issues connected with mobility rather than being linked to the ›problem‹ of migration. In this sector cross-border mobility is not a tool used by HR units to react to market conditions but instead a kind of factor reacting to the needs of companies to optimise factor allocation. In that sense companies can establish worldwide personnel value chains that follow company-based FDI and that improve conditions of market integration. Internal migration is thus not a phenomenon related to labour market needs or needs to cut wage costs but to the internationalisation of the flexible use of labour inside internationally operating organisations.

From the company perspective this migration or mobility that mainly takes place within the organisational context of an internal labour market is regarded as something completely unproblematic and necessary.

The two cases of the construction and the ICT sector seen from this perspective show us that labour migration must be regarded as a phenomenon that reacts to different structural and economic preconditions valid in each sector. The construction sector appears to be a sector historically highly regulated by nation states that became gradually Europeanised as a consequence of the freedom of movement for services and the posting of workers.

43 Many analyses implicitly argue in that direction by talking about general push- and pull factors in a similar sense as Ravenstein developed his ›laws of migration‹ at the end of the 19th century.

The different strategies chosen in the Netherlands and in Germany in reaction to this Europeanisation reveal that the options for single nation-states to deal with such forces still differ significantly.

The ICT sector proves to be completely different. The high relevance and dominance of the ILM operation in all countries is the most frequently used tool to organise labour allocation and indicates that the ICT sector is a highly international(ised) sector. Accordingly the options for action by individual nation-states are rather limited and restricted to the provision of a legal framework that allows the flexible allocation of personnel. More or less all states follow this path and have established quite similar regulations for ILM transfers.

Alex Balch, Ivana Fellini, Anna Ferro,
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The Political Economy of Labour Migration in the European Construction Sector

1. Structural Conditions of Labour Migration within the Construction Sector

The construction industry is a key sector of the European economy.¹ It is not only the largest industrial employer within the European Union (EU) but also one of the most important driving forces of economic development. The construction sector is also and always has been a key sector for labour migration. When assessing the importance of labour migration within the sector, it is important to stress some specific aspects concerning the nature of this industry. First, the construction sector is very labour intensive, with a nearly exclusive presence of male workers.² Although automation has significantly increased and the share of unskilled workers decreased in the construction process over the past few decades, manpower is still very important compared with other sectors. This makes the construction sector very attractive for foreign labourers, especially since construction work is still physically very arduous and, thus, in many cases unattractive for indigenous workers. Second, the construction industry predominantly produces immobile products. This means that in contrast to other industries production sites cannot be moved to other countries (in order to lower costs). Instead, migration serves as a kind of functional equivalent and has become the most important means to realise international cost benefits. Third, the dynamics of the construction

1 This paper is based on six national reports. The reports were elaborated by Michael Bommes and Holger Kolb (University of Osnabrück/Germany); Uwe Hunger (University of Münster/Germany); Mark van der Linden (Erasmus University Rotterdam/The Netherlands); Ivana Fellini, Giovanna Fullin and Emilio Reyneri (University of Milano-Bicocca/Italy); Maria Baganha, Pedro Gois and José Carlos Marques (University of Coimbra/Portugal); Philippe Koch, Eliane Kraft, and Sandra Lavenex (University of Berne/Switzerland); Alex Balch and Andrew Geddes (University of Liverpool/UK).

2 According to EUROSTAT Labour Force Survey, 2001 in the six PEMINT countries the share of male workers in the sector varies from 86,7 per cent in Switzerland to 96,4 per cent in Portugal.

sector are highly dependent on external factors such as the overall performance of the economy, public spending, weather, etc. which make this sector more sensitive to the business cycle than other industries. In many countries this has led to a strong tendency for governments to regulate by means of special wage regulations (such as the so-called ›bad weather‹ subsidy in Germany) and other forms of intervention, also applying to labour migration. Fourth, a very fragmented production process and a dominance of small and medium sized enterprises (SMEs) characterise the construction sector. This has led to a specific division of labour between big, medium sized and small companies in most European construction sectors. Big companies normally act as general contractors, medium-sized and small companies usually as subcontractors. This makes the sector even more attractive for labour migration because single tasks can be easily parcelled out to foreign companies or indigenous firms working with foreign workers. Fifth, due to the immobile character of the products, enterprises in the construction sector tend to focus on local and regional markets with intensive and long-standing relationships with their customers (including state officials since public spending is very important for the construction sector). A solid knowledge of and a high presence at local markets are very important for economic success. Therefore, the construction sector has for a long time been a highly locally and regionally orientated market. Since the sector is also well known for collusion, irregular work and other kinds of fraudulent activity, markets tend to still be relatively closed in many European countries, making it extremely difficult for outsiders to enter.

Thus, the vast majority of activity in European construction sectors are to a large degree still nationally oriented and protected from international competition. It was only at the beginning of the 1990s that markets were liberalised and opened up to a certain extent due to a number of political decisions concerning international trade and freedom of services. Within the EU free movement of services had already been introduced in the 1970s. Since then EU public procurement law means that construction companies from EU countries are allowed to compete for public construction projects in any other member state. In 2004 contracts with a value of more than €5,000,000 have to be tendered publicly. For many years specific sectors such as telecommunication, transportation, energy and water, had been exempted from this provision for reasons of national protection. However, with the introduction of the Single European Market in 1992 these exceptions were abolished affecting contract work in all sectors. This has subsequently led to an increase in international competition in the European construction sector. Besides this, other EU directives have been introduced to strengthen competition within construction, the most important among these being the Construction Products Directive (Council Directive 89/106/CE), which harmonised the stan-

dards of construction products within the EU with the effect of intensifying the internationalisation of the sector. Other international arrangements of future significance include the General Agreements on Trade in Services (GATS), which forced members to nominate single sectors to be subjected for liberalisation in services and the construction sector was nominated (among others) in most of the European countries. Due to this agreement foreign construction companies are allowed to compete for work contracts in public construction projects with a value of over €150,000 (see the chapter by Lavenex in this volume).

Due to the free movement of services rules, EU companies already had the opportunity to operate in foreign (EU) markets since the early 1970s (the same holds true for workers who were allowed to move to other EU countries for employment). However, until the early 1990s only a small number of (large) companies took advantage of this opportunity. In 1988, the share of foreign transactions from the total turnover of the sector was less than 30 per cent. The main reason for this relatively low degree of internationalisation is the local and regional character of the market as mentioned above. At the beginning of the 1990s, however, international consortiums were put together to bear the financial risks of massive construction projects such as the construction of sports fields and stadia for the Olympic Games in Barcelona in 1992, and the construction of the Euro-Disney-Land in Paris etc. In these cases construction companies from different countries collaborated in a similar way to that in which the participating companies relied on their own national networks of subcontractors. However, due to deregulation as mentioned above, the use of national and international subcontractors has increased substantially since the beginning of the 1990s. Since then the share of foreign transactions out of the total turnover of the sector has more than doubled. Interestingly, the internationalisation of the sector took place in a very uneven way differing from country to country. Learning about the political economy of labour migration within the European construction sector and the various PEMINT countries implies an attempt to understand this uneven process, and one of the purposes of this report is to explore explanations for this phenomenon.

2. Observed Variations of Labour Migration across the Six PEMINT Countries

2.1. Germany

Within Europe Germany is, without doubt, the country with the highest level of international labour migration in the construction sector. Since the beginning of the 1990s several thousand foreign construction companies and sev-

eral hundred thousand foreign construction workers have entered the German construction market which was once very locally and regionally bounded. The initial spur for this development was a special guestworker policy the German government instigated with a number of Central and Eastern European countries (as well as Turkey), which permitted companies in these countries to sign contracts with German firms to send their workers as contract labourers to Germany. The Eastern European migrants received a time-bound employment scheme and permission to enter Germany. After the completion of their work they had to return to their home countries. The Eastern European employees were subject to German employment laws and were to be paid according to current wage levels, but the workers were neither incorporated into German companies nor were they integrated into the German employment and social system. This resulted in substantial savings in social costs for the employers. Most German companies used this opportunity to start a mixed arrangement with a combination of high-cost German workers and low-cost foreign labour. German workers were mostly deployed for higher qualified work such as foremen, while cheap foreign labour was used for standardised low-skilled work. Due to the significantly lower labour costs for Eastern European workers a high number of indigenous workers lost their jobs and companies employing only domestic workers could not weather the competition and went bankrupt. Between 1993 and 1995 alone, the number of insolvencies in the German construction sector more than tripled (data from the Federal Office of Statistics, Wiesbaden). As a direct result, the number of unemployed construction workers in Germany increased rapidly. Despite an increase in the number of construction projects due to the German reunification process, the number of unemployed construction workers sites tripled from approximately 100,000 in 1992 to almost 300,000 in 1996.

As a result of this development, protests by German construction worker unions and employers' organisations took place and the policy of importing cheap foreign labour without incorporating it into the domestic employment and social system was discredited quite quickly. Thus, in 1992 the German government decided to reduce the number of foreign workers. With this move the government hoped to protect national construction companies and to re-integrate those who had become unemployed due to foreign competition into the regular labour force. Contrary to expectations, however, the reduction in numbers of Eastern European project-tied workers did not lead to a re-employment of domestic workers. Instead, existing demand for cheap and flexible labour (encouraged by the guestworker policy), was met by subcontractors and their (cheaper) staff from other member countries of the EU. While the Eastern European companies were bound *de jure* to German employment law – thus having to pay their labourers according to German wage standards – EU firms could invoke special community provisions

which skirted these regulations (see appendix 1). The principle of a free market and free movement in services enabled EU companies to accept contracts in other member countries, and for this purpose, post their own workers abroad to fulfill the contracts. The posted workers – mostly coming from low wage countries such as Portugal, Italy, and the UK (or the border regions of the Netherlands and Austria), did not work under the welfare system and wage levels of their host country, but could be paid under the prevailing conditions of their home country. Thus, these labour migrants were not only excluded from the social insurance system in Germany, but also received wages that were far below local German standards. Since Germany has the highest labour costs within the EU with the highest levels both of wages and social contributions (see appendix 2), even greater costs savings compared to Eastern European workers could be realised and, thus, the number of foreign construction companies and workers in the German market increased rapidly. In addition, the illegal employment of foreign workers increased due to the split labour market regulations. That part of the labour market, not being a subject of German labour and social law is already estimated to be approximately one quarter of the market. This is the reason why the German government introduced national minimum wage legislation for foreign construction companies and their workers in 1996.³

The increase in international competition through subcontractors employing cheap labour has led to a deep reaching restructuring processes in Germany, especially with regard to the personnel policy of companies. Within a few years competition in this industry has increased in such a way that contracts today can only be won when the companies are able to parcel out a large share of the contract to cheap foreign subcontractors. Companies which estimate their costs based primarily on wage levels for indigenous workers in many cases have no chance of withstanding competition in the market – even after the German government introduced a national minimum wage for foreign subcontractors. All interviews conducted with construction companies in Germany confirmed this trend. Large construction companies, however, are able to take advantage of this situation whereas SMEs tend to lose out because they lack the necessary infrastructure to cooperate with foreign companies. Smaller companies therefore try to specialise in market niches and/or try to rely on the high quality of their products. Larger companies have restructured their personnel policy completely. Expensive in-

3 Due to disagreements between employer associations and unions, this law came into effect not until 1999. For details see Uwe Hunger, *Temporary Transnational Labour Migration in an Integrating Europe. The Challenge to the German Welfare State*, in: Michael Bommes/Andrew Geddes (eds.), *Migration and the Welfare State in Contemporary Europe*, London/New York 2000, pp. 189–208; Uwe Hunger, *Globalisierung am Bau*, in: *Leviathan*, 2001, no. 1, pp. 70–82.

indigenous workers are employed as the core staff leading the construction work while foreign project-tied workers (and their companies) are used to carry out the individual tasks. In addition, larger companies extend their normal business to arranging loans, project planning etc.

As a result of this structural change in personnel policies, the number of positions for trainees and apprentice construction workers, which were mainly provided by smaller companies, has also decreased. Instead of raising their own succession of new construction workers German companies are now tending to recruit workers from abroad. Within companies' organisation, recruitment is shifting more and more from personnel to the buying department. This step change in personnel management also has consequences in other institutional arrangements within the sector. Until recently the historically institutionalised social partnership within the sector was very deep and of great importance for the development of labour market relations. The outcome of this consensual partnership was a large number of collective agreements and institutional achievements in order to make construction work more stable and attractive. With the recent dynamic growth of international competition within the sector these institutions have come under enormous pressure because a growing number of companies choose to opt out of these institutions. Their interest in better working conditions for indigenous workers and in vocational training for apprentices has decreased due to the alternative option of recruiting staff from abroad through subcontractor companies. Labour migration has become the most important tool for construction companies to lower labour costs in a context of highly intensified international competition causing associated structural changes within the sector.

2.2. The Netherlands

Although the Dutch construction sector seems comparable to the German one in terms of market structure and labour cost ratios, international subcontracting and labour migration do not play a major role in this context. Instead, national and international manpower agencies moderate the need for labour on the employers' and the supply of labour on the workers' side. However, the level of international exchange and labour migration is much lower in the Dutch context than it is in the German case. Currently only 17 per cent of construction employers recruit personnel in foreign countries while another 25 per cent is considering this option.⁴ In addition, only a small number of foreign companies and their detached workers and only a few foreigners, who are self-employed, coming mainly from the UK, are in the

4 H. Henkens, *Economisch Statistische Berichten*, 2000, no. 4282, p. 960.

Dutch market, although self-employment is quite widespread in the Dutch construction sector (ZZP or Self Employed Persons Without Personnel). Also the direct recruitment of migrants already in the country is rather low. The percentage of migrant workers in the Dutch construction sector is about 2 per cent⁵, which is significantly lower than the share of migrant workers in the overall workforce.⁶ The main causes for the small numbers of migrants are often interpreted as ›socio-cultural‹. The relatively low educational level of the migrants seems to lead to high fall out rates and there is often a negative perception of the construction sector by migrants. A lack of language skills among migrants is seen as another factor. Special projects and intensive guidance introduced to solve these problems were without any success.⁷ However, expansive welfare state provisions for immigrants provide another explanation for the low employment rate of migrant workers in the Dutch construction sector. Due to the generous pension provisions of the Dutch welfare state a large proportion of migrants left the labour market and are now clients of the Dutch welfare state, which is a growing problem of the Dutch system in general.⁸

Instead of international subcontracting and international labour recruitment, Dutch construction firms prefer to use agencies to meet their personnel needs. These agencies play an important role in particular in the recruitment process of highly skilled workers.⁹ As a consequence, the use of agencies is very widespread in the Dutch construction sector. Also, cooperating companies lend each other their workers quite frequently. The loaned worker continues his employment contract with the original company while working for the borrowing company. In regard to the recruitment of foreign workers these agencies settle all the legal questions and provide non-EU workers quickly and easily. Normally the sluggishness and the complexity of bureaucratic procedures discourage direct recruitment of non-EU workers.

One reason for the low degree of internationalisation and labour migration within the Dutch construction sector can be seen in management practices. Dutch firms are used to work with temporary agencies and, therefore, do not have any incentive to look for international cooperation. Besides this

5 EIB, Economisch Instituut voor de Bouwnijverheid, Allochtonen in de bouwnijverheid, 1997.

6 EIB, Economisch Instituut voor de Bouwnijverheid, Ontwikkelingen en vooruitzichten van bouwbedrijven, 1999.

7 Ibid.

8 See Anita Böcker/Dietrich Thränhardt, Erfolge und Misserfolge der Integration. Deutschland und die Niederlande im Vergleich, in: Aus Politik und Zeitgeschichte, B 26, 23.6.2003, pp. 3–11.

9 See H.J.A. Beereboom, Personeelsvoorziening in de bouw (Labour supply in the construction industry), Economisch Instituut voor de bouwnijverheid, Amsterdam 1998.

the difference between labour recruitment in Germany and the Netherlands can be explained by government policy towards the sector, especially with regard to the use of foreign subcontractors. First of all, we have to take in account that in contrast to the German situation, the Dutch labour market was not opened up and liberalised for international competition. In Germany the labour market was opened for Eastern European companies and their workers as early as the beginning of the 1990s with the effects of deregulation, whereas the Dutch government acted earlier to protect the national labour market (a chain liability law, for instance, was introduced in 1982; in Germany in 2002). In Germany, the experience of the guestworker system allowed German companies to make use of cheap foreign subcontractors. Based on this opportunity German companies learned (and had to if they wanted to stay in the market) to handle international trade and the division of labour in the construction sector and were therefore easily able to redirect this system to EU companies when the guestworker system with Eastern Europe was cut. Dutch companies were never confronted in the same way with a situation of an increasing and intensified international division of labour in their market. Instead, Dutch firms became accustomed to working with temporary agencies, which provide enough flexibility (and which are prohibited in the German construction sector). Therefore Dutch construction companies are likely to maintain this strategy since there is no tradition and no pressure in building international subcontracting relations which, due to the Dutch law, have never been attractive enough from the labour cost point of view. This also corresponds with the perspective of the sending countries. Portuguese subcontractors, for instance, could work in countries with higher social costs like the Netherlands, but they have already built preferential networks with German contractors and therefore have no incentive to look for subcontracting relationships elsewhere. In Germany and in the Netherlands labour migration in the construction sector takes place in different ways but in both cases is characterised by the organised and structured or planned mobility of firms and posted workers rather than in terms of the movement of individual workers (i.e. migration in the common sense).

2.3. Italy and Portugal

In the Southern European countries of Italy and Portugal labour migration in the construction sector differs from the previous two cases. We find neither international networking based on subcontracting as in Germany nor an agency-based labour recruitment system as in the Netherlands. Instead, we find the widespread practise of hiring foreigners already living in the countries, often illegal migrants deployed in the well-known irregular sector of the labour market. The reason for this pattern can be found in specific structural elements of the construction sectors in both countries, on the one hand,

and specific traditions and routines of management in construction firms on the other. While large-sized firms in Germany, for instance, can take advantage of their capacity to create international links and make use of international subcontractors, the extremely fragmented structure of the sector in Italy and Portugal makes it more difficult to contact foreign firms and to build international subcontracting relations. In both countries, there are only a small number of large construction companies with a strong presence of trade unions. Therefore, the vast majority of medium and small sized companies prefer to take advantage and reduce their costs by resorting to irregular labour. From the comparative perspective what we seem to find here is a kind of learning process where each country, based on the established structures in the sector, uses and adapts ›available resources‹ (routines, practices and also normative and contractual knowledge) to face competition and new challenges – with the effect of transmitting and making that behavioural and organisational model persist.¹⁰

In Italy and Portugal construction firms prefer to recruit non-EU workers already present in the country who often do not have a proper work permit. The strong presence of non-EU citizens without a work permit eases the use of this strategy. Frequent regularisation schemes in these countries make the case of foreigners who entered illegally (attracted by the widespread underground economy) – and then regularised – an important issue. The irregular position of immigrants on the one hand and the widespread underground economy on the other – a kind of mutually feeding interrelationship – make both informal and network-related practices central to the general process of recruitment. Only in the North of Italy labour shortages for medium/low skilled workers have led construction firms to attempt regular direct recruitment from non-EU countries. Some employers acted in these cases on an individual basis, directly contacting foreigners and trying to bring them to Italy, while others were supported by consulates and/or employer associations; both methods however were unsuccessful, because of the sluggishness and complexity of bureaucratic procedures to obtain work permits.

Another factor, common to Italy and Portugal, that explains the relevance of direct recruitment of foreigners already present in the country is the management style of national construction firms. The management of many of these firms is based on family traditions and they follow rather unstructured employment planning procedures, based on recruitment habits characterised by a short-term perspective. For this reason they prefer direct recruitment from local labour markets because it is easier and does not presup-

10 See Paul DiMaggio/Walter W. Powell, *The Iron Cage Revisited. Institutional Isomorphism and Collective Rationality in Organizational Fields*, in: Walter W. Powell/Paul J. DiMaggio (eds.), *The New Institutionalism in Organizational Analysis*, Chicago 1991.

pose much planning. In this context the role of networks and informal practices in direct recruitment such as word of mouth and personal/ethnic relations prove to be crucial.¹¹

National subcontracting strategies are also quite similar in the Italian and Portuguese cases. Construction firms in both countries subcontract mainly (in Italy) or exclusively (in Portugal) national firms employing non-EU foreigners already in the country. In a similar way to Germany, subcontracting is used as a strategy to reduce labour costs since subcontractors often pay foreigners less than domestic workers, exploiting the wage drift (i.e. a positive gap between the actual level of wages and that defined by collective agreements). Normally, due to acute labour shortages, construction workers obtain income above the wages defined by collective agreements. This extra money is contracted on an individual basis; sometimes it is formally defined as a production or over-time bonus and sometimes it is informally defined and not declared, in order to avoid the payment of social contributions and taxes. Since foreign workers' contractual power is usually weaker than domestic workers, immigrants often accept lower wages.¹² In addition, employers are often able to reduce social security costs since many foreign workers are irregularly enrolled. Since subcontracting to the self-employed is also very relevant in both Italy and Portugal (more for the former than the latter) and often connected with the informal economy, the use of foreign self-employed bogus companies is also quite widespread. Predominantly non-EU firms enter the Italian market to realise further labour cost savings.

In Portugal, agencies also play a relevant role for the supply of cheap foreign labour. Staff leasing companies and bogus enterprises supply every kind of medium and low skilled worker who is paid by the hour or by task. Workers are recruited for specific construction sites, tasks or professions and they are often self-employed (the so called ›recibos verdes‹ – green receipts). They may be already present in the country or illegally brought in from abroad (Eastern Europe). When the company offers a new contract, word is

11 For a discussion of networks in the immigrants' labour insertion and adaptation see M. Boyd, Family and personal networks in international migration. Recent development and new agenda, in: *International Migration Review*, 23. 1989, no. 3, pp. 638–669; Alejandro Portes (ed.), *The Economic Sociology of Immigration. Essays on the Networks, Ethnicity and Entrepreneurship*, New York 1995; Douglas S. Massey, *Contemporary Theories of International Migration*, in: idem/Joaquin Arango et al. (eds.) *Worlds in Motion. Understanding International Migration at the End of the Millenium*, Oxford 1998, pp. 17–59.

12 An hourly wage of an Italian low skilled worker in the construction sector is 7,5 €, whereas a detached foreign worker gains about 3–3,5 €; see EIRO – European Industrial Relation Observatory, *Posted workers and the implementation of the Directive – Posted Workers Comparative Study*, 1999, <http://www.eiro.eurofound.eu.int/1999/09/study/index.html>

spread around that people are needed, and workers will often proceed with informal approaches. Shortages for medium and low skill workers are in this way moderated by the abundant presence of foreign workers (mostly irregular). The inflows of foreign workers are, therefore, not the outcome of an active strategy of recruitment on the international labour market, but spontaneous movements attracted by easy insertion through the irregular economy helped by social network resources. Therefore, Portuguese as well as Italian firms do not need to look for workers on the international market because of the large availability of foreign workers in the national labour pool which they can easily find via informal and irregular forms of employment. In both the Portuguese and Italian construction sector, network-mediated informal channels are, thus, nearly the exclusive method of recruitment of medium and low skilled workers, most of them foreigners. The large and well-known irregular sector, in both countries is a strong pull factor attracting foreigners who can be quite sure to easily find a job in construction even without a work permit. In this way the recruitment practices of construction firms feed indirectly into the inflow of foreigners.

Finally, there are two further important effects of this reliance on irregular labour relations in the construction sectors of both countries. The abundant presence of foreigners prevents wage inflation in the sector. Such rises might well have occurred as a consequence of the shortage of domestic workers (which in the Portuguese case was due to a certain extent to the outflow of workers to Germany and other high wage countries via the international subcontracting network described above). At the same time it seems that, especially in the Italian case, this avoided international competition and preserved the structure of the sector – mainly characterised by SMEs.

2.4. United Kingdom (UK)

In the UK we find only a small but slightly growing portion of foreign migrants working in the construction sector according to official statistics. In 2000, only 2.2 per cent of the total construction workforce were foreigners, most of them (62.1 per cent) from a EU/EFTA-country and only 4 per cent of the workers were born in another country.¹³ At first glance, these findings seem to be surprising since the British construction sector suffers from serious labour shortages and recruitment difficulties due to relatively stable growth for some years. These problems are likely to continue, or worsen, although the prospect of slackness elsewhere in the economy could relieve some of the pressure in the medium to low-skill areas. An annual CITB (Construction Industry Training Board) report forecast that 76,000 new recruits

13 Department of Trade and Industry, Construction Statistics Annual, London 2002.

would be needed each year for the period 2002–2006, based on a predicted annual average growth in the industry of 2.6 per cent.¹⁴ Although the organisation has succeeded in increasing the number of trainees, some sources suggest that the limiting factor is not funding, but the willingness of companies to provide placements for youngsters. It is also reported that applications to university courses are dramatically down over the last five years, by 34 per cent in the case of architecture to 50–52 per cent for building/construction and civil engineering courses.¹⁵ Within the building industry, bricklayers (86 per cent), carpenters & joiners (82 per cent) and plasterers (85 per cent) continue to present the most serious recruitment problems. Also managerial, professional and technical positions cannot be filled.

As a result, lobby organisations of the construction sector successfully campaigned for the placement of various professionals construction occupations on the register for fast-track work permits, especially where there have been loud complaints made about shortages. The CIC (Construction Industry Council) wrote several times to Work Permits UK on behalf of its members to lobby for more professions to be included. However, the number of issued work permits for migrant construction workers – although rising – is predominantly for the high-skilled, and not in sufficient numbers to solve the problem of shortages.

In 2000 only 649 work permits were issued for construction occupations with 3,550 for other engineering occupations. In 2001 this nearly doubled for construction to 1,203 while the number for other engineering profession stayed stable at 3,570. In 2002 the numbers rose again with permits for construction rising to 1483 and 4,042 for other engineering professions.

Employment agencies provide significant numbers of operatives on sites, but none of the companies surveyed admitted to using this type of labour, except in exceptional circumstances. The agencies are often blamed by employers (and unions) for problems of irregular working practices including the employment of large numbers of irregular Central and Eastern European workers. However, the consensus across the industry seems to be that employment agencies are a 'necessary evil'. For high-skilled workers, recruitment agencies are the chief source of new staff (50–75 per cent), along with informal networks. Standard routes such as advertising provide relatively small numbers. For mid and low-skilled informal routes dominate, such as word of mouth, ex-employees, workers presenting at the start of work at the gates and notification by friends and acquaintances. In contrast to other European countries, the use of European foreign subcontractors is very rare (and no cases concerning non-EU subcontractors emerged), even

14 Construction Industry Training Council, CITB Skills Foresight Report, London 2002.

15 Ibid.

though the subcontracting strategy is otherwise central to the UK construction sector.

The key factors impacting on the recruitment process were found to be high levels of informality, the weak enforcement of regulations and labour shortages/bottlenecks. Taken together these have led to a reliance on trust relations within the contracting chain and the use of formal and informal networks. Informal networks such as those between companies and workers in the sector and more formal networks in the shape of recruitment agencies are traditionally an important route for recruitment for all skill levels. However, companies employing highly skilled workers were found to be building an internal human resource functions to improve recruitment and retention in an era of shortages (this also reflected a slow response within the sector to more general changes in management techniques).

For the mid and low skilled the weak regulation of the sector results in greater informality and a more open labour market. For recruitment this means informal networks such as business contacts and ex-employees are crucial. Importantly, recruitment for these firms is more decentralised than for those employing high skilled workers, and often takes place on-site.

One interesting aspect of the recruitment of foreign workers was the use of migratory chains. These were found to be relatively weak at the high skilled end of the construction sector labour market, although there were cases where patterns emerged of migration from South Africa and to a lesser degree, Australia and New Zealand. For the mid and low-skilled workers however, there was more evidence that migratory chains played an important role, particularly in the past with Irish workers, and now for Central and Eastern European workers. This is to some extent fostered by the recruitment methods mentioned earlier, where workers are usually hired locally or at the site level which can strengthen the importance of networks with a strong national origin dimension.

Moreover, a reliance on relatively cheap sources of foreign labour is an embedded, structural feature of the UK construction sector. The ›reserve army‹ of Irish labour was a central component of the UK construction sector. Between 1995 and 2001 output in the Irish construction industry doubled, however, and employment in the sector rose from less than 100,000 persons to 180,000. Meanwhile shortages in the UK construction sector have increased significantly over the 1990s and into the 21st century. The UK Office for National Statistics has recorded net outflows of migrants to Ireland since the late 1990s. It is natural, then, that with the decline in the supply of migrant labour in the UK construction sector thanks to the recent economic boom in Ireland, the industry seeks functional substitutes. These would seem to be Asian and Central and Eastern European workers, who exhibit the same qualities as their Irish counterparts.

The weak enforcement of regulation in the construction sector, combined with a lack of policing in terms of immigration officers visiting sites suggests that the policy of the government is to turn a blind eye to foreign workers. The real number of migrant workers on British construction sites might, therefore, be higher than the official data suggest. Public awareness of the large number of foreign workers legal, or illegal, at work on British construction sites, therefore, linked with the EU enlargement led the government to propose an extension of holiday visas already available to many thousands of Eastern European agricultural workers. The CITB, employer associations and unions were invited to a meeting to discuss the proposal, the result, however, was a firm rejection by all participants.¹⁶

The reason shortages persist and comparatively small (official) numbers of foreign workers are recruited are therefore due to structural factors specific to the UK construction sector and the embedded preferences in terms of firms' recruitment strategies. The shortage ›crisis‹ has been exacerbated by a decline in training and apprenticeships, lower applications for construction courses, poor perception of the industry and the difficulties in replacing large numbers of Irish departures. At the same time the sector is experiencing unparalleled stability and growth, thanks in part to large government spending programmes. Meanwhile, the industry is unable to find large numbers of functional substitutes for the Irish workers and there is paralysis in the sense of the political difficulties in changing immigration policy to accommodate the sector's needs as mentioned above. The result? Shortages and an increase in irregular working practices and irregularly employed foreign workers but also an increase in wages, particularly in areas of shortage.

2.5. Switzerland

The situation in Switzerland differs from all other countries in the survey because it is not a member of the EU, not a part of the common European labour market and therefore not affected by the European freedom of movement for services. It is the only PEMINT state that handles the implications of international competition at the national level. International competition is only allowed on the basis of an acceptance of Swiss labour and social security regulations. The type of labour migration found in the Swiss construction

16 As described by Jonathan Green of UCATT: »We [UCATT] said no for health and safety reasons – if you have a casual workforce you can get terrible accidents. The question that we asked is – how does it work now in the agriculture sector in terms of accidents and fatalities. Just last week there were two Polish workers killed, so I think we were right to be cautious. The rest of the industry objected because they said what's the point of bringing people in for six months when we have to train them up – we need a consistent permanent work force. So the scheme is not going to run in construction, it's going to run in retail and another sector such as hotels.«

sector, therefore, is similar to what we find in Germany before the Europeanisation and liberalisation of the market in the 1990s. With the exception of only a few international companies, national and regionally bounded firms still dominate the Swiss market. Foreign companies, particularly those from low wage countries, are very rare in the Swiss market, since they are not able to pit their competitive advantages of lower labour costs in the Swiss context. Due to this and due to the close networks between construction companies and their clients it is extremely difficult for foreign companies to gain entry into the Swiss market. However, due to liberalisation through the GATS and agreements with the EU to open the Swiss labour market for EU workers it is expected that this situation may change in the future. Foreign labour may become attractive for Swiss companies because of the high level of labour costs in Switzerland (see appendix 2). Up until now however, the Swiss legislative situation reduces the competitive advantages linked to wage and social contributions differentials.

Until the present day, the large foreign labour force that is already settled in the country as a consequence of recruitment in the 1960s and 1970s is the major supply resource for construction firms in Switzerland. Until the 1990s, high numbers of foreigners were recruited as seasonal workers directly from abroad. However, during the recession at the beginning of the 1990s the number of seasonal workers has been reduced by over 50 per cent. At present only high-skilled labour shortages seem to be causing direct recruitment abroad, mainly on the European labour market. The strong tradition of direct recruitment from border countries means companies often use this strategy. In recent years, they have made contact with workers mainly through informal (family) networks.

International subcontractors and international manpower agencies do not play a major role in the Swiss context. Instead, the Swiss case shows an interesting peculiarity with what could be called a *pseudo* internal labour market. Quite frequently Swiss construction companies lend each other their workers. As seen in the Dutch case, the loaned worker continues his employment contract with the lending company while working for the borrowing company. The intensity and the structure of this practice vary from company to company. However, this pseudo internal labour market operation usually does not include foreign workers with a cantonal working permit as that allows them only to work in the canton that issued the permit. Illegal employment of foreigners in general plays only a minor role and only normally occurs during the short time before a permit is issued when a company continues to employ the foreign worker. The level of irregularity is not at all comparable to the level in the Italian or Portuguese construction sectors. Despite this, Swiss employers are worried about the uncertain consequences of the recent legislative change replacing seasonal permits with short term per-

mits (introduced in 2002).¹⁷ Today, Swiss employers predominantly recruit foreign workers already present in the country, mainly EU citizens. In this regard, Swiss companies usually do not make a distinction between Swiss and foreign workers on the national labour market. A foreigner with a regular permit must be employed on the same basis as a Swiss national in terms of wage and social security. It therefore makes no strategic difference to employ a foreigner or a Swiss worker.

From the experiences of other European countries it appears that Switzerland has two options: 1) to maintain the protectionist measures of the national labour market by expanding national regulations to foreign competitors (Dutch scenario), or 2) to open the market and to accept international competition by allowing companies (at least for a certain time) to use their lower labour costs as a competitive advantage (German scenario). The first option might lead to a stable (labour) market situation but with a high price level, the second might lead to an instable (labour) market situation but with decreasing prices, as was the case in Germany where construction prices went down during the 1990s for the first time since the 1960s.

3. Conclusion: Common Patterns and Interactions

The overview of various construction sectors in Europe has shown a large variation in labour migration and strategies for the recruitment of foreigners. Liberalisation (especially within the EU) has led to an increasing interdependency and international competition between construction sectors in the various member states. Due to the specific characteristics of construction, international competition implies the international mobility of production capacity and workers since the products of the sector are basically immobile. From our results it becomes clear however that international competition has affected the selected countries very differently so that the degree of internationalisation of the sectors differs enormously and the various migration processes observed in each country can be understood as one important part of this uneven internationalisation process. These outcomes can be largely explained by the different market structures, welfare states arrangements and management practises in the various countries.

Across the PEMINT countries we can differentiate four different types of labour markets with Switzerland (A) in the first group characterised by a highly and effectively regulated labour market and only minor problems with irregular work. The Netherlands and Germany can be grouped into a second category (B) of equally highly regulated labour markets like Switzer-

¹⁷ With the coming into effect of the Agreement on Free movement of Persons on 1st of July 2002, the seasonal permit ceased to exist. Instead of a seasonal permit it is now easier to get a short-term permit that is valid for three months.

land but with considerable trends observed towards deregulation (especially in Germany where a significant part of the labour market is less regulated for foreign subcontractors and their staff than for indigenous companies). Thirdly, we have Italy and Portugal (C) with a dual labour market structure with a small highly regulated core labour market with big companies and a strong presence of trade unions on the one hand, and a large peripheral labour market without regulation and a large amount of irregular work, false self-employed, agencies etc. on the other hand. The UK (D) is characterised by a de facto deregulated labour market (the core labour market is somewhat regulated, but implementation of these regulations is low). Typical for this country is also the large number of self-employed persons.

In all PEMINT countries the immigration of foreign labour in the construction sector is most significant in those areas of the labour market, which tend to be more deregulated or are running through processes of deregulation. Germany is the interesting case and seems to have run through the most dynamic deregulatory processes during the 1990s. The German construction sector was previously characterised by a high degree of labour regulation. This changed with the rapid expansion of international subcontracting during the 1990s resulting in high unemployment and deregulation. Today, the largest inflow of foreign labour in Germany comes from EU subcontractors (especially from Portugal, the UK and the Netherlands) employed on a formally (re-) regulated but de facto deregulated market. Also in Italy and Portugal we mainly find foreigners in the irregular (peripheral) labour market segment – a pull factor attracting foreigners from abroad. Foreign workers (mainly from non-EU countries) migrate since they are quite sure they will easily find a job in the construction industry of these countries, even if they do not have a work permit. On the other hand, in the Netherlands and Switzerland, where the labour market is highly regulated, there is only a small inflow of foreign workers. In Switzerland we still find a high percentage of foreign workers in the regulated core labour market due to previous guest worker programmes. However, this number is decreasing and the inflow of new foreign labour in this part of the labour market is small. In the Netherlands, the overall share of foreigners in the construction workforce is rather small. The interesting deviant case is Britain where an acute labour shortage cannot be met with labour migration even though companies are willing to do so and the government has introduced corresponding measures. The reason for this phenomenon might be seen in the structural characteristics of the British construction sector with a long tradition of self-employment making it difficult for foreigners to gain entry into the market.

Figure 1: Correlation between Labour Market Structure and Labour Migration Characteristics within the Six PEMINT Countries

Type of Labour Market	Characteristics
A. Highly and effectively regulated: CH	Large core labour market with a high level of regulation Minor problems with irregular work, false self-employed, etc.
B. Highly regulated with recent trends towards deregulation (at least for EU companies)	
a. Minor trend: NL	Large core labour market with a high level of regulation Small portion of EU companies in a less regulated area; Minor problems with irregular work, false self-employed.
b. Major trend: GE	Large core labour market with a high level of regulation Increasing peripheral labour market with less regulations for EU companies; increasing problems with irregular work, false self-employed
C. Dual labour market structures: IT, PT	Small core labour market with a high level of regulation (big companies with presence of trade unions) Large peripheral labour market without regulation (irregular work, false self-employed, agencies)
D. De facto deregulated labour market: UK	Regulated core labour market, but implementation of these regulations is low Large number of self-employed persons

In addition, we can identify a strong interaction between the different labour markets in Europe resulting from increasing labour migration flows. In the case of Germany, for example, labour migration from the UK and Portugal to Germany has placed a lot of pressure on the highly regulated labour market resulting in a considerable deregulatory pressure and a weakening of important labour market institutions. In contrast to Germany, the Netherlands have been able to protect its labour market against this kind of EU competition. From the very beginning the Dutch government prohibited the detachment of workers under foreign standards (as allowed in Germany). However, proponents of a liberal economy might interpret the Dutch protection of the national labour market as a case of incomplete integration since foreign companies are prevented from exploiting their competitive advantage (e.g. lower labour costs) on the Dutch market. In Italy and Portugal foreign workers recruited in the peripheral labour market increasingly substitute indigenous workers that are less and less available to work in the sector at the current contractual level of wages. The internationalisation of the German construction sector has also had consequences for other construction sectors in other EU member states. The outflow of Portuguese, Dutch, and British workers to

Germany in the 1990s until the present, for instance, (in 2000 approx. 47,000 Portuguese, 56,000 Dutch, and 16,800 British (posted) workers were registered in Germany) has led to a relief for the sending labour markets. All these countries were able to lower unemployment rates through migration during the 1990s, some of them even up until today (the Netherlands). But the outflow of workers has also led to a demand for cheap labour in these countries. In Portugal, Italy (and nowadays also in the UK) we find an inflow of a great number of non-EU workers (in Italy mainly from Eastern European countries such as Romania and Albania, in Portugal from African countries) working in the peripheral (deregulated, informal) labour market segment exerting pressure, for example, on Portuguese workers who tend to solve this problem by working in Germany.

Switzerland seems to be a deviant case in this regard, because it is still a classical nation state with full control over immigration and internal labour market regulation. National companies and workers are therefore protected from EU competition. However, due to several political decisions concerning international trade with the GATS and freedom of services and movement within the EU this nationally oriented market may become more liberalised and opened up in the near future. At present, the situation in Switzerland seems comparable to the German one at the beginning of the 1990s. However, the German example shows that a highly regulated and predominantly regional or locally oriented construction market can experience deep structural changes as a consequence of internationalisation within a few short years. A central structural element of this process proved to be the inflow of foreign (detached) workers employed by foreign companies under lower standards. But this is only one path within the European framework as the Dutch case proves. The various ways of moderating the influence of Europeanisation by nation states still makes a big difference affecting labour markets, labour migration and prices.

With regard to the enlargement of the EU, the experiences of the European construction sector during the 1990s are certainly of central importance. Whereas countries like Portugal and Greece have so far not been confronted by any low cost competition within the EU, and countries like Ireland, the UK, and Italy were faced with only very few low labour cost competitors, this situation will change substantially with the admission of the new member states from Eastern Europe. Portuguese and British companies and/or their workers were able to compete with lower costs on the German market based on the exclusion of Eastern European competitors. In the near future Polish, Latvian and Hungarian companies (and/or their workers) will very likely underbid Portuguese and British companies (and those countries' workers). The wage differential between these countries is considerable (see appendix 2). Contrary to the German situation, however, the difference

might be that the demand for cheap labour is not as large as it was in Germany, since the labour market in the Southern European states is not as regulated as it is in Northern Europe (besides the UK) and there is a significant peripheral labour market segment with low-cost labour from within and (in growing numbers) outside the country.

Appendix 1: EU Legislation on Posted Workers

Up to 1996, the practice of posting workers was not governed by a special European Directive. In 1996 the European Commission adopted the Directive 96/71/EC concerning the posting of workers in the framework of the provision of services. The aim was to avoid social dumping between companies from member states and to ensure that a minimum set of rights were guaranteed for workers posted by their employer in other countries. The basic principle expresses that working conditions and payment (excluding social contributions) in a member state should be equally applicable to workers from that State and to those from other EU countries posted to work there.

The Directive establishes a core of essential regulations to ensure employees' minimum protection in the country in which their work is performed. The Directive does not intend to harmonise legislation in all EU Member States, but it deals only with the application of the host country's current statutory and regulatory provisions (like, for instance, maximum work periods and minimum rest periods, minimum rates of pay, conditions of hiring-out of workers, health, safety and hygiene at work, protective measures for pregnant women, equality of treatment between men and women).

In terms of law and the protection of collective agreements, the current situation of posted workers still varies from country to country. The concerns of countries that are ›exporters‹ of posted workers differ from those ›importing‹ them – for example, in Portugal more attention is paid to the posting of national workers to other countries than on postings to Portugal. The role played by collective bargaining and by legislation varies according to the nature of each country's industrial relations system, and the content of collective agreements.

Summarising, in terms of wages the present general assessment concerning the posting of workers among European Countries (Directive 96/71/EC) states that member states have the right to ensure equality of treatment for foreign posted workers under national law or collective agreements of the host State. The European Directive, on the other hand, does not cover social security issues. They are governed by a European Economic Community Regulation (n.1408/71) stating that social security contributions are under the responsibility of the employer that posts the workers abroad and that the

level of contribution is set by the social security bodies in the country of origin. In particular, it states that »an individual may be affiliated to only one social security system at a time –normally this should be that of the state in which he or she works but if the intended work in the host member state is likely to last less than 12 months (with the possibility of renewal for a further 12 months) then the individual should remain affiliated in his or her home state (Article 14)«.

Posted workers that come from non-EU countries are not governed by international agreement, but still rely upon the individual country's national legislation or bilateral agreements.

Appendix 2: Labour Costs (in €) in Selected European Countries 2001

	Total Labour Costs per Hour	Thereof Direct Earnings	Thereof Social Security Costs
Norway	25,33	17,12	8,22
Germany	25,05	13,92	11,13
Switzerland	24,96	16,37	8,59
Denmark	24,50	19,58	4,91
Belgium	23,15	11,84	11,31
Finland	22,12	12,51	9,61
The Netherlands	21,98	12,18	9,80
Luxembourg	21,12	13,99	7,12
Austria	21,00	10,90	10,10
Sweden	20,91	12,35	8,56
UK	19,23	13,41	5,82
France	18,93	9,89	9,03
Ireland	16,01	11,47	4,54
Italy	15,92	8,14	7,77
Spain	14,68	8,01	6,67
Greece	8,86	5,27	3,59
Portugal	6,75	3,79	2,96
Poland	3,76	2,45	1,31
Hungary	3,45	1,99	1,46
Czech Republic	3,30	1,85	1,45
Slovakia	3,03	1,81	1,22

Source: German Economic Institute.

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Recruitment and the Migration of Foreign Workers in Health and Social Care

1. Structural Conditions of Labour Migration within the Health Sector

The number of people employed in the health and care sector is huge – and will probably increase in the medium to long term. Statistics suggest that nearly one in ten of those employed in the EU are working in the health and care sector in one capacity or another. The exact proportion of the workforce varies from one country to another and estimates differ according to whether or not they include workers in functions such as cleaning and catering.

It can be assumed that in all PEMINT countries – as in all other Western industrial countries – declining birth rates and ageing societies are creating a significant demand for health and care professionals since the growing proportion of elderly persons are in need of medical treatment and care services above that of the general population. This demographic development along with an overall trend towards a gradual introduction of competition in the formerly strictly regulated national health sectors makes the increasing recruitment of foreign staff appear to be a logical consequence. However, we should take care not to overestimate the demographic argument. The outcome of our fieldwork suggests that patterns of migration, of supply and demand of foreign health professionals, are determined by the structural conditions in the respective national health sectors rather than by an overall demographic development. In fact, the widespread assumption of a direct cause-and-effect chain between ageing societies and increasing demand and recruitment of foreign professionals could not be confirmed by the results of our study. Instead, the situation has to be differentiated more carefully by taking into account specific structural conditions and the idiosyncrasies of systems of health service provision that are strongly nationally embedded.

Against this background this paper seeks to determine the role of international recruitment, the extent to which this is a preferred strategy and the

significance of national control and European regulatory frameworks in relation to international labour flows. When assessing the importance of labour migration within the health sector, it is important to stress some specific aspects concerning the nature of the sector.

Firstly, the health sector is, in comparison with the two other PEMINT sectors, strongly confined to the national level and rather sealed off from European or international competition. Most health care institutions operate in one country only. Consequently there is no possibility of transferring staff from one country to another through the internal labour market, as is the case with the Information and Communication Technology (ICT) sector. Government policies shape the sector, either by decisions directly affecting funding, organisation and provision of health and care services or by setting the regulatory framework for self-administration according to subsidiarity (see section 2: »Tax Financed vs. Social Security Financed Health Care Systems«). This influence of national policy determines the unique nature of each single health sector, resulting in quite different modes of provision, funding, actor-constellation (i.e. influence of professional bodies, corporatism etc.), professional training and provision for young professionals, the labour market situation and the political controllability of the sector as a whole. These divergences can be traced back to different socio-historical »paths of dependency«, at the end of which each respective national health system – as part of a country’s notion of social policy – is the result of specific institutional reactions to social matters.¹ To sum up:

»Health care systems are deeply embedded within the social and cultural fabric of each society, and thereby defy simple economic or financial characterisation. If a cross-national exercise is to be reasonably valid, comparisons must reflect national social contexts, rather than assuming that health system arrangements exist in splendid social and political isolation.«²

Secondly, the length of training involved in the case of nurses, and even more so in the case of doctors, means that shortages can not be resolved in the short-term by simply expanding training programmes. So it can be assumed that, unless patients go to other countries to be treated, shortages can be met in the short and medium term only by the recruitment of foreign professionals. Health care providers are rather compelled to follow this strategy if they want to react to shortages at short notice.

1 Cf. Franz-Xaver Kaufmann, *Varianten des Wohlfahrtsstaats. Der deutsche Sozialstaat im internationalen Vergleich*, Frankfurt a.M. 2003, p. 20.

2 Richard B. Saltman, *The Context of Health Reform in the United Kingdom, Sweden, Germany and the United States*, in: *Health Policy*, 41. 1997, pp. 9–26, here p. 9f.

Thirdly the recruitment of foreign health professionals as a strategy to meet labour shortages rapidly is hampered by factors specific to the health sector such as:

1.1. Culture and Language

Compared to the two other PEMINT sectors, the work and success of health care professionals strongly depend on their skills in social interaction. While work in the construction sector is determined by the ›manipulation of objects‹, in the ICT sector the ›manipulation of symbols‹ is a core activity (although the ability to interact socially is strongly relevant in the case of customer contacts). By contrast, in the health sector social interaction as a generic skill is inevitably linked to all professional activities. Social interaction with patients and their families, and also with colleagues for giving and receiving instructions and discussing cases, requires more than a basic competence in the language and culture of the host country. As to the different spheres of culture, there is the culture of the workplace and the nature of patient and staff relationships – even within the EU there are significant differences in workplace culture and the importance of hierarchies within hospitals. There is also the wider culture and institutions of the host society, which need to be understood when dealing with services and families outside the hospital and in home care. Thus these ›soft factors‹ play a more important role in terms of eligibility criteria in the process of recruiting foreign health professionals than in the two other sectors.

1.2. Recognition of Qualifications

Since most professions in the health sector are skilled or highly skilled, requirements for the recognition of qualifications are accordingly high. For EEA migrants, health professions are regulated by sectoral directives which imply the automatic recognition of diplomas. Where this is not the case, lengthy training may have to be provided without assurance of success.

1.3. Brain Drain

Almost all developed countries are affected by demographic change and the consequences that it implies: ageing societies in increasing need of medical treatment and care services. Interviewees were well aware of the negative consequences of a potential brain drain of health staff, particularly from Eastern Europe and poorer countries outside Europe. A responsible recruitment strategy cannot rely on pulling medical staff from places it is just as urgently needed. In the health sector a brain drain becomes effective more directly and visibly than in other sectors and health care provision in whole regions can

be put in jeopardy. To prevent such developments the British government, for example, inserted a clause in its NHS recruitment programme that explicitly bans recruitment from developing countries (section 3.1.). The same is true for the Netherlands (section 3.3.).

Fourthly a differentiation between the professional groups in the sector is necessary although difficult. Our research focused on the occupations of ›doctor‹, ›nurse‹ and ›care assistant‹, concentrating in the last case on those working with the elderly. On the one hand a differentiation between doctors and nurses is necessary since doctors' professional bodies are usually better organised, funded, more powerful and thus more effective in lobbying than nurses' associations. This imbalance of power often results in different labour market situations and the attractiveness of jobs for young professionals. On the other hand the health sector, i.e. the provision of *medical* treatment, has to be distinguished from the care sector, i.e. provision of long-term *care* of the elderly. In most countries health services and care (of the elderly) services are based on separate and totally different systems of funding, provision, organisation and entitlements. This can be explained by the fact that care of the elderly is a rather recently emerged branch of the care sector, related to increasing life expectancies. Formerly the average period of time using care services at the end of one's life was a few months. Today it can amount to a number of years. In addition increasing female employment is eroding formerly family-based modes of care. Besides this, most Western industrial countries lacked for a long time a system of state organised care of the elderly. The demographic pressure – and therewith connected cost pressure on budgets caused by the practice of supporting long-term care services by welfare benefits – forced most countries to introduce special funding and provision for long-term care. Broadly speaking, the north European ›social democratic‹ welfare states were the first that introduced comprehensive care of the elderly schemes some twenty years ago, the continental ›conservative-corporatist‹ states have recently done the same, whilst the south-European states are still reluctant.³ The latter sub-group can be explained by the strong influence of the Catholic Church which prioritises a whole set of responsibilities – such as the care of the elderly – within the family. Due to this rather unregulated or improvised provision of care a higher influence of informal labour can be supposed – in particular in countries with low state-involvement in care funding and provision.

3 For a detailed differentiation of social-democratic, continental conservative-corporatist and liberal welfare-state regimes, see Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Oxford 1990. For a survey on European strategies of funding and providing care of the elderly see Martin Schölkopf, *Altenpflegepolitik in Europa. Ein Vergleich sozialpolitischer Strategien zur Unterstützung pflegebedürftiger Senioren*, in: *Sozialer Fortschritt*, 48. 1999, no. 11, pp. 282–291.

2. Tax Financed vs. Social Security Financed Health Care Systems

The health sector as part of a country's social policy is – as described above – strongly embedded in the national context and its specific welfare state arrangements. Albeit reacting to common and shared social problems that occurred in the aftermath of the industrial revolution, institutions dealing with these matters developed quite differently across Europe. Their individual development usually reflected a country's social structures, tradition and dominating ideals as regards redistribution. Other factors influencing the evolution of institutional solutions are the different power and assertiveness of pressure groups and the political culture, i.e. the predominance of consensus and parity based decision making vs. a rather competitive zero-sum game of rival interests. Thus the path of dependency of institutional solutions has to be taken into account when regarding later and more recent developments.⁴

We assumed that there is probably an interrelation between migration and active recruitment of foreign health professionals on the one side and welfare state arrangements and labour supply or demand in the health sector on the other. Before interpreting the empirical outcome of the individual country studies, we want to explicate some theoretical considerations with respect to the differences between the two main schemes of health provision: tax financed and social security financed health care systems – or in other words the so-called ›Beveridge‹ and ›Bismarck‹ models. Named after their founders these two master models best illustrate the thesis that health systems are significantly shaped by their method of financing which in turn predetermines the integration capacities of the system.⁵ While research in the field of comparative health system analysis focuses on the interdependencies of structure, effectiveness, costs, inclusion, coverage etc. we presume that these connections are also relevant as regards the labour market situation, attraction of young professionals, staff shortages and foreign recruitment.⁶

The crucial difference between the two models consists of the fact that statutorily insured persons acquire direct and enforceable entitlements while patients in tax based national health systems do not.

This discrepancy can be traced back to specific ideals of welfare redistribution and integration. According to Gosta Esping-Andersen's well-

4 Cf. Claus Wendt, *Krankenversicherung oder Gesundheitsversorgung? Gesundheitssysteme im Vergleich*, Opladen 2003, p. 97.

5 Ibid., p. 86.

6 For the contrast of Beveridge vs. Bismarck see section 3 ›Observed Variations of Labour Migration across the Six PEMINT Countries‹, particularly the first parts dealing with the British and the German health sector.

established typology of welfare state regimes those states based on security contributions are usually classified as ›conservative corporatist«. The predominating influence that shapes this type of system is the preservation of status differentials. Rights are attached to class and status. Benefits are based not on the principle of universalism, but equivalence: they should be commensurate to formerly paid contributions – and thus eventually reflect class and status.⁷ Here another difference becomes obvious – the criteria of inclusion and exclusion. While in contribution based systems the criteria of inclusion is gainful employment, tax financed systems universally include *all* citizens or non-naturalized persons with a legal resident permit status respectively.

The different entitlements arising from the modes of funding determine a set of conflicts and problems that shape the respective health sectors. While in tax-based systems entitlements are not actionable but can be interpreted according to the current economic or social situation, in social security based systems insured persons acquire enforceable entitlements as a matter of principle. Thus the latter model is characterised by a significant power on the demand side of medical services. This collective demand was politically created and continuously increased by legally including growing parts of the population in social security schemes in the course of social policy evolution. In contribution-based systems moral-hazard effects usually aggravate the extension of health care supply and thus cost expansion.⁸ Cost reduction and its justification vis-à-vis those that contribute is a major problem because of entitlements.

This is quite different in national health services: these systems not only lack the described dynamics of cost expansion but at the same time can be controlled more easily and effectively by government policy. Health care is a public service guaranteeing basic provision and is limited by ceilings. Policy makers are less forced to justify and legitimise limited budgets as long as basic provision is not in jeopardy because the assignment of taxes is not earmarked.⁹ In addition, health sector resources are part of the overall budget and therefore limited *a priori*. In budget negotiations they compete, albeit

7 Esping-Andersen, *The Three Worlds of Welfare Capitalism*, pp. 26f. However, this is not true in such a strict sense for the health sector. In fact, in both systems the tangible (non-cash) health service is detached from the actual level of taxes or social security contributions. Thus the allegedly legitimizing principle of services commensurate to formerly paid contributions is less relevant in the compulsory health insurance than in other elements of compulsory social insurance, cf. Wendt, *Gesundheitssysteme im Vergleich*, p. 50.

8 Nils C. Bandelow, *Gesundheitspolitik. Der Staat in der Hand einzelner Interessengruppen?*, Opladen 1998.

9 Wendt, *Gesundheitssysteme im Vergleich*, p. 85.

strongly, with other fields of government policy for scarce economic resources.¹⁰ This direct impact of political decisions on the financial resources of the health sector indicates effective control by governmental policy. Since the state sponsors health care provision it is more legitimised to intervene in the sector, define aims and perform the necessary structural changes than in insurance-based systems. Furthermore, effective cost control is more probable in tax-based systems since a rise of taxes necessitates a higher level of legitimation.¹¹

The proportion of public money in total health care expenditure is often used as an indicator for the level of state penetration and therewith for the relevance of governmental control in the health sector.¹² This direct control corresponds with organisational structures that are significantly more homogenous and hierarchic than in security-based systems.¹³

These latter systems usually lack political controllability. The state has legally transferred instruments of control to corporatist actors. While insurers and suppliers of medical services are charged with negotiating the terms of funding and organising health care provision, governmental policy only sets the legal framework for self-administration.¹⁴ Particularly in the preliminary stages of legislation, intermediary bodies dispose of relevant influence.¹⁵ At the same time, self-administration is always threatened to be asymmetrically dominated by some well-organised powerful corporatist actors – usually doctors' associations.

3. Observed Variations of Labour Migration across the Six PEMINT Countries

The base material for the following presentation of empirical findings is a series of reports produced by institutes in the PEMINT countries: Germany, Italy, The Netherlands, Portugal, Switzerland and the UK (see the introductory article in this journal).¹⁶ Each institute organised a minimum of 12 interviews

10 Ibid., p. 89.

11 Ibid., p. 62f.

12 Cf. Jens Alber, *Die Steuerung des Gesundheitswesens in vergleichender Perspektive*, in: *Journal für Sozialforschung*, 29. 1989, no. 3, pp. 259–284; idem, *Der deutsche Sozialstaat im Licht international vergleichender Daten*, in: *Leviathan*, 26. 1998, no. 1, pp. 199–227.

13 Wendt, *Gesundheitssysteme im Vergleich*, p. 19.

14 Ibid., p. 94.

15 Wendt shows this for the German health sector, cf. Wendt, *Gesundheitssysteme im Vergleich*, p. 110.

16 The reports were elaborated by Kirsten Hoesch and Holger Kolb (University of Osnabrück, Germany); Barbara Da Roit and Giovanna Fullin (University of Milano-

with personnel managers of mostly hospitals and some nursing homes and care providers. In each country the sample included both general and university hospitals, both public and private provision and was spread over the country. In addition, some interviews (for example, in The Netherlands and the UK) were held with representatives of recruitment agencies in the health care sector. Statistical data were used to round up the quantitative picture. A serious problem was the generally poor or non-existent statistics on foreign workers employed in lower-skilled caring occupations.

We start with a more detailed comparison of the UK and the German health sectors since the two represent the *most different cases* among the PEMINT countries both as regards recruitment of foreign professionals and as regards provision, organisation and funding of health care services. With respect to the first empirical findings, we suspected a strong connection between the divergent systems and divergent recruitment practices.

3.1. United Kingdom

Within Europe the UK is, without doubt, the country with the highest degree of labour migration in the health sector and the large-scale overseas recruitment of health and care professionals is an explicit and politically initiated strategy to meet serious labour shortages.

The 2000 National Health Service (NHS) plan identified a shortage of human resources as the major challenge the NHS would have to face. It planned to increase the number of NHS employees significantly between 2000 and 2004, namely an additional 7,500 consultants, 2,000 general practitioners, 20,000 nurses and more than 6,500 therapists and other health professionals. Overseas recruitment was named as one option.¹⁷ It was clear that these quantitative objectives could not possibly be realised in the short term by increasing the output of medical training. The educational infrastructure could obviously not respond that rapidly.

The UK has had substantial numbers of people from overseas working in its health care system for decades and the trend is for this to increase. According to the Labour Force Survey, there were 220,900 health and care workers in the labour force in 2000 that were born in another country and, of these, 127,970 were foreign citizens. This represents a 21 per cent increase in foreign-born workers in this sector since 1995. The total health and care

Bicocca, Milan, Italy); Madelon den Adel and Maartje Hesselting (Erasmus University Rotterdam, Netherlands); Sónia Pires and Joana Ribeiro (University of Coimbra, Portugal); Philippe Koch, Eliane Kraft, Sandra Lavenex and Pamela Schaer (University of Bern, Switzerland); Janet Dobson and John Salt (University College London, UK).

17 Cf. National Health Plan 2000, www.doh.gov.uk/nhsplan/nhsplan.htm, 2003/ 07/ 24.

workforce also increased over this period, by about 12 per cent. Thus, foreign workers became a higher proportion of a larger number.

In 2000, 12.5 per cent of the total health and care workforce were of foreign birth; 7.3 per cent were foreign citizens. Among the latter, the proportion that were EU citizens decreased from 43.1 per cent in 1995 to 40.4 per cent in 2000. Within the sector as a whole, those occupational groupings with more than 10,000 foreign workers in 2000 were nurses (38,556), medical practitioners (27,746) and care assistants (27,710). In all groups there had been a marked increase since 1995, with the biggest rise in foreign care assistants.

The number of work permits and first permissions granted in the health and medical services sector accordingly rose from 1,774 in 1995 to 14,516 in 2000.¹⁸ The main source countries for health and associated professionals were the Philippines (6,344), South Africa (2,056), India (1,410) and Australia (602). This was also confirmed by interviews (see below).

Annual data on nurse and doctor registration from the Nursing and Midwifery Council (NMC) and the General Medical Council (GMC) confirms and adds to this picture. Initial admissions to the NMC register showed the number of registrations by Filipino nurses rising from 52 in 1998/99 to 7,235 in 2001/02, while those by South Africans rose from 599 to 2,144; Australian registrations stayed more constant, with 1,335 in 1998/99 and 1,342 in 2001/02; Indian registrations rose from 30 to 994; and those by Zimbabweans from 52 to 473. Other countries with over 400 registrations in 2001/02 were New Zealand and Nigeria. Other former British colonies added significantly to the total.

By contrast, annual admissions of nurses to the register via European Community arrangements actually declined over the four-year period, from 1,412 to 1,091. There are some gaps in the data, but only Spain recorded a continuous upward trend, from 126 registrations in 1998/9 to 374 in 2001/02.

Interviews with organisations confirmed the Philippines, South Africa, Australia and New Zealand as major source countries of nurses. But also a wide range of other countries was mentioned. The proportion of foreign nurses in different hospitals in part reflected local labour market situations.

In the case of care assistants, it proved difficult to obtain hard data. The general picture from our interviews is that workers of overseas origin form a significant part of the labour force in those areas where there are large numbers of recent migrants and their descendants.

In the case of doctors, the granting of full registration to those from the EEA also declined, from 2,084 in 1996 to 1,192 in 2000. A further 188 obtained

18 These data relate to industry, not occupation. Statistics by occupation show that in 2000, 15,526 were granted to health and health associate professionals, of whom 11,897 were nurses, a further 56 midwives and 373 pharmacists.

limited registration, which enables overseas qualified doctors to undertake supervised training posts in the UK. The largest numbers gaining full registration by EEA country of origin were Germany (244), Greece (203), Italy (197) and Ireland (188), with the Netherlands (57) and Portugal (12) in double figures. Grants of full registration to overseas doctors who qualified in countries outside the EEA totalled 833 in the year 2000 but a much greater number – 1,778 – obtained limited registration and 153 provisional registration. All these figures were considerably lower than in 1996.

Doctors from the Indian subcontinent are a substantial and long-standing group in the UK's medical workforce. South Africa was also frequently mentioned in interviews as a source country, particularly for private hospitals. One striking feature was the sheer range of national origins of doctors working in hospitals. In one example, 45 per cent of the medical staff were foreign nationals, of whom 18 per cent were from India and Pakistan, 5 per cent from EEA countries and the rest from about 30 other countries. In another institution, 22 per cent were foreign nationals, of whom 20 per cent were from India and Pakistan, 6 per cent from Ireland, 6 per cent from the rest of the EEA and the remainder from about 42 other countries.

Some of these findings are less surprising than others. For instance it comes as no surprise that there is a large proportion of health and care professionals from former colonies. It is not only the strong migratory chains between the former mother country and its dependencies that have survived political changes. Cultural and language difficulties that represent major obstacles to labour migration in health sectors (see section 1) can also be more easily overcome by migrants from former British ruled countries, many of whom continue to come to the UK for medical training. The large proportion of Filipino nurses is not too surprising either: The nurse training system in the Philippines is geared to oversupply in the expectation that many will work overseas. Filipino nurses can be found in almost all PEMINT countries.

What is notable, in the context of the other PEMINT countries, is the scale of foreign recruitment in the NHS and in the private sector over recent years. To explain this, it is helpful to keep in mind the above-mentioned difference between tax and contribution based health systems (see section 2). The British NHS is a tax financed health sector and is shaped by the characteristics named as typical for this model: it is a rather homogenous and hierarchically structured system.¹⁹ All citizens – and denizens – are included in the system of health service provision regardless of whether they are employed or not. But at the same time their entitlements are not legally actionable. The extent of services can be readjusted again and again according to

19 Cf. Wendt, *Gesundheitssysteme im Vergleich*, p. 19.

changing economic and social circumstances.²⁰ Furthermore, the health system is integrated into the political-administrative system and, therefore, is scarcely autonomous, but strongly controlled by governmental decision-making. Its output depends mainly on authoritative decisions within the political system and the allocation of funds. Health sector resources are part of the overall national budget and are therefore limited. In budget negotiations the UK health sector has to compete with other fields of governmental policy for scarce economic resources.²¹

Within this context, there has been a history of underinvestment in the NHS and failures of planning for future staffing needs. These occurred at a time when medical developments and new technologies were increasing expectations for medical care among the population at large. The election of a new government in 1997, committed to an expansion of the NHS and to implementing new methods of service delivery, brought new staffing demands on a substantial scale. The NHS has traditionally relied on foreign professionals attracted by the career opportunities presented in such a large, varied and high-quality system of health provision. Foreign recruitment provided an obvious means of meeting these immediate needs which were exacerbated by other developments such as the EU Working Time Directive.

Concurrently, the private health sector has also expanded and increased its staffing requirements. The absence of training within the sector means that qualified staff must come from elsewhere. Our interviews have found that foreign recruitment is for many employers a preferred option and a network of recruitment agencies has developed to provide the necessary service. The lack of career structures in the private sector makes short-term contracts an easier option than in the NHS and this mobility is frequently provided by doctors and nurses from other countries.

3.2. Germany

Compared to the large-scale recruitment in the UK's NHS the German health sector represents the other extreme as regards labour migration. Interviews showed that there had been virtually no active recruitment from abroad for decades. Though this has been changing since about 2002/2003 problems in the German health sector instead come from a surplus of doctors. One meth-

20 Ibid., p. 52; Joakim Palme/Irene Wennemo, *Swedish Social Security in the 1990s. Reform and Retrenchment*, Stockholm 1998.

21 Cf. Kirsten Hoesch, ›Green Card‹ für Ärzte? Von der ›Ärztenschwemme‹ zum Ärztemangel im deutschen Gesundheitssektor, in: Uwe Hunger/Holger Kolb (eds.), *Die deutsche ›Green Card‹. Migration von Hochqualifizierten in theoretischer und empirischer Perspektive*, (IMIS-Beiträge 22), Osnabrück 2003, pp. 99–113; Wendt, *Gesundheitssysteme im Vergleich*, pp. 62f.

odological obstacle of our fieldwork consisted of the fact that when starting the interviews in summer 2002 a shortage of doctors and care professionals was just at the verge of occurring – but not actually being experienced by our sample of interviewees. Also, official statistical data for the last few years does not reveal this current turnaround, but shows that there were no shortages of labour. Though in later interviews this turnaround was confirmed, as was the practice of recruiting an increasing number of health staff from Eastern Europe, this quite recent development is not reflected by data because doctors are registered only after a recognition phase of at least 18 months. But new data from the DKI (Deutsches Krankenhausinstitut) and KBV (Kassenärztliche Bundesvereinigung) show at least a first trend: About 50 per cent of the hospitals in the country as a whole are not able to fill vacancies; the situation is particularly difficult in the Eastern states (›neue Bundesländer‹) where about 80 per cent of the hospitals cannot fill job vacancies.²² Moreover, a growing number of young doctors have been resigning to take up jobs abroad. A steadily growing average age among German doctors combined with a decreasing number of young professionals actually entering a hospital position or becoming established as general practitioners we can assume an increasing need for doctors in the near future.²³ Shortages increase proportionately with the proximity to the Eastern borders and there is a significant domestic East-West migration.

Many hospitals near to the Eastern borders fill vacancies almost exclusively with doctors from Poland or the Czech Republic. In 2002, the number of foreign doctors in Germany increased by 6.7 per cent and exceeded the average expansion rate of foreign doctors of 2.5 per cent from 1994 to 2001. The 13.3 per cent growth rate of foreign doctors in hospitals was particularly high. In the Eastern states the number of Eastern European doctors employed in hospitals increased from 272 in 2001 to 405 in 2002, and to 772 in 2003.²⁴ Although these figures are still rather small they imply a trend that is quite different from the above-described surplus.

However, for the best part the German health sector has been characterised by oversupply which is reflected by official statistical data from the Federal office of Labour. It shows that stocks of foreign health workers are comparatively small and current flows into the country are miniscule. It also indicates that the number of foreign health workers actually decreased between 1995 and 2000, even while there was a general trend of increase in the

22 Deutsches Krankenhaus-Institut, Krankenhaus-Barometer. Herbstumfrage 2002, www.dki.de/PDF/Herbst_2002.pdf, 2004/03/03.

23 Bundesärztekammer/Kassenärztliche Bundesvereinigung, Dem deutschen Gesundheitswesen gehen die Ärzte aus. Studie zur Altersstruktur- und Arztlahlenentwicklung, 2. aktual. und überarb. Aufl., Köln 2003.

24 Non-official data provided by Kassenärztliche Bundesvereinigung (KBV).

total health workforce. Only 3.7 per cent (74,450) were recorded as foreign workers in 2000, compared to 4.5 per cent (80,970) five years earlier, with fluctuations in between. It is possible that new German naturalisation regulations may have had some effect in reducing total figures, especially in the year 2000. Nevertheless, the interviews with health care organisations reinforced this picture of stable or shrinking numbers of foreign employees by emphasising that no active recruitment from other countries had been taking place in recent years. Almost all foreign workers are in West Germany – though recent shortages in Eastern Germany entailed increasing recruitment of foreign doctors and nurses in that region as mentioned above.

With regard to doctors the Statistics of the Federal Medical Association (›Bundesärztekammer‹) show fairly constant numbers, though this source does not include general practitioners. The largest group are of Iranian origin, believed to have come to Germany as refugees. Those with their origins in Turkey, Poland, the former Yugoslavia and Greece are the next largest groups. Other EU countries (Austria, Italy, the Netherlands) are also sources but with smaller numbers.

In the case of foreign nurses, numbers have also remained fairly constant in recent times, with a slight decline. Those from countries in the former Yugoslavia form by far the largest group, though latterly there has been a sharp reduction. Those of Turkish and Polish origin are the next biggest groups. Austria, Italy and the Netherlands are again sources of smaller numbers of workers. However, statistical data does not reveal whether foreign health professionals were actively recruited from abroad or already resident in the country. The latter can be assumed for the better part.

There has also been a slight decline in the number of foreign care assistants. The pattern of origins is similar to that for nurses, with workers from the former Yugoslavia the dominant but decreasing group and Turkey in second place in terms of numbers of workers. The Philippines and Poland come third. Austria, Italy and the Netherlands are again among the smaller sources. It is worth noting that, particularly in the area of care of the elderly, a large informal labour market segment mainly shaped by female migrants can be supposed. More than 50,000 commuters, particularly from Poland, were estimated to be informally employed in German households. It can be assumed that the provision and funding of care of the elderly indirectly encourages informal employment. In contrast to health insurance, compulsory care insurance does not guarantee full coverage. Big risks are covered only up to 40 to 50 per cent, small risks not at all.²⁵ Two thirds of all households

25 Günter Roth, Fünf Jahre Pflegeversicherung in Deutschland. Funktionsweise und Wirkungen, in: Sozialer Fortschritt, 8-9. 2000, pp. 184–192; Ingo Bode/Claudia Zenker, Solidarität im Angebot. Über moralisierte Märkte, in: Leviathan, 2001, no. 4, pp. 484–506.

entitled to services prefer cash benefits to non-cash benefits.²⁶ This money flows into the informal labour market where Eastern European care workers are available for half the price of regular skilled employees.²⁷ This is to be kept in mind when interpreting figures in the formal care sector.

So what distinguishes the staff situation and the relevance of foreign recruitment in the German health sector which is so palpably different from the UK case? And what caused the recent turnaround?

In contrast to the UK NHS the German sector is a social security based one – with all the characteristics attributed to this model in section 2.

The German health sector represents a bargaining system of relatively autonomous actors. It lacks the homogenous and hierarchical structure of the British NHS. Funding is not part of the overall state budget and therefore scarcely controllable by governmental politics. In fact, German politics failed to intervene in the sector for decades. The dominant actors were on the one hand doctors' associations and professional bodies, on the other hand – though significantly less powerful – health insurance associations. They bargained for terms of provision and reimbursement within the legal framework of self-administration. However, the vast majority of health professionals, i.e. nurses and care assistants, never enjoyed powerful associations. The German health sector is therefore characterised by asymmetrical power among corporatist actors.²⁸ The deliberate delegation of legal tasks to the medical associations gradually strengthened their position. This framework allowed doctors'

26 Ulrich Schneekloth/Udo Müller, Wirkungen der Pflegeversicherung. Forschungsprojekt im Auftrag des Bundesministerium für Gesundheit, I+G Gesundheitsforschung/Infrastruktur Sozialforschung, Baden-Baden 2000, p. 22.

27 Eva-Maria Krampe, Arbeit im Gesundheitswesen. »Reformen« auf Kosten der Beschäftigten, in: PROKLA. Zeitschrift für kritische Sozialwissenschaft, 2003, no. 3, pp. 389–410; http://static.hr-online.de/plusminus20040316_plege.html, 2004/03/24.

28 While doctors are legally obliged to register with a regional chamber (»Landesärztekammer«) and pay membership fees, in the care sector a comparable obligation does not exist. The effects are dramatic: the level of organisation among employed or self-employed doctors is 100 per cent; the level of organisation among care professionals is estimated to be about 10 per cent. While doctors' organisations enjoy sufficient financial resources, care associations lack membership fees and are mainly based on unsalaried volunteer work. As a consequence doctors' associations are able to maintain a sophisticated system of professional lobbyists and experts that are especially involved in the preliminary stages of legislation. This is a huge advantage vis-à-vis care associations. Furthermore the compulsory registration of doctors provides rich statistical data which is by comparison quite poor in the case of nurses and care assistants. So in the present discussion regarding a looming shortage of health professionals, doctors' associations can underline their opinion by ample statistical data while care associations cannot even exactly establish the number of care professionals in Germany. In interviews care organisations named this lack of evidence as a major obstacle to professional and equivalent lobbying.

interest organisations to object repeatedly and successfully to political attempts at structural reform and cost reduction in the sector. The reason for this imbalance of power among actors in the health sector can be attributed to the divided character of the social security system: social sectors that are largely self-administered such as the German one have proved to be better at resisting attempts at political intervention and to be more susceptible to the impact of group interests than universalistic systems such as the NHS. Differently from the UK – and other countries – there were no deep reaching reforms of the system of welfare provision after World War II, but instead an advancement of Bismarck's structures.²⁹

The German surplus of doctors³⁰ can therefore be seen to have been directly caused by the sector structure and actor constellation. The separation of funding and provision of medical treatment had crucial consequences.

On the one hand there were mainly private suppliers of medical services – the doctors – interested in profitable efficiency. On the other hand there were health insurers which were backed by a strong collective demand consisting of statutorily insured persons disposing of actionable entitlements and a large tendency towards usage of services. While doctors had a medical as well as an economic interest in extending their supply, contributors were keen to make use of it and insurance reimbursed any service without ceiling until the early 1990s. This practice allowed doctors' incomes to grow continuously and attracted many young professionals. Only in the early 1990s did the oversupply of doctors and medical services culminate in such a severe cost explosion that for the first time a drastic political intervention towards the sector succeeded, resulting in deep structural changes. Budgetary ceilings, a maximum doctors-to-patient-ratio and elements of competition were introduced. In the following years the formerly fantastic financial and working conditions for doctors deteriorated gradually.

At the same time hospitals were forced to work more cost-effectively. The pressure on hospital doctors in particular increased. Young doctors were especially affected by this development. All this provoked a general loss of attractiveness of the medical profession. Because of the length of academic medical training, the effects of this 1992 reform – and a related reduction in academic training capacities – only become obvious after a time-lag. The main causes of the presently looming shortage of doctors are the migration of doctors to other more attractive professions, to other countries and at the domestic level from East to West Germany.³¹

29 Kaufmann, *Varianten des Wohlfahrtsstaats*, pp. 281–308.

30 In the 1990s the surplus of doctors was discussed under the slogan ›Ärztenschwemme‹ (glut of doctors) which had quite negative connotations.

31 For detailed figures and background information cf. Hoesch, ›Green Card‹ für Ärzte.

In the range of care-of-the-elderly services we can again clearly observe the structural determination of patterns of migration. Although the occurrence of migration in this sector is strictly speaking outside the PEMINT project's research focus, it is however worth a glance: illegal employment of care assistants in private households is widespread and as a complementary phenomenon of migration explains the rather reluctant recruitment of foreigners by firms. This shifting of labour from the formal to the informal labour market segment can be interpreted as a logical result of funding and supply structures of care-of-the-elderly services as described further above. The large informal labour market segment also prevented the creation of at one time an expected 400,000 new jobs in the range of nursing services. However, the number of ambulant services increased from 6,250 in 1993 to 11,700 in 1998 and to about 13,000 in 2000 as a consequence of the introduction of compulsory care insurance.³²

3.3. The Netherlands

Broadly speaking, apart from recruitment from contiguous countries, in the case of the Netherlands there did not appear to be a high level of foreign recruitment in the institutions interviewed – that which was mentioned seemed to refer to specialists in shortage areas (doctors and in some cases nurses). However many of the organisations interviewed are experiencing shortages and would prefer to react to it by foreign recruitment if bureaucratic procedures were not so sluggish and time consuming.

Before discussing the structural background of recruitment patterns an overview on stocks and flows follows.

According to data from the Central Bureau for Statistics, the foreign working population in health and welfare (including medical science, veterinary and welfare services) declined in the late 1990s, from 22,000 in 1995 to 16,000 in 1998. More than half of these were EU citizens, in particular Germans and British. Moroccans were the largest group of non-EU citizens, although their numbers and those from the UK fell significantly in 1998. It is important to note that these foreigners are mostly ›allochtonen‹ – non-Dutch who live in the Netherlands.

The number of work permits issued to non-EU foreign workers in the health sector fluctuated between 1996 and 1998 and then rose sharply from 187 in 1998 to 386 in 2000 and to 567 in 2002 (CWI Centrum voor Werk en Inkomen: Employment Services Authority). In the first half of 2003 the number (316) already exceeded the total number of work permits issued in 2000. From 2000 to the first half of 2003, the total number of work permits issued

32 Krampe, Arbeit im Gesundheitswesen, pp. 402f.

(by definition from non-EU countries) was 1,560. Some countries were well represented in these numbers: Indonesia (524), Poland (190), the Philippines (185), South Africa (153) and Surinam (121). The remaining 387 are spread over 62 countries, with a maximum of 36 for the USA.

Data specifically on the occupational groups that we have been studying also indicate some increase in numbers of migrant workers entering the Netherlands in recent years. Statistics derived from the *Rapportage Arbeidsmarkt Zorg en Welzijn* (Report on the Labour Market in Health and Welfare) show a rise in immigration of physicians with a foreign diploma between 1996 and 2000 from 76 to 262 in the case of EU citizens and from 169 to 258 in the case of non-EU citizens. However, nearly half of the latter were refused permission to stay or needed more training. New registrations of foreigners on the Register of Medical Specialists fluctuated in the late 1990s, with 50 (40 of them from within the EU) in 1998 – 9 per cent of all new registrations.

In the case of nurses with a foreign diploma, there was a steady decline in migration from the EU between 1996 and 2000, from 310 to 139 but this was offset by migrants from outside the EU. Their numbers fluctuated considerably, with the lowest figure of 348 recorded in 1996 and the highest, 579, in 2000. The numbers described as referred or refused were small.

It is worth remarking that non-EU nurses are allowed to stay for a maximum of two years only. Surprisingly enough this does not discourage nurses – especially from the Philippines – from migrating for this limited period and passing all related procedures such as language courses, cultural courses and bureaucratic requirements. Both sides – employers as well as foreign nurses – would prefer longer contracts.

The interview survey provided some complementary information. Firstly, substantial numbers of foreign staff were Belgians and were cross-border workers. One organisation running a hospital plus nursing and residential homes said that about 250 staff were living in Belgium, 83 of them employed in the hospital. Another large hospital had about 600 foreign employees of whom about 500 were Belgians, mainly doctors and nurses.

Germany was the other principal source of foreign staff mentioned in the interviews, though not in terms of very high numbers.³³

Three organisations referred to staff of Moroccan and Turkish origin settled in the Netherlands. One hospital said that they were employed at all

33 It is interesting that interviewees repeatedly mentioned cultural problems with German migrants. Since the structure of professional groups in the German health sector is a clearly hierarchical one, problems that arise in the more informal culture of the Dutch institutions consist mainly of communication difficulties between doctors and nurses. »In Germany Herr Doctor determines how things are done« one interviewee said.

levels, as well as others from Germany, the Philippines, Nepal, the Ukraine and some South African doctors specialising in paediatrics and anaesthetics. Other references were made to South African specialists and nursing staff such as operating theatre nurses. In nursing homes and domiciliary care, the picture seems to vary – one organisation said it had no foreign employees, while another stated that it had only a very small number, though 18–19 per cent were of immigrant origin (mainly Antilleans and Surinamese) reflecting the local resident population.

Overall, the pattern of recruitment in the Netherlands appears to reflect in a predictable way the geographical locations of different institutions. Those close to the Belgian border are most likely to recruit Belgians. Those situated in areas of high immigrant settlement are likely to recruit partly from that source, particularly in nursing and caring occupations. And – similar to the UK – professionals from former colonies represent an above average proportion of foreign health personnel.

However, since shortages exist and will increase considerably in the near future it is astonishing that on the one hand foreign labour is used very reluctantly and active overseas recruitment scarcely occurs and on the other hand if it does occur bureaucratic procedures are rather restrictive and discouraging.

How can this discrepancy between a subjectively experienced labour shortage in the heart of the organisations and the relatively small use of foreign labour in the sector be explained? To answer this question we return to our considerations in section 2. The Dutch health sector is a social security based one. The main characteristics attributed to this model can be found there as well (see section 2).³⁴ The sector is shaped by various but equal ac-

34 The classification of the Dutch welfare state is difficult and ambiguous. While Esping-Andersen originally classified the Netherlands as a social democratic regime – which was further differentiated later (cf. Esping-Andersen, *The Three Worlds of Welfare Capitalism*, p. 52) – other authors alternately emphasise the social democratic features or the conservative continental elements of the Dutch welfare state. Robert Goodin et al. (*The real Worlds of welfare Capitalism*, Cambridge 1999) regards the Netherlands as a prototype of a social democratic welfare regime. On the other side Francis F. Castles and Deborah Mitchell (*Worlds of welfare and Families of Nations*, in: Francis F. Castles (ed.), *Families of Nations. Patterns of Public Policy in Western Democracies*, Aldershot 1993, pp. 93–128). Fritz W. Scharpf and Vivien A. Schmidt (*Welfare and Work in the Open Economy. Vol II: Diverse responses to Common Challenges*, New York/Oxford 2001) and others classify the Dutch welfare state as a continental/conservative/catholic regime. It can therefore be assumed that »the Netherlands stands clearly apart as a different kind« (Jens Alber, *Recent Developments in Continental European Welfare States: Do Austria, Germany, and the Netherlands Prove to be Birds of a Feather? Contribution to the 14th World Congress of Sociology, Montreal 29 July 1998*, quoted according to Philip Manow, »The Good, the Bad, and the Ugly«. Esping-Andersens Sozialstaatstypologie und die kon-

tors. Societal actors are important and involved in consultation and rehearsal in the preliminary stages of legislation. All relevant actors are involved in an institutionalised interaction process.

In this highly cooperative environment there exists a consensus among all the institutional actors that labour migration is no solution to shortage. The various actors rather pursue sustainability. The employees together with employers and the government prefer labour market policies directed at the domestic supply: investment in education, improvement in working conditions and status of the professions.³⁵ In December 1998 employers, employees, the Ministry of Health and the Employment Office agreed on the ›Covenant Labour Market Policy Health Sector‹ (CAZ). Among other issues, the parties involved agreed on arrangements with regard to the granting of employment permissions for nurses and care workers from outside the EU/EEA. In principle no work permit will be granted in a case where the country of origin itself is facing shortages with regard to nursing and caring personnel.

3.4. Switzerland

Labour migration in the Swiss health sector represents an interesting case: although Switzerland suffered from a severe oversupply of doctors and cost explosion in the health sector and for this reason radically reformed its health system in 1996, the overall workforce and the number of foreign health professionals is still rising. Before discussing the structural background of this development a statistical overview follows.

Foreign workers in the health and care sector increased from 66,423 in 1995 to 71,743 in 2000, with fluctuating numbers in the years between. Statistics from the Federal Office for Foreigners indicate that people with ›permit C‹ (settlement) make up by far the largest component of the foreign workforce in health. These are people who will mostly have been resident in Switzerland for at least five years. The second, much smaller component is year-round residents, followed by border commuters. As a percentage of the total workforce in this sector, foreign staff decreased from 20 per cent in 1991 to 18.3 per cent in 2000, due to the overall growth of the workforce.

professionellen Wurzeln des westlichen Wohlfahrtsstaats, in: *Kölner Zeitschrift für Soziologie und Sozialpsychologie*, pp. 203–225, here p. 207.) Despite this confusion the crucial feature of social policy is the consensus-oriented bargaining of a variety of societal actors.

35 Andrew Geddes/Philippe Koch/Eliane Kraft/Sandra Lavenex, *The Impact of Organised Interests on Migration Processes from a Cross-national and Cross-sectoral Perspective*, in this issue.

The number of foreign doctors went up from 2,740 in 1995 to 3,583 in 2000, with the biggest annual increase between 1999 and 2000. They constitute just over 1 per cent of all doctors. The number of foreign nurses went up from 21,357 in 1995 to 23,618 in 2000. Other foreign nursing personnel have also increased over the same period.

Personnel from Germany and France accounted for the largest part, followed by Italy. Interviewees indicated that especially for language reasons nurses from these countries adapt more easily. Germany, France and Italy together were the source of seven out of ten new registrations in 2001 and EU countries for eight out of ten. Almost all the rest were from other parts of Europe, mainly the countries of the former Yugoslavia.

It was noticeable that there was a sharp drop in numbers from the Netherlands and several other EU countries from 1998–99 onwards. Numbers from Germany increased by 80 per cent between 1995 and 2001. This can be interpreted as a reaction to gradually deteriorating working and financial conditions in the German health sector as a time-lagged consequence of the 1992 reform (see section 3.2 – Germany). As a consequence, German numbers became the largest – 519 compared to 367 from France in the 2001 registrations.

The presence of workers of foreign origin in the organisations interviewed was relatively high. In all but one case, the percentage of foreign workers was in double figures and it was more than half in three institutions. However, some of the statistics provided related to the whole workforce rather than being confined to doctors, nurses and care workers and this could inflate the figures. For example, in one hospital with 24.7 per cent foreign doctors and 15.6 per cent foreign nurses, 69 per cent of those employed in cleaning, washing and catering were foreign citizens.

The pattern of foreign employment in different institutions clearly varied considerably. In the minority of cases where statistics were provided for different occupational groups, the percentage of foreign doctors ranged between 3 per cent and 24.7 per cent, the percentage of foreign nurses between 15 per cent and 72.7 per cent. As in the Netherlands, the geographical location of institutions was significant.

So why does immigration flow rather smoothly in the Swiss health sector without being obstructed by societal actors aiming at a sustainable domestic supply?

Although the Swiss health sector is based on health insurance contributions and is therefore grouped in the social security financed cluster (see section 2) with Germany and the Netherlands, there is a difference between these two latter cases and Switzerland. While in the Netherlands and Germany cooperation among societal actors is well established, in Switzerland social partnership is still in its infancy. As regards overall welfare state ar-

rangements some authors rather situate Switzerland ideologically at the American coast.³⁶ The ambiguity of classification becomes obvious by different approaches regarding Switzerland either as a ›Christian-democratic welfare state.³⁷ or a dominant liberal-conservative mixed type enriched by social democratic features³⁸ – in other words a bit of everything.³⁹ This indicates that with respect to social security Switzerland can also be considered to be a type all of its own.

As regards immigration in the health sector this can be described as a government-led process.⁴⁰ While in the UK it is easier to plan strategically because of the more direct governmental control in the sector, in Switzerland we find a favourable handling of work permit requests. So neither the government nor legislation acts as veto-player or barrier. If barriers are also not placed in the way of foreign recruitment by employees, unions or professional organisations – as it is the case in Germany and the Netherlands – the result is a fairly open system as is described above for the UK (3.1.).

Some recent laws and initiatives in Switzerland confirm the impression of such an open system, e.g. bilateral agreements that facilitate free movement from EU countries and emergency measures to recruit nurses where urgently needed. This openness could be explained by the fact that cooperation among societal actors is less well established than in the Netherlands or Germany. There, cooperation among strong actors results in a widespread consensus that labour shortages have to be solved in a sustainable manner at the *domestic* level. Furthermore in Switzerland state control is more efficient due to the large share of hospitals under cantonal administration. Private hospitals have a market share of only 25 per cent. The sector's closeness to the state has on the one hand prevented for a long time the formation of a classic social partnership and on the other hand allowed hospitals to establish good contacts to political forums.⁴¹

So this actor constellation explains why immigration to the Swiss health sector flows rather smoothly. It does not explain why shortages exist at all since one aim of the 1996 radical health sector reform was not only to limit costs but also to stop the oversupply of doctors.

36 Manow, *The Good, the Bad, the Ugly*, p. 205.

37 Scharpf/Schmidt, Introduction; Evelyne Huber/John D. Stephens, *Welfare States and Production Regimes in Retrenchment*, in: Paul Pierson (ed.), *The New Politics of the Welfare States*, New York 2001, pp. 107–145.

38 Herbert Obinger, *Politische Institutionen und Sozialpolitik in der Schweiz*, Frankfurt a.M. 1998.

39 Manow sums up the reflections of these different authors on the discriminatory limits of categorizing welfare states, Manow, *The Good, the Bad, the Ugly*, p. 208.

40 Geddes et al., *The Impact of Organised Interests*.

41 Ibid.

The reform mainly consisted of replacing the former system of income-related health insurance contributions – which were not compulsory – with a *per capita* premium system that is compulsory including the whole population. Premiums are equal for all those insured regardless of their level of income, but guaranteeing only a basic service. Additional services have to be insured privately.⁴²

Diverse elements in favour of competition have been introduced and the connection between higher co-payments and lower premiums are meant as incentives for reducing availment of services. Before the reform the number of doctors was steadily growing for three reasons. First, insurance reimbursed all costs without ceiling through the same mechanism as described for the German case (3.2.). Second, no restrictions to opening a surgery existed, and third, there were hardly any alternatives for a doctor having completed further training – if he did not choose an academic career he could not stay in a hospital and had to open a practice. This changed with the 2002 bylaw ›Ärztstopp‹ (literally ›doctor-stop‹). This prohibited doctors from opening a practice for three years and prescribed a maximum number of doctors in every canton. Another measure is the creation of the so-called ›hospital-doctor‹. This new position allows doctors to stay in hospitals after further training.

So if there were problems of oversupply why the increasing employment of foreign professionals? The inflow of foreign doctors can be explained by a parallel development that thwarted the former oversupply: the legal reduction of working time in hospitals to 50 hours per week (formerly 60–80 hours) which created a vast extra demand for doctors. In addition Swiss hospitals attract foreign doctors because of their high medical reputation. Employment in Swiss hospitals is often regarded as a good transitory period for an academic career.

In the case of nurses oversupply never existed. Reasons for shortages are the same as in all other PEMINT countries: a relatively bad image of the profession, i.e. hard work and inadequate pay. In some specialised areas there is not enough training capacity available, in others vacancies cannot be filled with trainees. Recent reforms of training schemes are meant to overcome this discrepancy and to attract young professionals.

42 For detailed information and a critical assessment of the reform cf. Thomas Gerlinger, *Verlagern statt Sparen. Die Folgen der Schweizer Gesundheitsreform von 1996*, in: *WZB Mitteilungen*, no. 101, September 2003, pp. 11–16; Thomas Gerlinger, *Gesundheitsreform in der Schweiz – ein Vorbild für die Reform der gesetzlichen Krankenversicherung?*, in: *Jahrbuch für Kritische Medizin*, vol. 38: *Gesundheitsreformen – internationale Erfahrungen*, Hamburg 2003, pp. 10–30.

3.5. Italy

In Italy virtually no recruitment of foreign doctors takes place. On the contrary Italy rather suffers from an oversupply of approximately 100,000 doctors. By contrast the severe shortage of nurses is estimated to also add up to around 100,000. Despite this shortage the recruitment of foreign staff is relatively low, probably mainly due to restrictive legislation – in particular as regards public hospitals and nursing homes, which constitute the large majority of health care institutions registered to the Italian National Health System. In order to circumvent legal constraints, ›moonlighting‹ and subcontracting is widespread in the Italian health sector. In lower skilled care professions – such as care assistants – the recruitment of foreigners is more common though it takes mainly place among foreigners already resident in Italy. Before discussing the structural background of these patterns of recruitment and employment there follows a statistical overview.

Due to the regional structure of the NHS there do not appear to be any statistical data which would give a comprehensive national picture of foreign workers in health and social care in Italy as a whole. The main labour shortages for which foreign recruitment is a possible solution are to be found in the north of the country and the organisations interviewed in our study were all located in Lombardy – the largest region in the north.

On the basis of the interviews and other sources, it would appear that the majority of doctors are of Italian origin and that nurses and care assistants are the categories which contain the more significant numbers of foreign workers. Forecasts of the need for non-EU workers in the health sector for 2001 indicated that 3,494 personal care and related workers and 1,344 nurses and technicians in the medical sciences might have to be recruited from non-EU countries. These figures represented nearly 40 per cent and 33.3 per cent respectively of total job openings in these two employment areas.⁴³ However, these figures may well overestimate what actually occurred. All human resources managers interviewed stated a shortage of nurses was a major problem. This is due to the physical and psychological harshness of the job, low wages despite increasing training requirements, low social status of nurses and less autonomy for nurses within the hospital hierarchy than in other European countries. Beside legal restrictions (see further below) this unattractiveness of the job renders international recruitment more difficult.

A total of 814 non-EU nurses obtained recognition of their professional diploma in Italy during 2001, of whom 299 were from Romania and 171 from Poland. Other countries in descending order were Albania (99), India (64),

43 The data are provided by the ›Sistema Informativo Excelsior‹, a periodic information system, which has been set up by the Ministry of Labour and the Union of the local Chambers of Commerce, who derive the information from employers.

Croatia (52), Tunisia (45), Serbia (42), Cuba (24) and Bosnia (18). Data on foreign nurses who joined the National Nurses Association in Lombardy during 2001 provide a wider picture, including EU nurses. In total, 251 came from non-EU countries, of whom 44 were from Romania, 38 from Peru and 26 from Poland. Another 240 came from EU countries, almost exclusively from Spain (220). Romanian as well as Spanish nurses are a preferred group: they have less problems with cultural integration and easily learn the Italian language. While Romanian nurses are attracted by better wages and working conditions, Spanish nurses only come to Italy because gaining work without professional experience is difficult in Spain. They therefore acquire this experience during a transitory period of six to twelve months at most and then return to Spain because of better wages and status. Nevertheless Spain is a relevant labour pool for foreign nurses.

In the hospitals that participated in the survey and provided data, numbers of foreign nurses varied but only one reported more than 25 per cent in total. The highest recorded number was 200, 12.5 per cent of the total in a large private hospital. Another smaller institution said that it had 20 foreign nurses and 40 more due to arrive with scholarships. To avoid problems in obtaining a work permit, some hospitals provide scholarships for foreign nurses. These nurses are formally involved in an apprenticeship programme, but in fact they work like other nurses with standard employment contracts. The only difference is that they receive a scholarship instead of a salary. Nursing homes reported both high and low levels of foreign staffing but provided little statistical information on nurses.

With regard to care workers, few statistical data were found to quantify the involvement of foreign workers. The interviews with organisations operating in the field of residential and home care suggested, as stated above, that the presence of foreign staff was high in some institutions and low in others. In the nursing home where 79 foreign workers were employed, 61 of these were care assistants. In another organisation providing workers for home care, nursing homes and hospitals, 50 per cent of care assistants were said to be foreign.

If we try to interpret this rather patchy and incomplete data we have to keep in mind that due to common practices of subcontracting and moonlighting work, legislative constraints imposed on recruitment of foreign staff in public health care institutions and due to the dual labour market structure in Italy⁴⁴, there is an unknown number of foreign workers.

Since legislation imposes more constraints on public organisations than private ones concerning the engagement of foreigners, subcontracting is a

44 Maria Baganha/Emilio Reyneri, Migration and the Labour Market in Southern Europe, in: *IMIS-Beiträge*, 2001, no. 17, pp. 33–53.

way to solve shortages. The Italian health sector is the only one among PEMINT countries where not only catering and cleaning but also core businesses such as caring and nursing activities (not medical care) are subcontracted. It is a strategy to cope with skill shortages and not a cost cutting or flexibility strategy. Health institutions with severe nurse shortages, that in normal conditions would rather not outsource, ›buy‹ nursing activities from either cooperatives or professional associations. Within these subcontracting firms, moonlighters and in a few cases non-formally qualified nurses are available. Therefore subcontracting in these cases is a way of accessing a pool of labour that would not be otherwise available.

Reasons for the subcontracting of public hospitals are their general competitive disadvantage vis-à-vis private institutions. There is competition for the recruitment of nurses and ›thefts‹ of workers are quite frequent. Private hospitals usually overcome public ones thanks to more flexible contractual frameworks and the possibility of offering higher wages.

While the possibility for public hospitals to recruit foreign labour is quite restricted, private hospitals on the contrary do not have any constraints in hiring foreigners as permanent or non-permanent workers. So subcontracting private firms or cooperatives is a way to indirectly engage foreign workers. As concerns possible irregular workers there are fewer controls in subcontracting firms than in public hospitals – another indicator of a dual labour market structure. Altogether irregular work and moonlighting are quite widespread in the Italian health sector, especially among care workers. The irregularities mainly concern foreigners without a permit to stay. Although it is not within the focus of PEMINT it is worth remarking that irregular work is very widespread in the home care sub-sector where households are more likely to engage foreigners without a permit to stay in order to save money. In contrast to the illegal labour market segment in the German home care sector where informal employment occurs as a rather hidden and accidental side effect of the mode of funding and covering risks (see section 3.2), in the Italian home care sector the overall dual labour market structure suggests that there is probably a more direct link to this established informal practice.

Regarding the virtual absence of foreign doctors and the oversupply of Italian doctors this phenomenon is rather surprising if we take into account our considerations on tax based vs. contribution based national health systems (section 2). How can the oversupply of doctors be explained in a health system that lacks the dynamics of collective demand and related cost increase and professional attractiveness? An answer might be that the NHS was only established in 1978 as a radical reaction to an uncontrollable cost explosion in a contribution based system. However the implementation took place gradually – up to the mid-1990s the system continued to be financed partly through contribution. Now it is completely financed through taxation. The

oversupply of doctors might be interpreted as a relic of this former system. Furthermore, more than 60 per cent of hospital doctors are employed as ›professionals‹ which means better conditions and wages than regular employment. This might be another relic of the former system and might suggest that effective organisation and representation of professional interests once established in a contribution based system can outlast the transformation to a tax based NHS. In comparison to the situation of nurses it can also be assumed that the academic medical profession is in a more elite position and therefore better succeeds in organising and asserting interests vis-à-vis governmental policies towards the sector. However, these considerations are rather notional and should be further investigated.

3.6. Portugal

Statistics from the Portuguese Ministry of Health show a strong upward trend in numbers of foreigners employed in the health sector, from 313 in 1994 to 1,231 in 1998 and 2,909 in 2000. The majority of these migrants originated from Spain, i.e. 59 per cent of all foreign health workers (1,710). All EU countries together accounted for 1,832. Though there is a substantial presence of people from PALOP countries⁴⁵, they have declined as a proportion of the total: in 1994, 127 foreign workers in the health sector were from these countries, 108 from Brazil, with only 47 EU citizens, 26 of them from Spain. By contrast, in 2000 PALOP countries accounted for 727, Brazil for 245. A total of 105 workers came from non-EU countries other than PALOP and Brazil.

Of the 2,909 foreigners in 2000, 1,324 were doctors and 1,376 nurses.⁴⁶ Among the doctors, 691 were EU citizens, 355 from PALOP countries, 127 from Brazil and 151 from elsewhere. However, 74 per cent of Brazilians and 66 per cent from PALOP countries were specialists, compared to 34 per cent from the EU. In the case of nurses, 1,113 were from the EU (a big leap up from 597 in 1999). This increase, particularly from Spain, might be due to the opening of the first public hospital with entrepreneurial management that needed to contract Spanish nurses in order to be able to operate. In general, the shortage of nurses in the Portuguese labour market is becoming well known in Spain and consequently the number of Spanish nurses has increased. At the same time the Portuguese demand for nurses matches a peculiarity of the career paths of Spanish nurses. In fact, the Spanish system of access to health units requires that the nurse obtains a minimum number of

45 I.e. African countries whose official language is Portuguese.

46 Data from another source, the Professional Association of Nurses, for 2001 gives a total of 1,097 foreign nurses, of whom 787 are Spanish, 94 Brazilian, 51 Guinean and 36 Angolan. The largest EU groups, other than the Spanish, are the French (25), the British (20) and the Germans (15).

points that can only be acquired in Portugal, according to a certain working time in a changing institution. Thus high staff turnover is the consequence. This connection is also visible in the case of the transitory stay of Spanish nurses in Italy (section 3.5).

The rest of foreign nurses came from PALOP countries (171) and 16 from elsewhere.

The general trend of increase in employment of foreign professionals shown in the figures above was reflected in statistics at the organisational level for the years 2001 and 2002 and was confirmed by all interviewees: all but one had recruited both doctors and nurses of foreign origin

In 2002 for three of the sample organisations, the proportion of foreign doctors was in the range 17–22 per cent. In two, the proportion was between 8 and 11 per cent. In the rest, it was below 5 per cent. Some hospitals have relatively large numbers of doctors because they use part-time or hourly-based contracts. This practice reflects another trend in the recruitment of foreigners: while the most common contract form of Portuguese health professionals is incorporation as permanent staff⁴⁷, in respect to the contractual arrangements for foreign workers there is an increasing precariousness in their employment – a tendency that affects all professional groups. Most of the foreign health professionals are not staff members of the health institutions: In 1998, 1999 and 2000 77.49, 74.46 and 79.65 per cent respectively were non-staff members compared to 22.50, 25.53 and 20.35 per cent staff members in the same period.

In the case of nurses there were some higher numbers and percentages of foreign staff employed by different organisations, with one hospital having 417 (45 per cent) foreign nurses, another 138 (39 per cent) and a third 119 (about 40 per cent). In two others, the figures were 79 (17 per cent) and 75 (14 per cent). However, there were very low figures in some of the other organisations. Data collected from the interviews on lower-skilled workers in nursing and residential homes or domiciliary care were very limited. In the cases looked at, the percentages of foreign workers were 40–50 per cent and 13 per cent.

So what are the reasons for the strong increase of foreign recruitment between the mid-1990s and 2000/2001? And why are the numbers of nurses significantly higher than those of doctors?

For the answer to these questions we have to go back to the structural background of the Portuguese National Health Service. Its emergence occurred when Portugal was going through the process of democratisation and the state was developing an effective welfare system for the whole popula-

47 As far as physicians are concerned that type is used in 70 per cent of the cases the rate for nurses rises to 82 per cent.

tion. Previously, the state only played a supplementary role in relation to private initiatives in the health sector. The provision of health and care services within the post-democratisation NHS is open to every citizen, funded by taxes and organised in a rather bureaucratic and hierarchical way. The role of the state has been central which is reflected by the high proportion of health professionals occupied as regular members of public service staff (see above). Despite reforms towards privatisation and entrepreneurial management that were started in the 1990s, the NHS has been until now the largest owner and manager of most of the health care production means and the most important purchaser of health care provided by the private sector. The heavy human and logistical structure of the NHS is blamed for a series of problems, namely the obstacles to modernisation of management of health care institutions. The rather central planning of needs as regards human resources in the individual public hospitals and health care centres hampers foreign recruitment. As a consequence, the recruitment processes by private institutions or by public institutions with private management are more active and diversified.

The main reason for foreign recruitment is the simple lack of these professionals in the Portuguese labour market, often related to scarce training capacity, especially in the case of nurses. But despite the rising numbers of foreign professionals the state restricts the quota for foreign professionals in public health institutions. At the same time government policies try to restrict public employment. This is also reflected by the increasingly temporary nature of employment contracts for foreign workers as mentioned above.

The state as the dominant actor takes the position that the scarcity of nurses is simply not as high as promoted in some studies and in the doctor's case it's a distribution problem. External recruitment is therefore neither necessary nor wanted. The main options for labour market policies all refer to the domestic market: an increase in numbers and of the wages paid to those working in the hinterland. Interestingly, employees' organisations are quite in line on this with the state. The issue is not used by the trade unions for their normally tough campaigns against the government. The Portuguese Medical Association also fulfils a gatekeeper-function by following different strategies against immigration, such as requiring compulsory language exams and proposing an alteration of the graduation course to keep up with the Spanish system.

The nurses are in favour of a structured foreign recruitment process, but the dominant strategy in Portugal mirrors the restrictive attitude of the Medical Association, which follows from the strength of that organisation

within institutional arrangements that include the formulation of national health policies.⁴⁸

4. Conclusion: Common Pattern and Interaction

Broadly speaking, there seem to be few circumstances in health and social care where employers deliberately seek to employ foreign workers in preference to the country's own citizens. This is true for all PEMINT countries although the actual extent of foreign recruitment varies considerably across the individual countries.

While there are numerous reasons for the reluctance to use foreign recruitment in the health sector (such as language and cultural requirements and recognition of diplomas) this paper focused on the impact of strongly nationally determined health sector structures on the recruitment of foreign labour. In contrast to widespread opinions that there is a *direct* cause-effect chain between ageing societies, associated increases in demand for health care professionals and foreign recruitment, our fieldwork confirmed our assumption that demographic development and the labour market situation in the health sector are linked not in a linear fashion but indirectly and in a way determined by structural conditions. In the future, however, demographic factors are likely to become more important.

While in all PEMINT countries there is a preference not to recruit overseas, the empirical fieldwork and theoretical framework showed that there are significant differences with respect to numbers and skill levels of shortages and recruitment. The strong embeddedness of the health sector in the wider patterns of national social policy and welfare state arrangements help to explain on the one hand the national narrowness of the sector and absence of international competition in all PEMINT countries, and on the other hand the rather divergent national peculiarities in terms of the funding and provision of health services, influence of the state and constellation of actors. The specific structures and history of each individual health sector result either in a kind of sustainability as regards the provision of sufficient young professionals or in an incapacity to sustain supply and therefore an inclination to depend on foreign recruitment.

At the same time health sectors in all PEMINT countries are characterised by the relative absence of market structures and the, albeit changing, dominance of the state in planning and execution.⁴⁹ However, the country studies showed that the influence of the state becomes manifest quite differently according to the respective sector structures. The two types of health

48 Geddes et al., *The Impact of Organised Interests*.

49 Ibid.

sectors that were introduced initially as reference models suggested that, depending on the type of funding, there were specific constellations of actors, different levels of political controllability and different labour market situations.

The application of these assumptions (section 2) to the outcome of our empirical fieldwork revealed that there actually *is* a connection between health sector structure, supply and demand for labour and recruitment of foreign labour, but this connection must be differentiated more carefully.

Andrew Geddes, Philippe Koch,
Eliane Kraft and Sandra Lavenex

The Impact of Organised Interests on Migration Processes from a Cross- national and Cross-sectoral Perspective

This article complements the earlier PEMINT project focus on sectoral recruitment processes by examining national regulatory contexts and relating these to modes of organising key aspects of state-society relations. The emphasis is placed on the roles of national-level institutional actors and their perceptions of labour migration and labour recruitment decisions in the three PEMINT sectors. Our primary focus is on modes of state-society relations that clearly have a strong national resonance given that welfare states and fiscal systems retain a strong national organisational basis.

This report seeks to contribute a perspective that draws from work in the fields of political science and political economy that analyses migration policy and politics. The report also draws from the comprehensive existing literature on migration flows, stocks and labour market inclusion that have mainly been written by researchers working in the areas of sociology, geography, economics and law. As with other PEMINT contributions, this report seeks to meld perspectives from various disciplines.

Our research suggests that there has been relatively little analysis of the ways in which migration policy is made and the constellations of actors and interests that are active during this policy formation process at national, European and international level. Through further investigation of the roles of institutional actors in the three PEMINT sectors and in six European countries, the PEMINT research can contribute to a better understanding of labour recruitment and migration policy. The particular focus of this report is the national level, although the PEMINT project does not seek to simply produce ›national‹ reports on ICT, health care and construction in each of the six countries.

Aside from its sectoral and European approach, the PEMINT project's other distinct methodological contribution is that it reverses what could be viewed as the usual analytical approach to analysis of migration that specifies (usually implicitly) international migration as an independent variable

and then analyses effects on the organisational and conceptual borders and boundaries of European states. The PEMINT project is concerned with the ways in which migration is understood as a social and political issue and the ways in which decision making processes within organisations ascribe meaning to those forms of international population mobility that involve crossing state borders. We know that what is defined as international migration is closely linked to decision-making processes within organisations. We analyse these organisations and the ›sense-making‹ processes within them regarding labour recruitment and migration.

This insight is particularly pertinent in the context of the PEMINT project because, as earlier contributions have shown, the dynamics of particular sectors may not rest easily with a focus on migration policy-making that is fixed on the nation-state. We have found strong international dynamics within the ICT sector and a strong European resonance within the construction sector. In contrast, health care retains a strong national organisational focus. This suggests that while it is useful to explore patterns of state society relations and to understand their implications for recruitment and migration, it is also important to bear in mind that migration networks and sectoral dynamics may not fit with a world neatly divided into nation-states with their own distinct modes of state-society relations. This insight is, of course, an important aspect of the PEMINT project, which is concerned with the dynamics of labour migration *in an integrating Europe*.

As already noted, there is not a particularly substantial political science or political economy literature on the making of migration policy and on the links between labour recruitment and migration. What we have found is that, since the 1990s, it is possible to identify a distinct liberal political economy approach to migration policy-making that argues that organised interests (such as business) in cooperation with public administrations can play an important role in shaping the admission of economic immigrants. Drawing on public choice theory¹, these approaches contend that those sectors of the economy which benefit most from foreign labour perform best in organising their interests and exert a strong influence on political processes and especially admission policies.

These liberal approaches to the political economy of migration clearly have cross-national and comparative relevance. We seek to apply these insights to our analysis of sectors that operate within, between and across European states and explore the particular constellations of interests concerning recruitment and labour migration in the three PEMINT sectors. Our

1 E.g. Mancur Olson, *The Logic of Collective Action. Public Goods and the Theory of Groups*, Cambridge, MA 1971.

aim in this paper is to examine the role of institutional actors in shaping foreign labour recruitment in Europe in the three PEMINT sectors.

Our analysis commences from the divergence between national modes of labour market, economic and social regulation, as well as the notion of ›incomplete European integration‹ (whereby supranationalised free movement co-exists with the continued predominantly national organisational basis of welfare and fiscal systems). There are clearly important differences between European countries in the ways that they organise their labour market, welfare state and industrial relations. One task of this report is to attempt to make sense of these differences and then to try and understand their implications for recruitment and migration. This suggests a complex interplay between national differences and sectoral dynamics in health care, ICT and construction that may cross these national borders. In order to grasp cross-national differences in relation to sectoral dynamics, we combine public choice approaches with institutional analysis in order to assess the relationship between different forms and patterns of state-society relations in the respective countries and the role of organised interests. Thus, this paper focuses on two broad sets of variables in examining patterns of labour immigration in Europe:

1. Country-specific patterns of state-society relations
2. Sector-specific degrees of institutionalisation.

Following a short presentation of the theoretical framework guiding this analysis, we present a typology of welfare states and industrial relations in the PEMINT countries. This typology describes the overarching patterns of state-society relations within which institutional actors interact in the regulation of labour migration. It also suggests a first set of assumptions concerning the relative importance of organised interests in the three sectors in each PEMINT country. The third chapter complements this statist perspective with a synthesis of sectoral characteristics in ICT, construction and health care and their relevance for labour migration. On this basis, we formulate initial hypotheses concerning the role of institutional actors in the regulation of labour migration in each sector. These hypotheses are then examined on the basis of the interview data contained in the national institutional actors reports. The conclusion interprets these findings in the light of the general analytical framework of the PEMINT project and of the theoretical considerations included in this paper.

1. Theoretical Background

Political science approaches to national immigration policies have been strongly influenced by public choice models that conceive the pluralistic interplay of organised interests as the main determinants of public policies.

From this perspective, the levels of labour migration in liberal democracies can be explained by the interests of the most influential groups in society.² This influence is, on the one hand, a function of the distribution of costs and benefits of immigration and, on the other, of different groups' capacity to organise and articulate their interests in the decision-making process.³ According to Gary Freeman liberal democratic states share a similar organisation of interests vis-à-vis immigration which leads to inherently expansive and inclusive migration policies »which tend to be more liberal than public opinion and annual intakes larger than is politically optimal«. ⁴ The reason for this is that immigration produces diffuse costs and concentrated benefits⁵, whereby »those who benefit from immigration in direct and concrete ways (business and pro-migrant organisations) are better placed to organise than are those who bear immigration's costs« (the general public).⁶ Those who particularly benefit from migration are employers in labour-intensive industries and those dependent on a cheap, unskilled workforce. As a consequence, »the interest group system is dominated by those groups supportive of larger intakes«. ⁷

A problem with this public choice approach is that it would predict variance across economic sectors, due to the differential benefits of migration for labour-intensive versus less labour-intensive branches, but not across countries. Freeman concedes this when he claims to draw a general model valid across liberal democracies, but notes that there may well be differences between northern and southern European countries although this is attributed to »peculiar immigration histories«. ⁸ Here, the main divide is between those countries that share a longer tradition with (colonial or guest-worker) immigration, and the Southern European countries that have only recently become immigration societies.

2 Gary Freeman, *Modes of Immigration Politics in Liberal Democratic States*, in: *International Migration Review*, 29, 1995, pp. 881–902; James Hollifield, *Immigrants, Markets and States. The Political Economy of Postwar Europe*, Cambridge, MA 1992.

3 Olson, *The Logic of Collective Action*, p. 241.

4 Freeman, *Modes of Immigration Politics*, p. 882.

5 With regard to diffuse costs Freeman mentions the time-lag between immigration and its (negative) unintended consequences such as the tendency of migration flows to start small and build up over time and the tendency for temporary labour migration to develop into permanent settlements, implying family reunification and raising the problems of economic, social and political integration into the host societies.

6 Freeman, *Modes of Immigration Politics*, p. 885.

7 *Ibid.*, p. 885.

8 *Ibid.*, p. 882.

In short, it could be argued that the public choice approach faces two important limitations if we wish to understand differences in the scope and the forms of labour migration in the six PEMINT countries. First, it tells us little about the differences between ›traditional‹ European immigration countries and the reasons why interest groups within the same sector in different countries can play a more important role in one country than their counterparts in another. Second, this approach focuses on the admission of foreign workers, but does not explain the influence of institutional actors on the regulation of the stay and the labour conditions of those immigrants who are already in the country. It is to this institutional dimension that we now turn.

Insofar as intra-European labour mobility is concerned, our interest in the differential realisation of free movement of persons within different economic sectors is broadly consonant with the focus of the Europeanisation literature on the differential impact of European laws, action and norms on EU member states.⁹ While acknowledging the influence of interest groups in the adoption and implementation of European rules, this literature emphasises the important role of the broader national institutional context within which these actors are embedded. Following an institutionalist approach, institutions are thereby defined as »formally organised [...] practices and rules that are embedded in organised systems of authority, resources, and meaning«. ¹⁰ By structuring »the relationship between individuals in various units of the polity and economy«¹¹, institutions can both empower particular societal actors in the pursuit of their interests and they can act as veto points.¹² At the same time, the focus of our PEMINT research on the subjective understanding of recruiters and employers also suggests that organisational and institu-

9 Adrienne Héritier/Dieter Kerwer/Christoph Knill, *Differential Europe. New Opportunities and Restrictions for Member-State-Policies*, Boulder, CO 2001; Claudio M. Radaelli, *Wither Europeanisation? Concept Stretching and Substantive Change*, in: *European Integration Online Papers*, 4. 2000, no. 8, <http://eiop.or.at/eiop/texte/2000-008a.htm>, 05.05.2004; Maria G. Cowles/James Caporaso/Thomas Risse (eds.), *Transforming Europe. Europeanisation and Domestic Change*, Ithaca, NY 2001; Dirk Lehmkuhl/Christoph Knill, *The National Impact of European Union Regulatory Policy. Three Europeanisation Mechanisms*, in: *European Journal of Political Research*, 41. 2002, pp. 255–280.

10 James March/Johan P. Olsen, *Democratic Governance*, New York 1995, p. 243, p. 6.

11 Peter A. Hall, *Governing the Economy. The Politics of State Intervention in Britain and France*, Cambridge 1986, p. 245, p. 19.

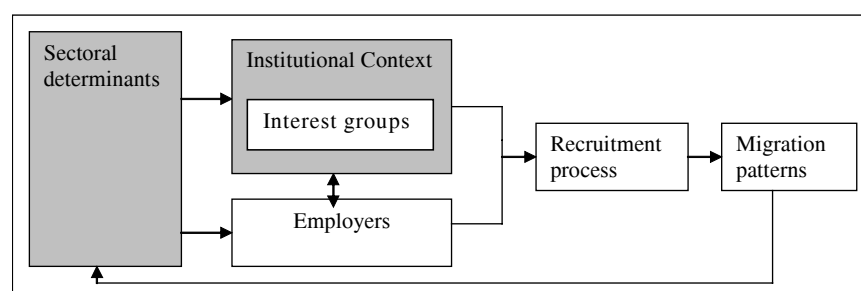
12 Peter A. Hall, *The Political Power of Economic Ideas*, Princeton, NJ 1989; Peter J. Katzenstein, *Small States in World Markets. Industrial Policy in Europe*, Ithaca, NY 1985; Sven Steinmo/Kathleen Thelen/Frank Longstreth (eds.), *Structuring Politics. Historical Institutionalism in Comparative Analysis*, Cambridge 1992; Fritz Scharpf, *Games Real Actors Play. Actor-Centered Institutionalism in Policy Research*, Boulder, CO 1997.

tional settings can have constitutive effects on the preferences, identities and interests of actors.

This paper focuses on the role played by two broad clusters of institutions: types of welfare states and patterns of industrial relations. The relationship between state and market reflected in the type of welfare state and the interplay between the organised interests of employers and employees and the state administration expressed in the patterns of industrial relations provide the context, within which institutional actors define their interests and feed them into the political process. We use ideal types of welfare states and corporatism in the sense of Max Weber as heuristic devices to organise our empirical findings and to identify crucial differences between our cases. Typologies are by definition forced to reduce complexity, to underline the differences between categories and to underrate the differences within the clusters. In our empirical analysis, however, we don't assume patterns in the different countries to be static. Instead, they are themselves the object of inquiry and our findings will point out their dynamics. With this analytical framework, we hope to provide a comparative perspective on the role of institutional actors which is able to explain their differential impact on labour migration both with regard to

- a) Sectoral characteristics – reflected in the capacity of interest groups to organise and to make their voice heard in the policy-making process (public choice)
- b) National characteristics – referring to the impact of welfare state institutions and patterns of industrial relations on these interest groups and state actors in the definition and the pursuit of their preferences (historical institutionalism).

Figure 1: Analytical Framework



Sectoral determinants include economic conditions like the openness of the sector, the degree of company fragmentation, the existing skill and education level etc. They influence the formation of the interest groups and the con-

stellation of the actors. Interest groups and the administration are involved in the policy-making process within the overall institutional context including welfare states and national and sectoral corporatist structures. So on the one hand it will be important to analyse their impact on the legislative process in general (see section 2.2.). On the other hand, we want to find out how far migration policy becomes relevant in their activities. Migration policies are hence not conceived of as independent variables but are analysed in so far as they are mentioned as opportunities or constraints in the interviews. This analytical framework is synthesised in figure one.

We are also likely to find feedback effects that link migration patterns back to sectoral characteristics. This concurs with the PEMINT method according to which migration can be understood as both a dependent and an independent variable of the recruitment process, i.e., migration flows influence recruitment but at the same time institutional processes can ascribe social and political meaning to population mobility.

Whereas this proceeding may suggest a positivist, deductive rational-choice approach to the interpretation of the role of institutional actors, we see it more as a conceptual framework, within which the subjective information received through the open-structured interviews can be interpreted, ordered and assessed against the results of earlier empirical research and theoretical considerations. At this point we draw your attention to the fact that the submitted report is based on and limited by the information provided by the national institutional actors reports presented by the six national PEMINT research teams. Further limits arise from the difficulty of applying a qualitative and interpretive approach to a six-country comparison where information has been passed through three levels (institutional actors – national interviewers – authors of the comparative report).

2. Patterns of State-Society Relations

Patterns of state-society relations provide the country-specific context within which institutional actors act in shaping the admission of foreign workers. Drawing on comparative political studies, these patterns of state-society relations may be conceptualised along two dimensions: types of welfare states and industrial relations. In line with our institutional perspective, we are interested in

1. Longer-term patterning and path dependencies
2. The impact of state-society relations on the interests and identities of actors.

It is our contention that the migration pattern and flows that we analyse are not simply the consequence of labour market clearing at particular points of

time, but are also closely linked to the organisational characteristics of particular sectors and the interests and identities of actors within them.

2.1. Types of Welfare States

The relationship between migration and welfare is central to the PEMINT analysis, although here too, research is relatively scarce.¹³ The first influential typology of welfare states was elaborated by Esping-Andersen.¹⁴ Esping-Andersen provides a conceptualisation of the welfare state that analyses the nexus of state and markets by examining the welfare state's impact on de-commodification and stratification.¹⁵

- De-commodification means the degree to which social rights »permit people to make their living standards independent of pure market forces«.
- Stratification refers to class position.

Esping-Andersen identifies three different types of welfare regimes.

Liberal – means-tested assistance, modest universal transfers, or modest social-insurance plans predominate. Generally the market takes over an important role and the regime minimises de-commodification-effects. In liberal welfare states stratification processes are dominated by a division between state-welfare recipients and market dependants.

Conservative – the idea of market efficiency not as dominant to the same extent as in liberal welfare states. The state assumes a more dominant role in the economy and the social rights attached to class and status. Private insurance play a marginal role but the redistributive effect of the welfare outcomes is negligible as the state upholds the status differences. Furthermore these regimes are often committed to the preservation of the family.

Social democratic – principles of universalism and de-commodification are extended to the middle class. In this regime the welfare state promotes high levels of equality and doesn't tolerate the dualism between state and market and working class and middle class.

More than a mere description of regime types, the relevance of Esping-Andersen's typology for our study derives from the influence of welfare state characteristics on public policies in general and on the interplay between government and organised interests in particular: »the contemporary welfare state is not merely a passive by-product of industrial development. With its institutionalisation, it becomes a powerful societal mechanism which deci-

13 Michael Bommers/ Andrew Geddes (eds.), *Immigration and Welfare. Challenging the Borders of the Welfare State*, London 2001.

14 Gosta Esping-Andersen, *The Three Worlds of Welfare Capitalism*, Oxford 1990.

15 *Ibid.*, pp. 3f.

sively shapes the future.«¹⁶ Certain welfare-state regimes favour active or passive market solutions or corporatist structures while others support labour movements. Therefore differences occurring between state–society relations mainly concern the labour market arrangement. In his later work ›The Social Foundations of Post-Industrial Economies«¹⁷ a correlation is found between the welfare state regime and the level of economic co-ordination or union centralisation respectively (social democratic +.45, +.41; liberal -.25, -.52; conservative -.13, +.15). Although weak, these correlations still indicate a certain pattern, at least for the social democratic and liberal regimes.¹⁸

In subsequent work, Esping-Andersen's triple typology has been modified to include a fourth group composed of Southern European countries.¹⁹ According to Martin Rhodes »while the differences between the southern and continental systems can be ascribed in part to under-development, the socio-political organisation of these societies has ensured that when and where development has occurred it has been seriously distorted in favour of certain privileged groups, creating a specifically southern welfare ›syndrome«.²⁰ Several points are characteristic of the Southern type:

- The strong presence of an irregular labour market, which questions Esping-Andersen's de-commodification aspect (which is only related to the regular labour market);
- The weakness of state institutions and the failure to endow a ›rational-Weberian« civil service²¹;
- Informal institutions and solidaristic mechanism are still very important;
- The importance of the family and family ties as a social assistance mechanism.

Ordering the six PEMINT countries along a continuum from weak (liberal), to strong welfare states (social democratic), we come to the following table:

16 Ibid., p. 221.

17 Gosta Esping-Andersen, *Social Foundations of Postindustrial Economies*, Oxford 1999, pp. 20f.

18 The correlation between welfare state regime and industrial relation or corporatistic structure can be explained by the power of the labour movement and the possibility of the social democratic parties of creating coalitions with other movements (Esping-Andersen, *Postindustrial Economies*, pp. 29–32).

19 Francis G. Castles/Deborah Mitchell, *Worlds of Welfare and Families of Nations*, in: Francis G. Castles (ed.), *Families of Nations*, Aldershot 1993, pp. 93–128; Francis G. Castles, *Comparative Public Policy. Patterns of Postwar Transformation*, Cheltenham 1993; Martin Rhodes (ed.), *Southern European Welfare States*, London 1997.

20 Rhodes, *Southern European Welfare States*, p. 5.

21 Ibid., p. 6.

Table 1: Types of Welfare States

UK	Switzerland	Italy	Portugal	Germany	The Netherlands
Liberal	Liberal	Southern	Southern	Conservative	Social democratic

Sources: Esping-Andersen, *The Three Worlds of Welfare Capitalism*; Francis Castles, *Comparative Public Policy*, Cambridge 1998; Rhodes, *Southern European Welfare States*.

2.2. Types of Corporatism

The second interlinked dimension of the institutional context is the structure of industrial relations in the PEMINT countries, i.e. the degree of corporatism inherent in the interaction between the state administration and social partners in the running of the economy. Corporatism is generally understood as an ›institutionalised‹ pattern of policy-formation in the shaping of economic policy.²² Siaroff uses the following definition: »within an advanced industrial society and democratic polity, the co-ordinated, cooperative, and systematic management of the national economy by the state, centralised bargaining, and employers presumably to the relative benefit of all three actors«. ²³ As with the welfare state literature, several typologies have been drawn (Siaroff mentions 23 different analyses in the past two decades) which focus on at least one of the following four aspects: (1) structural features, (2) functional roles, (3) behavioural patterns and (4) favourable contexts. In general, a high degree of corporatism signifies a strong degree of organisation and influence of the social partners and strong ties with the public administration in the regulation of the economy. For the PEMINT countries two groups can be identified: Germany, Switzerland and the Netherlands with a high degree and Italy, Portugal and the UK with significantly lower degrees of corporatism.

In Germany, the Netherlands and Switzerland there is a more or less shared consensus concerning the joint management of the economy by business, labour and the state as social partners. Therefore the traditional institutions of social partnership (tripartite commissions, economic councils) are accepted and important for all these actors (though the influence of these institutions may differ between the countries). The level of strikes is low and the state acts as a mediator. A favourable context variable of this system is the

22 Gerhard Lehmbruch, *Liberal Corporatism and Party Government*, in: Philippe C. Schmitter/Gerhard Lembruch (eds.), *Liberal Corporatism and Party Government*, London 1979, pp. 147–183.

23 Alan Siaroff, *Corporatism in 24 Industrial Democracies. Meaning and Measurement*, in: *European Journal of Political Research*, 36. 1999, pp. 175–205.

more consensual or consociational rather than majoritarian political tradition in these countries.²⁴

Table 2: Degree of Corporatism in the PEMINT Countries

	Germany	Italy	Netherlands	Portugal	Switzerland	UK
Schmidt (1982)	3	1	3	1	5	1
Wiarda (1997)	3	1	2	1	–	3
Schmidt (1986)	5	1	3	1	5	1
Layard et al. (1991)	4	2	3	3	3	1
Siaroff (1999)	4.125	3	4	2.375	4.125	2

Ranking: 5 (high) to 1 (low).

Source: Siaroff, *Corporatism in 24 Industrial Democracies*, p. 180.

In the UK the Conservative government after 1979 reversed the trend towards corporatistic policy during the 1970s. All tripartite institutions built in the UK during the 1970s were weakened by the diminishing role of labour.²⁵

In Italy and Portugal the situation is more complex. There are strong labour unions in both countries with an influential communist wing, which refuse or hesitate to cooperate in a corporatistic system. Communication between the state and societal organisations is not as formalised and institutionalised as in the first group, though there were attempts to do so in establishing tripartite agreements or economic councils, through mainly macro-level appointments. However, the influence of such institutions on the decision making process is, in general, rather low.²⁶ To conclude one can say that in the first group a culture of economic concertation can be observed with

24 Sven Jochem/Nico Siegel, *Einleitung. Konzertierung, Verhandlungsdemokratie und wohlfahrtsstaatliche Reformpolitik*, in: idem (eds.), *Konzertierung, Verhandlungsdemokratie und wohlfahrtsstaatliche Reformpolitik*, Opladen 2003, pp. 7–33; Hans Slomp, *The Netherlands in the 1990s. Towards ›Flexible Corporatism‹ in the Polder Model*, in: Stefan Berger/Hugh Compston (eds.), *Policy Concertation and Social Partnership in Western Europe*, New York/Oxford 2002, pp. 235–248; Jeremy Leaman, *Germany in the 1990s. The Impact of Reunification*, in: *ibid.*, pp. 139–154; Arend Lijphart, *Patterns of Democracy*, New Haven/London 1999.

25 Peter Dorey, *Britain in the 1990s. The Absence of Policy Concertation*, in: Berger/Compston (eds.), *Policy Concertation and Social Partnership*, pp. 63–67.

26 Bruce Haddock, *Italy in the 1990s. Policy Concertation Resurgent*, in: Berger/Compston (eds.), *Policy Concertation and Social Partnership*, pp. 207–220; José Barreto/Reinhard Naumann, *Portugal. Industrial Relations under Democracy*, in: Anthony Ferner/Richard Hyman (eds.), *Changing Industrial Relations in Europe*, Oxford 1998, pp. 395–425; Ida Regalia/Marino Regini, *Employers, Unions and the State. The Resurgence of Concertation in Italy?*, in: *West European Politics*, 20. 1997, no. 1, pp. 210–230.

formalised and institutionalised communication channels and decision-making, while within the second group some attempts towards concertation were made but did not attain similar levels of formalisation.

These patterns occur not only in general economic policy but in migration policy as well. As already pointed out by Freeman²⁷, we can confirm that in the southern European countries the institutions and actors in the field of migration policy are not as formalised as in the other countries. Migration only recently ascended the political agenda and the social partners have not yet produced a clear strategy and channels of articulation of their interests. On the one hand this is due to these countries' recent move from sending to receiving countries. On the other, the pattern of industrial relations means that it is more difficult for institutional actors to get involved in new political issues due to the lack of formalised arenas of political deliberation and decision-making including the social partners.

2.3. Migration Policy and Societal Actors

Patterns of corporatism have an impact on migration policy in so far as they structure the interplay between institutional actors on behalf of the employers, the employees and the relevant government agencies.

Labour migration policy is regulated by work permit schemes which vary strongly between our PEMINT countries. The administrative procedures are complex and only a few common rules exist among the EU countries.²⁸ It is nearly impossible to make out in which country it is easiest to get a work permit and in which the legal regulation is most rigid.²⁹ In four countries (UK, Germany, the Netherlands and Portugal) we find exemptions for work permit requirements, either for specific and special employees or for migrants from countries with colonial ties. In all countries some groups – mainly the highly-qualified or staff of multinational companies – have facilitated access to the labour market. Other ways of reacting flexibly to actual labour market needs include the use of special schemes (Germany, UK, the Netherlands) or quotas (Italy, Switzerland). Germany, the Netherlands and UK created special schemes to ease the recruitment of highly-qualified ICT employees, while in Italy additional quotas for ICT personnel and nurses were established for only one year and were not renewed the following year. In Switzerland the sectoral allocation of quotas lies in the hands of the cantonal administration and therefore differs from canton to canton. In all coun-

27 Freeman, *Modes of Immigration Politics*.

28 Holger Kolb, *Mapping of Convergence and Divergence in the Range of Social Security Systems, Fiscal Systems and Immigration Policies*, PEMINT Working Paper 8.2002, <http://pemint.ces.uc.pt/Working%20Paper-8.pdf>, 2002, p. 24.

29 For further information we refer to Kolb, *Mapping of Convergence and Divergence*.

tries but Switzerland a central governmental organisation takes responsibility for the actual issue of work permits. In Switzerland the execution of migration policy is done by the cantons, so one can say that in Switzerland there are 26 labour migration policies.

The influence and inclusion of employers and employees in migration policy is best institutionalised in countries that establish special schemes for certain employees. In the UK decisions about the allocation of work permits is taken within the framework of sectoral panels including employers associations and unions. In the Netherlands and Germany the traditional system of social partnership and close cooperation between state and social partners facilitates the influence for employers and unions in the field of migration policy. But unlike the UK, cooperation is not organised by sector. Due to the federalism and the local structures in Switzerland the influence of societal actors concerning the issue of work permits follows a more accidental path. Companies and unions can get direct access to local decision-makers and are sometimes and in some cantons included into commissions which allocate the work permits. In Portugal and Italy the influence of societal actors is dominated purely by lobbying at the national level and therefore success depends mainly on the power of these actors.

There is a significant difference between migration policies in Portugal and Italy on the one hand and the other four countries on the other. In Italy and Portugal irregular immigration and the employment of illegal migrants is more or less tolerated by all actors. While this policy of non-intervention and tolerance is based on social norms rather than a legal framework, it results in legal actions in the form of regularisation. Regularisation can therefore be understood as a certain form of migration policy. In the other countries acceptance of the illegal employment of migrants is rather low.

Generally we can say that the attitude towards low-skilled non-EU immigration in all countries is negative. Most employers would prefer a more flexible and open system when it comes to averagely qualified personnel, especially in the UK and Switzerland. The position of the unions vary: while in Germany, the Netherlands and Switzerland they are mainly against immigration, the unions in the UK see themselves as advocates of the migrants and in Portugal and Italy they are traditionally pro-immigration. In all countries (except perhaps Italy and Portugal) government policy is labour market driven, trying to reduce national unemployment by raising the barriers for unskilled and average skilled recruitment from non-EU countries.

2.4. Conclusion

Summing up the two dimensions type of welfare state and degree of corporatism, we come to the following typology for the PEMINT countries:

Table 3: Types of Welfare State and Degree of Corporatism in the PEMINT Countries

	Welfare State	Corporatism
Germany	Conservative	High
Italy	Southern	Low-medium
The Netherlands	Social democratic	High
Portugal	Southern	Low
Switzerland	Liberal	High
UK	Liberal	Low

Drawing on the literature, we can formulate some very general hypotheses at the country level concerning the role of institutional actors. For example, we would expect that social partners, i.e. employers' associations and unions, play a greater role in regulating labour migration in countries with a high degree of corporatism. With regard to our first dimension, the type of welfare state, we assume that employers' associations will be more influential in ›liberal‹ countries, while the unions should exert a greater influence in ›social-democratic‹ regimes. We are likely to find a balanced relationship between the two in ›conservative‹ welfare states, while ›southern‹ regimes should see strong unions, but a limited impact on economic and public policy.

Apart from this national institutional context, the role of institutional actors will be shaped by sectoral determinants which influence both the forms in which migration or mobility within the different sectors take place and the costs and benefits that the different actors are likely associate with foreign workers.

3. Sector Overview

This chapter summarises the main sectoral determinants shaping the role of institutional actors in the ICT, Construction and Health sector.

3.1. ICT

Institutional & Economic Context

The ICT sector itself is not easy to define³⁰, and ICT occupations crosscut nearly all economic sectors. The relative youth of the ICT sector and the fact that a lot of ICT companies are members of other sectors has implications for

30 In some definitions consulting and accounting and broadcasting activities are included, in others not. In many official statistics the whole ICT sector is still split up in the ›classic‹ sector definitions: ›Electronics‹, ›Communication‹ and ›IT Services‹.

its *degree of institutionalisation*, both in terms of the organisation of interests and regulation of work and training. Generally speaking, collective bargaining and, connected to that, the importance of social partners is weaker in the ICT sector than in other branches of the economy. The same is true for the regulation of professions and occupations. The systems of education and vocational training are not well established. Companies thus create their own job descriptions and build their own structures of positions, careers and salaries related to their functional needs.

Despite some important differences between PEMINT countries, employers' associations are often heterogeneous and companies sometimes act as ›political‹ actors without passing through sectoral associations. The low degree of institutionalisation is even stronger on the part of employees, who often belong to distinct unions or are not organised at all. Coupled with the absence of professional groups, one consequence is that there are no ›gatekeepers‹ or strong veto-players within the sector. A second consequence is that the structure of the sector favours large multinational companies (MNC) that have easier access to important decision-makers than small or medium sized enterprises (SME).

A third important feature is that the ICT sector is the *most international sector* in our sample due to the mobility of the product. This has two important consequences: it favours the emergence of MNCs and the ›outsourcing‹ of jobs, especially low-skilled occupations, to low cost countries. Many ICT companies have exploited comparative cost advantages by relocating their production facilities and low skilled service activities to lower cost countries while maintaining research and development and corporate headquarters in Europe. This has involved the export of low skilled occupations and the concentration of high skilled jobs in Europe. Finally, the predominance of MNCs means that chains of production cross national frontiers, often involving several degrees of subcontracting and flexible labour market structures.

Consequences for Migration

The term ›migration‹ is not one often used by ICT actors. More often than not they speak of mobility. This ›international mobility‹ within the ICT sector can take different forms:

- Temporary moves within the internal labour market (ILM) of MNCs;
- ›Classical‹ migration of individuals (almost exclusively highly skilled workers);
- Outsourcing of whole production processes.

Together with the sectoral determinants identified above, in particular the low level of institutionalisation of the sector, these features suggest that the national institutional context will play a lesser role in shaping the activities of

institutional actors in this sector than in the other two. In the absence of a tradition of collective bargaining and unionisation, relations in this sector are likely to be much closer to Freeman's public choice approach. Therefore, we can assume that MNCs will mostly lobby for the liberalisation of cross-border mobility within their internal labour market and are less dependent on 'classical' immigration venues through visas and work permits. The introduction of special immigration schemes for ICT workers is therefore more likely if there are strong employers associations concerned with representing the interests of SMEs, which unlike MNCs rely on classical immigration for filling vacant jobs. Finally, the absence of strong unions and professional associations should generally favour the smooth introduction of such schemes relatively independently from politicised immigration debates, while it may also favour the emergence of certain forms of irregular or, rather, unregulated work.

3.2. Construction

Institutional & Economic Context

Unlike ICT, the construction sector, as one of the oldest sectors of the economy, has generally a strong degree of *institutionalisation*. Furthermore, the immobility of the product yields demand for (mainly manual) labour, so that migration has always been an issue in this sector, which has long been a harbour for new *migrants*.

Another specificity is the fragmented nature of the production process. Single tasks can be parcelled out to different companies, therefore subcontracting chains, which often crosscut national borders are a common phenomenon. Correspondingly the treatment of posted workers and the question of liability chains are of major importance in the regulation of the construction sector.

Another important point is the strong reliance on the *state* as both customer and investor. The state intervenes through infrastructure programmes geared towards improving the economic situation and through subsidies against market failure or seasonal fluctuations. This explains why corporatist structures can be more important than in other sectors.

Finally, the construction sector is the most *Europeanised sector* of our sample. With the establishment of a Single European Market and the Posted Worker Directive the construction sector is open to European companies (not for non-EU companies) throughout the EU. Therefore the case of the construction sector might be an instructive example to analyse the effects of incomplete EU integration. Because of its labour intensive production cheap labour is often the most important advantage in competition, therefore *wages*

and social contributions differentials between European countries have a big influence as a pull factor for migration.

Although the 2002 ECJ decision on posted workers stated that national conditions concerning minimum wages did apply to foreign workers, it also stated that such arrangements couldn't be used to protect the interests of particular economic sectors. Hence there remains continuing ambiguity concerning the relationship between national social models and EU level liberalising tendencies, which reaffirm the importance of ›incomplete European integration‹. Wage and social contributions differentials can be summarised as follows.

Table 4: Levels of Wages and Social Contributions in the PEMINT Countries

	Wages	Social Contributions
Germany	High	High
Switzerland	High	Medium
The Netherlands	High	High
Italy	Medium	Medium
UK	Medium	Low
Portugal	Low	Low

Source: Alex Balch, Ivana Fellini/Anna Ferro/Giovanna Fullin/Uwe Hunger, The Political Economy of Labour Migration in the European Construction Sector, in this issue.

Consequences for Migration

Labour intensiveness combined with some potential for the realisation of competitive advantages within the European single market underline the importance of labour migration in this sector. Migration can take place in different forms:

- The classic immigration of individual workers. In countries such as Germany and Switzerland, this form of migration has a long tradition through guest-worker programmes and has led to the establishment of networks between sending and receiving countries that continues to influence migration patterns. In southern European countries, it often takes the form of irregular migration.
- The migration of individual workers as independent self-employed persons;
- And finally temporary mobility as posted workers who are employed by a subcontracted foreign firm from their country of origin working on the territory of the host country.

Taking into account the tradition of interest organisation and collective bargaining in this sector, we can assume that interest groups will have a certain influence on the regulation of these different forms of migration both with regard to recruitment and working conditions. In short, we hypothesise that given labour cost differentials in Europe the scope for the exploitation of comparative advantages through these various forms of immigration will to a large degree be determined by the extent of regulation exerted by institutional actors. In other words, the scope for the exploitation of comparative advantages will be reduced if there is a high degree of cooperation between the social partners and the state in the monitoring of the labour market. The role of the ECJ and supranational law is also important because it directly applies to the freedom to provide services, which was the basis for the movement of posted workers.

3.3. Health

Institutional & Economic Context

The health sector is the *least internationalised or Europeanised sector* in our sample. Unlike within classic markets, *government regulation* is central to the financing and policy orientation of the sector.³¹ Another traditional feature is the delegation of certain regulatory functions to semi-autonomous organisations, such as the regulation of the professions. Professional bodies that seek to promote and protect standards of qualification and training in various occupations represent the interests of medical and nursing staff. These groups have an influence both on the supply side in the domestic labour market and on the eligibility of those from other countries to fill particular posts.³² Health care is *labour intensive* and the availability of sufficient (well-qualified) staff is a key determinant of effective health service delivery. Because it is a population and client-oriented service, in general it cannot be moved to the sources of labour – if there are shortages, labour must be attracted from elsewhere.³³ Furthermore, both a highly interdependent labour process and the proliferation of specialised professional roles characterise the sector work with *long lead times in terms of training* (which of course is true only for highly-skilled workers such as nurses and doctors and not for lower-skilled care assistants). These features can jeopardise health provision because even small-

31 Stephen Bach, *International Migration of Health Workers*. Labour and Social Issues, ILO, Geneva 2003.

32 PEMINT, *Labour Migration in the Health and Social Care Sector*, Working Paper, Rotterdam 2003.

33 Tim Martineau/Karola Decker/Peter Bundred, *Briefing Note on International Migration of Health Professionals: Leveling the Playing Field for Developing Country Health Systems*, Liverpool School of Tropical Medicine 2002.

scale changes in stocks of specialist groups (e.g. intensive therapy nurses) can undermine a country's health system.³⁴ The long lead times imply further that investments in education cannot help as a short-term remedy in times where personnel shortages emerge. Another general factor which has to be taken into account is that due to *demographic conditions*, the demands on health services will further increase. So too will employment opportunities in this field. Employment conditions, however, seem to be negatively affected by ongoing cost-containment measures. Due to *increasing costs of health care services*, governments are undertaking different structural reforms, often including privatisation and increased use of market-type mechanisms.³⁵ To keep in step with these policies and to resist the reduction of professional privileges, the organisation of health care workers is strengthening.

Consequences for Migration

In contrast to our two other sectors, the national organisation of health systems and the low degree of international openness means that we find only one form of international migration, namely the classic migration of individuals as workers. Another form of migration, which, however, has less to do with recruitment, is the mobility of patients across national borders in the pursuit of medical treatment.

The migration of health workers is distinctive because it is strongly influenced by the regulatory frameworks of individual governments that control the training, recruitment and deployment of health professionals; such frameworks give rise to particular national patterns of migration.³⁶

As a consequence of the dominant role of the state (which is often acting directly as an employer) and because health care provision is labour intensive, we expect according to Freeman's approach that migration will be a very common instrument in the health sector: the tight connection between health care and politics allows the labour market needs for foreign health care workers to be easily satisfied. Intake is further facilitated because of state accountability in the case of shortages arising from the malfunctioning of training systems coordinated by the state and the strong means of control that are available regarding employment conditions. The long lead times for health care training also contribute to governments opting for migration when there are shortages.

To conclude, we expect that labour immigration is perceived as a remedy during shortages and not motivated by the realisation of cost benefits.

34 Bach, International Migration of Health Workers.

35 ILO-Website, <http://www.ilo.org/public/english/dialogue/sector/sectors/health/background.htm> (02.04.2004), 2002

36 Bach, International Migration of Health Workers.

The high degree of regulation of working conditions and wages may also prevent such ›strategic‹ recruitment. Yet, we assume such strategies will increase relative to the involvement of the private sector in health care provision and the deregulation of the professions. Here, unions and professional bodies are likely to play an important role as ›watchdogs‹. Attempts at reform within the sector may have an unintended impact on migration as working conditions could suffer from cost-containment measures making jobs in the health sector less attractive and meaning further gaps will need to be filled. Alternatively, increased government investment in the sector combined with long lead-in times to train new staff can lead to a short to medium term reliance on migrant labour.

The relationship between different actors (i.e. government agencies, hospital associations, unions and professional organisations) in recruiting and regulating foreign labour is strongly dependent upon the national institutional configuration, which itself is highly politically sensitive. In general, we expect the role of institutional actors as partners in the collective bargaining model to be subordinate, since employers' organisations and also, to a lesser degree, unions are weak. We hypothesise that professional groups can serve as veto players in this field regulating access to particular occupations.

4. Sector Analyses

This section summarises the results of the interviews conducted with employers' associations, unions, professional bodies and relevant sections of the public administration in our three sectors in the six PEMINT countries.

As stated in the introduction, the main interest of these open-structured interviews was to discover the ways in which the issue of migration appears on the monitor of these institutional actors. That is, how they make sense of the phenomena, the importance they attribute to it for the functioning of their organisation, and the strategies and instruments that they employ in order to influence the regulation of admission, recruitment and stay of foreign workers.

4.1. ICT

Institutional Actors

As already noted, the level of institutionalisation within the ICT sector is low, but in a comparative perspective significant differences can be observed. Bearing in mind the corporatism typology it is surprising to note that only in the *UK* is there an institutionalised dialogue within the sector concerning migration and education topics. Within the framework of the Work Permit

Panel on ICT and the Sector Skill Council network, the state, the employers and the trade unions discuss the needs and developments of the sector and measures that should be taken. Nevertheless, clear strategies are difficult to design due to the lack of information and figures concerning the operation of the labour market. The employers' associations (ICT intellect, e-skills) are strong in the UK and encompass a heterogeneous sample of companies from MNCs to SMEs including all kinds of ICT business. Big companies have a privileged access to the Department of Trade and Industry. Generally the employers were found to be pro-immigration but the importance of the topic has decreased since 2003. More importance is now placed on education and co-ordination between universities and business. The ICT trade unions (Amicus, ITPA) are involved in the Work Permit Panel, as well as participating in several governmental projects targeted at labour needs and education. The unions have tended to adopt a more restrictive migration policy stance because of unemployed ICT personnel. The unions also attempt to increase the government's awareness of problems concerning irregular work within ILMs, >offshoring<, unclear labour conditions, and a perceived unsatisfactory education system. The Department of Trade and Industry conducts a clearly liberal approach, trying to establish good conditions for free market organisation and identifies ICT as an important sector.

The UK is certainly a special case: in all the other countries there is no comparable institutional setting. On the employees side in the *Netherlands* and *Germany* the institutional setting is fragmented. No trade union exists solely for the ICT sector and different unions quarrel with each other about bargaining rights. Although some collective agreements have been agreed, none were declared to be generally binding. Most companies prefer to negotiate at company level and the unions, which vote for macro-level agreements face certain mobilisation difficulties due to the anti-union climate within the sector. The unions are generally against recruitment from non-EU countries.

Employers' associations are better established and recognised as representing the sector, but their institutionalised involvement in the decision-making process is marginal. Their position towards migration is more open than the employees'. During the 1990s the government in both countries (as in the whole of Europe) tried to support and develop the ICT business, but cooperation between industry and government followed a more haphazard path.

In *Italy* the employers' associations are strong and organised while there have been difficulties establishing a powerful union. The majority of ICT firms in Italy are included in the mechanical engineering sector (settore metalmeccanico) and they refer to the collective agreement and the unions of this sector. For this reason in Italy there aren't specific trade unions for ICT

workers. In small firms trade unions are totally absent but, by contrast, they are powerful in large-sized firms. In *Switzerland* and *Portugal* the power of employers' associations as well as the unions' are negligible. Employers' associations exist, but they either appeared to have little support within the business community, or focused on information exchange and the improvement of their members' technical knowledge. Political involvement was also marginal and representation is weak. Nevertheless, the ICT sector did appear on the political agenda in both countries. In Portugal the state was active in creating Inter-Ministry commissions and in supporting the development of internet resources in schools. These activities were mainly related to the concept of the ›information society‹ and had little relation to migration policy. In Switzerland the discussion in the parliament concerning labour shortages in the ICT sector was dominated by educational arguments.

The existence of employers' associations is particularly important for SMEs. MNCs are able to set up networks and access political decision-makers due to their economic importance. It is more difficult for SMEs as individual companies to develop links with political institutions. Moreover, MNCs and SMEs have different interests regarding the legal framework for migration. For MNCs, recruitment through ILM is a practicable and popular solution. SMEs usually depend on ›normal‹ individual recruitment.

Impact on Migration Patterns

While in the construction sector the regulation of labour conditions has a strong influence on resulting migration patterns, in the ICT sector the admission of non-EU employees is the core topic. But due to the economic downturn ICT companies' need for foreign recruitment decreased. This means that we need also to account for conditions in the 1990s when, across Europe, all employers identified labour shortages. As well as economic needs, three other factors were found to influence ICT sector migration patterns (or just the legal framework for migration, because: have we identified a clear migration pattern for the ICT sector? See: Paper on ICT in this issue):

1. The extent of sectoral institutionalisation: This determines the degree in which the organised interests are able to get their voice heard and influence migration policy. If institutionalisation is high then one can expect a greater consideration of SME interests, i.e. the need for non-ILM work permits schemes.
2. The presence of veto-players: Key interests, such as government, influential non-sectoral interest groups, and professional organisation need to be factored into the analysis.
3. The degree of formalisation of the work permit regime: This influences the need for special schemes. If formalisation is high then companies/

individuals will not have the possibility to obtain permits in informal or exceptional ways with the result that there will be a need for special schemes.

Four countries have introduced special legal schemes for the ICT sector: *the UK, Germany, the Netherlands and Italy*. In all four countries the employers are stronger than the unions and they generally have a pro-immigration attitude. In the *UK* there is a special and important panel just for the work permits needs of the sector and the government introduced special treatment for the ILM and the recruitment of ICT personnel on a temporary basis. Although the unions do not favour non-EU migration, they are not able to act as real veto-players. In *Germany* two regimes were introduced: a Green Card system for ICT personnel from outside the EU and a special scheme for ILM treatment, which seems to be more important. Employers together with the government approved a special work permit system for the ICT sector. As in the *UK* the unions were not happy with the scheme but did not have enough influence to act as veto players. In the *Netherlands* a special scheme was introduced at the end of the 1990s during a period of high labour shortages in the sector. However after the economic downturn this system was abolished. The general anti-immigration attitude of the government was certainly the main reason for this reaction. The government of the Netherlands, unlike in the above mentioned countries, acts as a veto-player. In the Netherlands, Germany and the UK the general work permit regimes are highly formalised and centralised. Therefore the need for new regulations was high due to the remarkable economic situation in the ICT sector. In *Italy* the main goal that ICT employers managed to obtain was the achievement of an additional quota of 3000 work permits for non-EU personnel. Additionally there is a relief for temporary ILM movements. There are no veto-players and as the general work permit regime in Italy is not too formalised, the firms use informal practices in order to avoid the sluggishness and the complexity of the quota system.

In *Switzerland* and *Portugal* the degree of institutionalisation is even lower than in the other four countries, correspondingly no special legal measures have been taken. In *Switzerland* there is special treatment for the ILM and the recruitment of highly qualified personnel but it is not specifically related to the ICT sector. All companies have the possibility to apply for these permits. The question of Green Cards rose but due to the advocates of the educational system and veto-players within the government and administration, such a system has not been introduced. Nevertheless ICT companies (particularly MNCs) have opportunities to get exceptional work permits, due to the federalist and less formalised issue of permits. The cantons recognise the need for work permits when they want to attract business. If a big company wants to set up a subsidiary, work permits are never an obstacle. In *Por-*

tugal the situation appears similar – even though there are no special schemes the companies are able to fill labour shortages. One possible explanation is the more informal special treatment for ICT recruitment on the administrative level.

The topic of employment conditions only occurred in *UK*, where the unions are the strongest. In all other countries temporary admission was the main interest. The predominance of MNCs is certainly one explanation for the non-issue of ›labour conditions‹. They internalise labour conditions with all countries having more or less the same standards. Another reason might be the education level of the employees. Highly qualified personnel are less likely to be union members. This finding corresponds with the observation of low mobilisation of ICT personnel for trade union activities in all countries.

In all countries the misfit between education and industry was mentioned and especially in the *Netherlands, the UK* and *Switzerland* an improvement in training was demanded by both employers and employees. In one sense, education can be understood as concurrent with migration, but within the ICT sector, education is also linked to the notion of a ›knowledge society‹ with education guaranteeing the minimum of qualified personal. The use of migration in ICT is for all actors more or less self-evident, due to the international character of the sector. Nevertheless local employees are important because of cultural proximity. Another alternative to migration is outsourcing, and while the importance of this is not clear, this certainly is an instrument to put pressure on the government to ease work permit regimes.

Illegal practices are not common, but they were mentioned in all the countries. Due to the flexible short-term character of the sector, established work permit regimes are sometimes overly rigid and slow. Most of the illegal practices are related to temporary movement using tourist visas. There seems to be a greater tolerance of illegal practices amongst institutional actors in the ICT sector. Most often these practices were not described as ›illegal‹ but as ›exceptional‹.

Conclusion

The need for migration or mobility was self-evident for most ICT actors. The most prevalent pattern is individual migration either through the ILM or through company recruitment. Outsourcing may be an alternative to migration, depending on the labour costs, the possibility to employ foreigners and the knowledge needed. Drawing on our above-mentioned hypothesis, we come to the following conclusions:

- Due to fragmentation, institutional arrangements are less important than in other sectors for the definition of migration policy; and if they exist, they have a positive impact for SMEs, i.e. easing classical immigration;

- Special schemes are introduced if employers are strong, the work permit regime is formalised and no strong veto-players exist;
- Large MNCs often act on their own and achieve preferential access to decision makers;
- In the absence of strong unions, the presence of MNCs, and the international character of the sector, national labour conditions are not a major concern to the extent that they hinder migration. Irregular practices are not common but are tolerated as ›exceptional‹ rather than as ›illegal‹;
- Education/training seems to be more of a complement than a substitute for migration.

4.2. Construction Sector

Institutional Actors

If the focus were solely on formal institutions then no big differences would be apparent between the PEMINT countries: in all there is at least one labour union, an employers' organisation representing large employers, and another for medium or small sized companies. On the government side, there is rarely one institution that holds responsibility for the construction sector. (see Appendix 1)

The key point is that the formal and informal patterns of communication and interaction between actors differ strongly. The same is true for the rules and institutions set up between these actors, such as social partnerships. As already mentioned, the structure of social partnerships influences immigration politics in two respects:

- The ways in which employers and employee organisations are able to transmit their interests (and those of their members) into the policy process;
- Determination of the scope for action in the regulation of foreign workers in the domestic labour market, i.e. with regard to wages, labour conditions, recognition of diplomas etc.

Institutional actors may influence the degree to which wage and other differentials may be exploited along with comparative advantages in a construction market that has strong European dimension, as evidenced by the tendering process for large projects in the EU's Official Journal.

Based on our analysis, it is reasonable to distinguish between two country groupings with comparable institutional contexts: 1) *Germany, the Netherlands and Switzerland* and 2) *Italy, Portugal and the UK*.

In the *first group* industrial relations are well developed with collective agreements set up by the social partners and the government playing only a minor role during the negotiation on tariffs. The social partnerships contain

many regulations concerning pensions and insurances schemes, training, and definitions of wages. Notwithstanding certain differences, the countries in this group share the existence of such negotiated rules on a sectoral basis. Our institutionalist framework implies a history and tradition of cooperation and of trust between employers and employees and a similar perception of the problems and needs of the sector, including some shared norms of behaviour. In contrast to the second group all institutional actors condemn irregular work. Therefore the institutional setting corresponds with a highly regulated labour market (at least compared to the second group). Aside from the traditionally close relations between social-partners, the low level of fragmentation in the entrepreneurial structure and the presence of self employed persons in Germany, Switzerland and the Netherlands, these countries also differ from those in the second group in the sense that, while there is some market fragmentation, it is not as atomised as in the second group of countries. We find a smaller number of one-man enterprises and micro companies. Another common feature however is that in recent years, the social partnership has come under pressure and the peaceful search for solutions is increasingly challenged. This trend is strongest in Germany but also exists in the Netherlands and Switzerland. The reasons behind this trend are manifold and include, aside from increasing international competition, the reduced capacity of employers to support the costs of social partnership, the growing heterogeneity of interests with associations and, more generally, the neo-liberal climate, and the issues raised by the posting of workers within the EU.

It would be wrong to portray this first group of countries as uniform because there are also some important differences. First, the role and importance of the state and of the umbrella organisations in the negotiation and implementation of collective agreements differs. In *Switzerland* and *the Netherlands* the social partners are highly autonomous. Once collective agreements are signed the government or administrative authority declares them as generally binding for the whole sector. The declaration is more an administrative than a political act. In Germany the declaration that agreements are generally binding can be more difficult to reach: as a first step the umbrella organisations of non-construction employers and employees are responsible within the framework of the Tarifausschuss; since 1998, if there is no consensus then the government ministry has the right to declare collective agreements as generally binding.

Second, in *Germany* and *the Netherlands* the state is responsible for labour market inspections and these depend on the will of government or on the lobbying power of sectoral organisations. In *Switzerland*, where the social partners are responsible for the control of the labour regulations, the social partnership has created common institutions (the SPK) to conduct checks on construction sites without state involvement.

Third, the possibility for actors in the construction sector to get their voices heard at state or government level differs. In *Switzerland* contacts are very informal and often at the administrative level. There are commissions within the administration in which specific topics on the sector are discussed with the social partners involved (Construction Forum). These commissions are very low-key and the results and decisions are hardly discussed in public. In *the Netherlands* a governmental commission, the EGBB (Dutch Council of European Affairs for Construction, *EG-Beraad voor de Bouw*), involves all the important actors in the sector and is in charge for all the questions concerning construction and Europe. Drawing on Freeman³⁷, one could argue that in *Switzerland* democratic or parliamentary control of these contacts and influences is at a lower level than in *Germany* and the *Netherlands* and therefore particular interests can have a greater chance of success when seeking to obtain their goals through lobbying.

In contrast to the welfare state typology where *Switzerland* is said to have a liberal economic orientation, the Swiss construction sector can be described as having a system of sectoral corporatism. This has a conservative tendency and is closely focused on sectoral needs.³⁸ Market forces are also diminished by specific sectoral regulations. *The Netherlands* and *Germany* on the other hand conduct more what has been described as corporatist concertation. According to Lehmruch »Corporatist concertation« is distinguished from sectoral corporatism by two essential features: (i) it involves not just a single organised interest with privileged access to government but rather a plurality of organisations usually representing antagonistic interest; and (ii) these organisations manage their conflicts and co-ordinate their action with that of government expressly in regard to the systemic (*gesamtwirtschaftliche*) requirements of the national economy.«³⁹ That means that the state is more involved and the sectoral organisations are confronted with cross-sectoral matters.

In the *second group* (Portugal, Italy and the UK) the social partnership in the construction sector is not as well established as in the first group.⁴⁰ Although there are collective agreements between employers and unions, these are not as fully encompassing and their impact is more limited. Compared to the first group, agreements at the company level between unions and em-

37 Freeman, *Modes of Immigration Politics*.

38 Fritz Scharpf, *Interaktionsformen. Akteurzentrierter Institutionalismus in der Politikforschung*, Opladen 2000, p. 226.

39 Gerhard Lehmruch, *Concertation and the Structure of Corporatist Networks*, in: John Goldthorpe (ed.), *Concertation and the Structure of Corporatist Networks*, Oxford 1984, pp. 60–80, here p. 62.

40 Besides the national institutional reports we rely on papers of the European Industrial Relations Observatory, www.eiro.eurofound.ie.

employers are more common. The relationship between employers and unions is less close and contacts between the social partners occur mainly at the top level and through the mediation of government institutions. For example, in *Portugal* the collective agreements are discussed and signed in the social and economic council, which is a tripartite and cross-sectoral organisation. In *Italy* there seems to be no sectoral institution that encompasses employers, employees and the state. Only the school for construction workers (Scuola Edile) is funded and managed by a tripartite organisation, which includes some representatives from government, employers association and unions of the sector. They provide vocational training for construction workers, so that they also pay attention to gaps in the labour force and the strong presence of foreigners in the sector. Nevertheless, this tripartite organisation does not have an institutional role in the process of defining migration policies. Additionally in Italy the employers' associations are strong while the trade unions have only a certain influence within big companies and are underrepresented in small and micro companies, which are in the majority. Like in all the sectors, in Italy there is a national collective agreement for construction firms, discussed and signed by employers' associations and trade unions.

This system corresponds to a more pluralistic model where organisations act as pressure groups and communicate more indirectly with each other, for example through the media. In this system the state is the most important regulator and the involvement of employers or unions depends on the issue and on the negotiating power of the interest group. A sectoral institutional dialogue between the social partners does not exist in the same way as in the first group. Forms of corporatism only occur at the macro-level, mainly involving peak organisations. The involvement of social partners in the legislative process is not established or consistent – contacts exist on a more informal basis. Majority voting and governmental decisions are more important than deliberation.⁴¹

A particular characteristic of *Italy* and *Portugal* is their dual labour market structure with a small, highly regulated core labour market with large companies where the unions have a certain influence, and a large peripheral labour market with high levels of irregular working, falsely self-employed workers, and extensive use of employment agencies, which are difficult to control and which often undermine the regulatory framework.

The *UK* is characterised by a de facto deregulated labour market (the core labour market is somewhat regulated, but implementation of these regulations is low). Typifying this is the fact that the country has the largest number of self-employed persons in the construction sector. In the *UK* there

41 Jochem/Siegel, *Konzertierung, Verhandlungsdemokratie und wohlfahrtsstaatliche Reformpolitik*, pp. 13–15.

has also been a longer-term reliance on foreign labour within the construction sector. This was particularly evident in the recruitment of Irish workers. The recent high levels of economic growth in Ireland have, however, reduced the availability of such flows. UK employers have thus sought other sources of foreign labour, particularly from Eastern Europe – employed either regularly or irregularly.

Impact on Migration Patterns

Although high wages mean that the countries in our *first group* (Germany, The Netherlands and Switzerland) are attractive for foreign workers, the admission of individual employees from EU countries is not controversial. This is firstly because the countries have a long tradition of labour migration (guest-worker programmes) and secondly because migration occurs (with reference to labour conditions) within a highly regulated environment due to collective agreements. The topic of irregular employment of individual migrants from non-EU countries is not as important as in the second group, but it seems that in recent years the issue has become more salient, particularly in Germany. In contrast to our second group this migration occurs mainly on a temporary basis from Eastern European countries to the metropolitan areas in Germany and to a lesser extent the Netherlands. As the employers' associations, trade unions and government strongly condemn the irregular recruitment of individual foreigners each has succeeded in creating protective laws, for example concerning temporary work agencies. In the three countries the temporary recruitment of foreigners from abroad is either banned (as in Germany and Switzerland) or highly regulated (The Netherlands). In contrast to the second group the ex-post regularisation of irregular work relations is not perceived as an option. The admission policy towards non-EU workers at the low skilled level is restrictive in all countries and generally supported by the construction sector, companies still find ways to circumvent legislation and inspection, however, through the recruitment of workers from Eastern European countries on short notice and only for a couple of days. However, this pattern of migration seems to be more similar to the posting of workers and the migration of the self-employed as these individuals usually do not live in the host country and stay there only on a temporary basis.

The second and third patterns, the posting of workers and the migration of the self-employed are mostly mentioned together. This is the most salient issue within the first group: The increasing migration through the (temporary) posting of workers or self-employed (mainly within subcontracting chains) from abroad produces strong conflicts and activism, particularly in Germany but also in the Netherlands and Switzerland. The huge labour cost differentials between European countries (see table 4) due to variable economic development and the different degree of regulation of work condi-

tions, is a strong pull factor not only for individuals, but for companies to migrate as well. All the actors in all the PEMINT countries share the recognition of this pattern of migration as a problem. Employers tend to favour a more or less open economy and, as a result, lower social contributions and wages, but they also opt for a moderate and moderated process of increasing competition, knowing that unfettered competition may bankrupt many of their members. On the employers' side opinions on migration are as diverse and heterogeneous in the construction sector as in the whole economy. Due to the competition introduced through subcontracting, German employers can exert pressure on the unions to agree to lower wages. Compared to the employers the labour unions are more homogeneous: they vote for strong measures against social dumping and for the principle of ›same wages for the same work in the same place‹. However, due to the high unemployment rate (especially in the Eastern parts of Germany), many construction workers have left the unions and agreed with employers on ›Betriebsvereinbarungen‹ in which wage levels were lowered. The position of the government is in between these two positions: on the one hand the safety of the work place for indigenous workers is a goal, on the other hand protectionist measures contradict the goal of European integration and an open market economy (this is precisely the point of the German posted workers legislation and the 2002 ECJ decision, which said that similar standards should apply for all workers, but that this should not be a device for protecting particular domestic interests). Therefore the German government supports legal measures but its capacity to do so is limited. It hopes that employers in the sector will change their behaviour due to self-interest. In all three countries legal measures were taken during the last ten years. Germany introduced a labour Dispatch Law in 1996, which aimed to include posted workers within the national legal framework. With this law the minimum wage level for the German construction sector was extended to foreign companies and foreign employees working in Germany. In the same year the EU Directive 96/71/EC concerning the posting of workers in the framework of the provision of service was agreed. It sought to avoid ›social dumping‹ by ensuring that a minimum set of rights is guaranteed for workers posted by their employer to work in another country. The main principle is that the basic working conditions and minimum pay in effect in a Member State should be applicable both to workers from that State, and those from other EU countries posted to work there. In the Netherlands the posted workers in the construction sector came under the regulation of the collective agreement, when they work for more than one month in the Netherlands. Fearing wage pressure and social dumping with the entry into force of the Agreement on the Free Movement of Persons (AFMP) in June 2002 between the EU and Switzerland, the Swiss government passed a law in 1999 on the regulations for posted workers and the employ-

ment of foreign workers. All these legal measures extended the labour conditions to foreign companies, but differences between *non-wage labour costs* can still be exploited, only in Switzerland the legal regulation encompasses the alignment of the non-wage labour costs.

However, as the German case shows, the opening of the labour market labour relations can change matters significantly and the potential for irregular work beyond the legal wage level rises, in spite of the legislation. Another legal measure which has been taken in Switzerland, the Netherlands, Germany and Italy (in the framework of the Labour Dispatch Law) was the Chain Liability Law. Under this legislation the main contractor is a guarantor for certain debts of his subcontractors (and all subsequent levels of subcontracting).

Generally speaking, the organised interests of the sector were able to get their voice heard and influence the regulation of migration. The admission of non-EU foreigners is restricted and national labour conditions have been extended to foreign companies and workers. Therefore not only were the benefits of migration taken into consideration but also the costs, due to the close cooperation of all actors. Legal measures do not guarantee success, however. In Germany we can identify a large amount of irregular work and a consequent pressure on well-established social partner institutions. With reference to our analytic framework, as relations become more dynamic then welfare state institutions and collective agreements tend to produce higher wages and non-wage labour costs. On the one hand, this limits the ability of employers to achieve their goals (i.e. to be competitive in an open economy) but, on the other, it guarantees institutionalised involvement in the decision-making process. One strategy is to reduce the competition through the establishment of strict barriers and controls in a cooperative action together with unions and the state (as in the case of Switzerland). This strategy can only be successful as long as the sectoral actors have autonomy in the implementation of legislation (which means that it does not apply to EU member states) and as long as the number of ›free-riders‹ is low (which will depend on the capacity to enforce). Another strategy is the use of (irregular) migration to put pressure on the corporatist and welfare state institutions (as in the German case in the early 1990s). The different strategies undertaken by the actors within the first group can be explained by three factors:

1. The German situation is unique because of the economic boom in the construction sector in Berlin during the 1990s, which unleashed both significant competitive pressures and pressures to lower costs. This situation clearly supported the recruitment of posted workers and irregular employment;

2. Germany is close to Eastern Europe and therefore open to relatively fast and temporary hiring of (irregular) migrant workers (as individuals or groups);
3. The control mechanism is better established in Switzerland because unions have the right to visit construction sites and to initiate the control procedures of companies. In Germany and the Netherlands checks always depend on the will of the government. It can be very difficult to regulate a country the size of Germany compared to smaller countries such as the Netherlands and Switzerland where the construction sector is still dominated by its ›national character‹. One could also argue that in the German case, due to greater competition, employers' associations are no longer capable of self-regulation and sanctioning by their members. The norm of not establishing irregular work relations appears to no longer be shared by all institutional actors.

In the *second group* the traditional migratory patterns follow a different path: Portugal and Italy have been primarily (and still are) sending and not receiving countries, therefore the legal framework and decision-making concerning migration policy is not as well established as in the first group. The UK has a long and well-established history of labour migration. This occurred within the privileged context of movement from the Republic of Ireland and the Common Travel Area created between the two countries. The migration policy setting might be well-established in the UK, but the sector itself is fragmented and difficult to regulate.

The main issue in these countries is the existence of a dual labour market. Migration takes place mainly as individual migration from non-EU countries to the irregular labour market at the low skilled level, this is particularly true for the construction sector. Estimates assume that some 20 per cent of all employees in the Italian construction sector are working on an irregular basis.⁴² Obviously it is difficult to get figures on this topic and some institutional actors claimed that the official statistics are suspect and that a large part of the sector, (mainly among small and micro enterprises) is dominated by irregular practices. The same is true for Portugal. What is most striking is the general explicit or implicit acceptance of this fact by all actors. At the governmental level the main activity is the regularisation of the illegal workforce. The policy is focused on questions concerning stay and labour conditions of those foreigners that have already entered the country, i.e. topics such as integration, legalisation, equal treatment etc. It seems as if the government lacks belief in its own capacity to control the inflow of foreigners. In Portugal the government's General Labour Inspectorate said: »The regulatory power of the States is very small. In relation to those global eco-

42 Sectoral Report, Italy, PEMINT Working Paper 2003, p. 7.

conomic phenomena, based on the information that the citizens of several countries have in the enterprises, they have to realise that the Government's regulatory power is smaller than their expectation of it.⁴³ The attitude of the social partners is similar. This strategy is characterised by non-intervention. Non-intervention is not only due to reduced involvement in the decision-making process compared to the first group but also because of their own interests: the employers rely on an illegal workforce to lower labour costs and the unions welcome migrants as new members. While in the first group the unions are ambivalent vis-à-vis migration due to the competition between migrants and indigenous workers, in the second group »conflicts between migrants and the local population only seldom concern labour market problems and the competition for jobs«. ⁴⁴ Therefore, compared to the first group, the main activities and strategies of the unions and the employers associations are focused on the implementation of laws and legal framework concerning the stay and the labour conditions of migrants and not on the legal framework of admission. In Portugal for example the implementation of the regularisation law lies in the hands of the social partners.

According to Straubhaar and Jahn, there can be a trade-off between the tolerance of irregular migration and the costs of enforcement.⁴⁵ Governments will trade off a certain level of irregular migration because of the economic benefits that they know that it will bring compared to the costs of enforcement. Moreover, Sciortino argues that governments have to tread a fine line because they know that internal enforcement affects all.⁴⁶ By this he means that governments tend to focus on external frontier controls because these hit citizens who cannot vote. If they decide to adopt a much more aggressive approach to internal labour market enforcement then this impacts upon all those involved in this kind of economic activity, which, of course, will include citizens that can vote. Even if »state regulation of economic activities (in these countries) is traditionally strict, [...] enforcement is slack and ›free rider‹ behaviour is not firmly condemned by public opinion«. ⁴⁷ While in the first group we can observe a state which can be described as Weberian, believing in its own capacity to regulate, in the second group (although this probably does not apply to the UK, but rather the construction sector within

43 Institutional Actor Report, Portugal, PEMINT Working Paper 2004, p. 8

44 Maria Baganha/Emilio Reyneri, Migration and the Labour Market in Southern Europe, in: IMIS-Beiträge, 2001, no. 17, pp. 33–53, here p. 49.

45 Thomas Straubhaar/Andreas Jahn, A Survey on the Economics of Illegal Migration, in: South European Politics and Society, 3. 1998, pp. 6–42.

46 Giuseppe Sciortino, Planning in the Dark. The Evolution of the Italian System of Immigration Controls, in: Grete Brochmann/Tomas Hammar (eds.), Mechanism of Immigration Controls, Oxford 1999, pp. 233–260.

47 Baganha/Reyneri, Migration and the Labour Market, p. 45.

the UK) the state and institutional actors assume that the state will not have the capacity or the will to enforce all legislation. Therefore irregular immigration and employment can be an accepted and important factor in the economy, or parts of it.

Extra-EU mobility by posted-workers is mentioned in the Italian case, but its relevance is not clear because of the lack of data and information on this strategy. In both Italy and Portugal the European Directive on Posted Workers was transposed into national law and foresees the equal treatment of national and posted-workers in the respective country. Compared to the countries in the first group the issue of posted-workers is certainly not as important in Italy and Portugal, though the employers' association in Italy mentioned some posted-workers from Eastern European countries which are certainly not contracted legally.

The UK sits uneasily within these two groups. Although it fits with certain sectoral characteristics, particularly the fragmentation of the sector, difficulties enforcing regulations and the operation of dual labour markets, the expectation that the state will have the capacity to regulate society is high. The issue here is rather the tension between this expectation and processes of deregulation and liberalisation. Thus, in terms of expectation and capacity, the UK is more aligned with the first group, even if the UK construction sector is not particularly a group one type of sector.

To conclude, the construction sector reveals the effects of incomplete integration on the regulation of immigration. In particular, we find a tension between national and supranational regulation, and an underlying tension between liberalisation and national social models, which opens a window of opportunity for social partners to regain regulatory power. The extent to which this window of opportunity is used, however, depends on the broader national institutional and sectoral context within which these actors operate.

Conclusion

When comparing our findings with the hypotheses we can come to the following conclusions:

- In Italy and Portugal the main issue is the existence of the dual labour market and a strategy of intentional non-intervention on the part of the institutional actors;
- In the UK a strong reliance on foreign labour has become a well-embedded preference within a sector that is highly fragmented and within which there are enforcement problems. However, this is not simply a straight ›read-off‹ from the type of welfare state and labour market organisation. The UK construction sector needs to be understood in relation to historical patterns established within the sector with a general expectation that the

state does possess the capacity to enforce regulations. The UK shares characteristics with both the group one and group two countries identified in this section;

- In the Netherlands, Germany and Switzerland the main issue is the posting of workers and the regulation of this new form of migration, which occurs due to incomplete EU integration;
- The higher the degree of corporatism, the greater the impact on migration policy by the institutional actors and the smaller the scope for the exploitation of comparative advantages;
- New forms of migration influence the behaviour and the setting of the institutional actors and can be used as an instrument to weaken the regulatory power of these actors and challenge the corporatist framework of policy making;
- Both the admission policy as well as the labour conditions are strongly affected by the institutional setting of the sector and influence the migration patterns within the sector.

4.3. Health Sector

Institutional Actors

In contrast to the two other sectors in our study, the health sector is characterised by the relative absence of market structures and the, albeit changing, dominance of the state in planning and implementation. The state regulates the labour market and thus limits the potential impact of the social partners on the admission and working conditions of immigrants. Yet, notwithstanding the apparently statist structure of the sector, important differences exist in the organisation of health care in the different countries analysed. Since this organisation determines to a certain degree the institutional setting, we have grouped the PEMINT countries with regard to this criterion: *Italy, Portugal* and the *UK* with national health services (NHS) form one group and those with social health insurance systems in our sample, *Germany, the Netherlands* and *Switzerland*, form the other. According to this division we hypothesise that the institutional actors in NHS systems are more state-related and that their positions are less independent than in the other group. The government is expected to be the central player, by setting labour market conditions (for domestic and foreign workers) and by monopolising the legislative process. The social partners perform only a weak role as veto players. In contrast to this asymmetric constellation of actors in the NHS systems, societal actors are presumed to be better integrated in the systems with health insurance schemes. The hypothesis of a more symmetric constellation is based on the idea that the influence of the state is comparatively limited and bargaining is compulsory as a part of a health insurance system to set prices. However, it is

not the focus of this sector analysis to show how far organisational variables determine interaction patterns of institutional actors. This approach may, however, increase our awareness of the differences in these patterns that are again relevant for differences in immigration policy outcomes.

In NHS countries health care is provided principally by public actors and in our *first group* it is therefore mainly the government that performs the functional role of the employer. Yet, ongoing trends may change this. In many countries the introduction of the purchaser–provider split as a cost-containment measure has triggered reforms aimed at hospital decentralisation. In NHS countries these have taken the form of self-governing hospitals or public trusts.⁴⁸ In *Italy* and in *Portugal*, however, public hospitals are in most cases still managed directly or indirectly through appointment by the administration, while reforms in the *UK* have reached further in the sense that public hospitals now have independent management, with NHS Trusts enjoying a far reaching autonomy, which includes independent planning of employment and salary negotiations.⁴⁹ In the *UK* as well as in *Italy* and *Portugal* there has been an increase in private-sector provision, competing on a more or less equal basis with public-sector hospitals. To persist in this more competitive market the NHS Trusts in Britain have organised themselves fairly well and are representing their employer's interests independently. The NHS confederation has a human resources advisory committee to provide strategies to promote recruitment and retention. In *Italy* public hospitals are still under the wings of the state and independent employers' voices trying to influence labour market conditions are therefore absent unless supplied by the marginal private providers. In *Italy* there is the situation that legislation imposes more constraints on public organisations than private ones concerning the engagement of foreigners by regulating labour contracts and hiring procedures only for employees in the public health care sector. Yet, this is not the case due to strong lobbying on the side of private institutions. It is rather a result of a delay in legislation compared to sectoral developments. In *Portugal*, the process of privatisation, which began in the late 1990s, has led not only to an increase of private hospitals but also to the emergence of public hospitals under more entrepreneurial management regimes. This development can become relevant for migrants as recruitment responsibilities are transferred from public to entrepreneurial actors. The entrepreneurial hospital managements may follow different recruitment strategies to public actors and employment contracts can become more flexible.

48 World Health Organization, The European Health Report, <http://www.euro.who.int/document/EHR/E76907N.pdf> (05.05.2004), Geneva 2002.

49 Jürgen Hohmann, *Gesundheits-, Sozial- und Rehabilitationssysteme in Europa. Gesellschaftliche Solidarität auf dem Prüfstand*, Berne et al.

How are employment conditions set if the government who possess the authority in the public sector act also as the main employer, as in Italy and Portugal? How far are the labour unions integrated into the policy development process? Due to a comparatively low development of industrial relations in these two countries, the unions have to impose themselves by the strength of their organisational power (in the public sector). In *Italy* a permanent struggle takes place for the precedence of collective bargaining over legislation in the regulation of working conditions in the public sector.⁵⁰ But there exists a national collective agreement for the public health care providers – as part of the collective agreement for the public sector employment – as well as for the private providers. In *Portugal* too, the right to bargain carries much less force in the public sector than in the private one. Although under current law the public administration is subject to a duty to bargain in certain cases, it is not bound by the outcome of collective bargaining.⁵¹ As a consequence of privatisation, collective agreements in the Portuguese health sector are no longer made with the Regional Health Administrations but – due to their financial autonomy – with the Administrative councils of the single hospitals. Therefore, the government actors are becoming less important in the process and it can therefore be assumed that collective bargaining coverage varies greatly from one hospital to the next. Although the discussion of the Portuguese collective agreements may give an idea of the general state of the cooperation between the social partners, it does not seem to be too relevant here, since migrant workers have not been a topic on the collective bargaining agenda. Social partners do however take part, within the scope of the social dialogue, in the debate concerning the legislative integration of migrant workers. Yet, this so-called social dialogue does not seem to be well institutionalised. In *Italy*, collective agreements generally do not deal with the working conditions of migrants. Some references to foreigners might be found in firms' agreement concerning working time, holidays etc. but in general, Italian unions are entering a period of reduced power due to the political approach of the Berlusconi government that tries to exclude them from the definition of most social policies.

In general, our analysis suggests that trade unions have a rather confrontational style in Italy and Portugal where the degree of integration of the employees is low. In other PEMINT countries where trade unions are better integrated, we detect more cooperative styles.

50 Domenico Paparella/Vilma Rinolfi, Government and Unions Reach Agreement for Public Sector, EIRO, <http://www.eiro.eurofound.eu.int/2002/03/inbrief/it0203102n.html> (05.05.2004), 2002.

51 E MIRE database, European Employment and Industrial Relations Glossaries, <http://www.eurofound.eu.int/emire/emire.html> (05.05.2004).

In the *UK*, the third country of our NHS group, the formal centralised structure of collective bargaining has not changed in the public sector. However, there is a tendency to decentralise and create autonomous negotiating entities, particularly to determine wages.⁵² Whilst NHS trusts enjoy great flexibility in individual salary negotiations, there exist since the early 1970s standing committees appointed by the government to review the pay and terms and conditions of groups of workers like doctors and nurses for whom it is thought that collective bargaining is not appropriate. The awards made by these bodies have to pass Parliament in order to be binding.⁵³ In any case, the relevance of collective agreements clauses for migrants is also quite limited, although proposals exist that union representatives should seek a role in consultation on planned recruitment to check that recruitment agencies operate in an ethical manner, to monitor plans for induction arrangements (e.g. language classes and information on employment rights), and to ensure that migrant workers are employed on no less favourable terms and conditions than the existing workforce. It is not known how widely these proposals have been implemented.⁵⁴ The general impression from the interviews with institutional actors is that independent employers in the UK compete for influence with the strong professional associations and also with UNISON, the biggest trade union in the sector. The NHS confederation is probably in a privileged situation since its close relationship with the Department of Health might help in influencing policy, but all of them are all involved in different projects and forums of the Department of Health. A progression towards social partnership seems evident, which is interesting since the UK is normally classified as a pluralistic state. In the (public) health sector, however, a shift away from a confrontational style of industrial relations towards more cooperative forms has taken place.⁵⁵

In the private sector, bargaining takes place at the company level and there is less interaction of the societal actors. As in Italy, regulation seems to be far behind, but in contrast, the UK does not intend to loosen regulations in the public sector, but rather tries to find ways of integrating the private sector in their regulatory system. The behaviour of the private sector (such as con-

52 Pedro Brito/Pedro Galin/Marta Novick, *Labour Relations, Employment Conditions and Participation in the Health Sector*, http://www.who.int/hrh/documents/en/Labour_relations.pdf (05.05.2004), Geneva 2001.

53 EMIRE database.

54 David Winchester, *EIRO comparative study on migration and industrial relations. The case of the United Kingdom*, <http://www.eiro.eurofound.eu.int/2003/03/word/uk0212105s.doc> (05.05.2004), (2003).

55 Anne Munro/Helen Rainbird, *In Partnership with the Government? The Case of the Unison Education*, Nene University College, <http://www.csv.warwick.ac.uk/fac/soc/complabstuds/confsem/Munro.htm> (05.05.2004), 1998.

tinuing actively to recruit medical staff from South Africa) has been cause for concern and the UK government has received complaints from other governments.

As we have seen, our hypothesis of an asymmetric actors constellation in the NHS countries is hardly proven. Although it seems to hold true for *Italy* and *Portugal*, where the integration of societal actors in the policy development process is weak, it is not borne out in the *UK*, where equal actors compete for influence. We will now focus on the analysis of our *second group*. In general, we detect a difference between *the Netherlands* and *Germany*, where cooperation is well established, and *Switzerland*, where the social partnership is still in its infancy.

In *the Netherlands* where a large part of hospital services are provided by private non-profit institutions, the well established ›Dutch Association of Hospitals‹ represents the hospitals' interests – such as improved flexibility in the case of changing market conditions – in a health sector with various equal actors. Its instruments include lobbying as well as policy development and consultation. It is further involved in the bargaining of the collective labour agreements, where it stands for more deregulation. The collective labour agreements are relevant for migrants because of the arrangements that are being made on employability and training.⁵⁶ Emphasising the importance of societal actors, the Netherlands has a whole raft of trade unions that are active in the health sector and trying to form a single front. Apart from bargaining, the ›Covenant Labour Market Policy Health‹ is a forum for employer and employee cooperation. Migration policies, as with policies in general, result from a close cooperation between the government and the social partners. The need for conflictive strategies for unions is therefore rather low in the Netherlands where all relevant actors are involved in an institutionalised interaction process.

The same goes for corporatist *Germany* where non-governmental corporatist bodies play a major role and decision-making powers are shared with further powers governing statutory insurance schemes.

»Corporatism has several important aspects. Firstly, it hands over certain rights of the state as defined by law to corporatist self-governed institutions. Secondly, the corporatist institutions have mandatory membership and the right to raise their own financial resources under the auspices of, and regulation by the state. Thirdly, the corporatist institutions have the right and

56 Marianne Grünell/Tanja van den Berge, Migration and Industrial Relations – the Case of the Netherlands, <http://www.eiro.eurofound.eu.int/2003/03/word/nl0212104s.doc> (05.05.2004), (2003).

obligation to negotiate and sign contracts with other corporatist institutions and to finance or deliver services to their members.⁵⁷

The hospital association as well as professional associations assume an important part in the self-administration of the sector. The relative strength of the different professional organisations is however totally asymmetric. While doctors – due to the compulsory registration at a »Landesärztekammer« – are well-organised and have sound financial resources at their disposal, the degree of organisation of the caring professions is very low (approximately 10 per cent). The hospital association also includes private non-profit providers that constitute about one third of the sector. Private profit provision is marginal with about 5 per cent of the sector. Although Germany has a higher share of public hospitals than the Netherlands, hospital associations perform an independent role and are strong actors at the national as well as the Länder level. They are involved in drafting legislation, contribute in hearings and statements and pursue classic lobbying strategies to direct the political decision-makers' attention to the precarious staff situation. The employees have the same instruments at their disposal. They use them not to facilitate migration, but rather to maintain their privileges or to improve the attractiveness of the health professions. Cooperation among the different partners is institutionalised in the Concerted Action in Health Care, which advises both government and corporatist institutions on improving efficiency and effectiveness of health care.⁵⁸ With regard to the working environment, collective labour agreements exist for the public hospitals on the national level and are overtaken voluntarily by the Länder. Agreements exist also with church hospitals. Yet, in general, we can expect due to the intensive cooperation of the social partners that migration issues are discussed in a spirit of partnership.

In *Switzerland* industrial relations are quite underdeveloped and attempts to build a forum for the social partners have been undertaken only recently. This is mainly due to the large share of hospitals under cantonal administration (private hospitals have a market share of about 25 per cent). The proximity to the state (and the membership of the cantonal administration in the Swiss hospital association) has on the one hand prevented for a long time the formation of a classic social partnership and on the other hand allowed hospitals to establish good contacts with political forums. The Swiss hospital association is a key contact for the Parliament and is invited to hearings and round tables. Under-developed industrial relations do not mean

57 European Observatory on Health Care Systems Health Care Systems in Transition, Germany, <http://www.euro.who.int/document/e68952.pdf> (05.05.2004) Geneva 2000, p. 21.

58 Ibid.

however that other institutional actors outside government are not important. On the contrary, in Switzerland, a country characterised by liberalism, the state basically only intervenes when private initiatives fail to produce satisfactory results.⁵⁹ So actors such as the Swiss Medical Organisation or the Swiss Red Cross play a major role. But these actors appeared as public bodies and not as interest organisations. Progression towards social partnership can be expected from ongoing privatisation trends. Employees have promised their support in the structural reform where hospitals are placed in joint-stock companies under a collective agreement, but wages are set mainly according to the cantonal employment guidelines and ongoing discussions only concern the cantonal level. The attempts to form a social partnership might be bolstered by the emancipation process the hospital association is currently undergoing. According to this vision of a future Swiss health system, hospitals shall be no longer a simple extension of the administration but independent entrepreneurs. Such a change in mentality will of course also lead to a gathering of the employees, which are mainly organised in professional organisations and less in labour unions. Different labour market policies are subject to the cooperation of the societal actors: among others educational matters which are also relevant for migrant workers.

After having analysed in more detail our second group, we need to examine the hypothesis mentioned earlier. The constellation of institutional actors is probably more symmetric in our second group, but the degree of influential cooperation of the actors varies between *Germany* and *the Netherlands*, where it is high, and *Switzerland*, where it is still limited.

One speciality of the health sector is the importance of professional organisations besides labour unions as typical representatives of the employees. Professional bodies exist in all the PEMINT countries. They represent the interests of the profession and safeguard professional standards, for which they have different instruments at their disposal. The Portuguese Professional Medical Association for instance is enabled to give professional certification and is involved in the recognition of European diplomas. As these are differently equipped they correspondingly differ in their influence. Professional associations also often participate in issues that are usually in the arena of labour unions. A hypothesis that suggests itself could be that this happens in countries with a weak labour union movement. Such an explanation may fit for Switzerland, but not for Portugal with strong unions.

Aside from the vertical dimension of the decision-making process (social partnership) analysed above, the horizontal diffusion of decision-making

59 European Observatory on Health Care Systems, *Health Care Systems in Transition, Switzerland*, <http://www.euro.who.int/document/e68670.pdf> (05.05.2004), Geneva 2000.

powers (federalism) might also affect migrants. The observation that the responsibilities for personnel regulations are found on different administration levels accords with the fact that federalism is differently developed in the PEMINT countries.

Impact on Migration Patterns

Before discussing migration patterns, we need to clarify here that migration is not a main issue in most health sectors of the PEMINT countries. Although it might be a dominant topic in the domestic debate in the *UK* and recently in *Germany* (specifically with regard to doctors), in the other countries migration is rather a side issue, with employees mainly concerned about their own working environment and with employers and governments occupied with cost-containment policies. In general, migration is incidental rather than part of a strategy used to exploit comparative advantages hence needing regulation or control by institutional actors. Migration is instead an unintended consequence of planning failures with regard to education, working conditions, regional distribution of health services and of recent reforms that may reduce the attractiveness of the professions for indigenous workers. The situation is different in the *UK*, as we have already mentioned, where, immigration is part of the sector planning and the issue is well established in the discourse between the institutional actors. Such a vivid debate is due to active societal actors and a fairly well developed cooperation as we have seen from the preceding analysis. Professional organisations and unions have produced a code of practice for international recruitment on behalf of the Department of Health to promote ethical recruitment. Furthermore, they provide information for foreign workers, stand up for their protection and mobilise to end targeted recruitment from (developing) countries with shortages themselves. Their actions are partly interpreted to be over protectionist by the employers. The Department of Health is engaged in forging government-to-government links to set rules for migration from specific countries. They are also trying to integrate the private sector into existing regulations where one can speculate about the priority of the motives: are they mainly interested in the *UK's* international reputation or rather about the pressure of private hospitals competing with the NHS Trusts for international staffing? While international recruitment is part of official planning, it is – at least in the public sector – the pressure of staff shortfalls and not the realisation of cost advantages that drives this policy. Doubts were expressed as to whether this is also true for the private sector, for example in the unregulated but growing private sector in *Italy*. Unlike the *UK*, *Italian* unions and professional organisations are not established players in the field of migration policies. Furthermore, immigration is taking place mainly in low skilled jobs where there are not enough domestic workers. While foreign workers just fill these

gaps, domestic workers do not feel threatened by competition via immigration. Additionally, there are no professional organisations for unskilled jobs that could act as possible gatekeepers. With no pressure from groups within society, the government does not have to undertake any serious measures to regulate immigration in the private sector. All the more relevant if we consider that a dual labour market structure is fairly common in Italy.

The fact that migration is something of a side issue in the health sector could also be examined from another perspective: does the very closeness of the sector to the state lead to a privileged supply of migrants so that pressure does not reach a level high enough to stir controversy? This would seem to be partly true in the UK, Switzerland and Italy where immigration in the health sector is a government-led process. In the *UK* it is completely planned, in *Switzerland* we find a favourable handling of work permit requests while in *Italy* irregular immigration is tolerated, so for these three countries neither the government nor legislation act as veto-player or barrier. If no check on migration is provided by employees, unions or professional organisations, the result is a fairly open system as described above for the *UK* and *Italy*. *Switzerland* would also seem to fit into this category – none of the actors really resist immigration – although there has been evidence of some scare-mongering from the Swiss Medical Association concerning the AFMP.

We expected migration to be a common instrument as a consequence of the dominance of the state and the labour intensity of health care. With regard to the UK, Switzerland and Italy we can confirm this hypothesis, but with *the Netherlands*, *Germany* and *Portugal* the situation is different. In the highly cooperative *Netherlands* there exists a consensus among all the institutional actors that labour migration is not a solution for shortages. The employees together with employers and government prefer labour market policies directed at the domestic supply: investment in education, improvement of working conditions and status for health care workers. Such strategies apply also for the UK and Switzerland, but while there migration is seen as a necessary and unproblematic supplement, the Netherlands takes in a restrictive attitude of which we can only speculate about the reasons. The restrictive policy can be seen as the result of a general political trend. It is by all means consistent with intensive labour market activities. The inflow of foreigners is taking place anyway, with or without legal prohibition, as mentioned in the interviews. Again in *Germany*, strategies to fill staff shortages are mainly directed towards the domestic labour market. Germany is however a special case, because of the importance of migration that takes place within the country, from East to West. While for the West a more liberal legal framework is not seen as a goal, the East has attempted to draft a ›green card‹ scheme for doctors. Since this initiative failed, the employers are now eagerly awaiting EU enlargement to solve recruitment problems. However, the employers are

resigned to the fact that they might be able to recruit from abroad, but they see themselves as merely a stepping-stone to the West.

In *Portugal* the state as the dominant actor takes the position that the scarcity of nurses is simply not as high as promoted in some studies and in the case of doctors it is seen as a problem of distribution. External recruitment is neither necessary nor wanted – the main options for labour market policies all refer to the domestic market, such as an increase in the wages paid to those working in the hinterland. Interestingly, the employees' organisations are in line with the state. The issue has not been taken up by the trade unions for their typically combative campaigns against the government. The Portuguese Professional Medical Association fulfils the hypothesised gate-keeper-function by following various strategies against immigration such as requiring compulsory language exams and proposing an alteration of graduate courses to keep in line with Spain. Nurses however are in favour of a structured foreign recruitment process. The dominant strategy in Portugal mirrors the restrictive attitude of the Medical Association, which follows from the strength of that organisation within institutional arrangements that include the formulation of national health policies.

Conclusion

With reference to the hypothesis formulated in section 3.3., we can summarise the findings as follows:

- The dominance of the state per se does not necessarily promote migration as a common instrument to solve labour market problems. Various factors prevent a liberal expansive policy: such as social policy paradigm (the Netherlands), internal migration flows (Germany) and missing recognition of shortages (Portugal).
- Immigration is unlikely to be exploited for market purposes by public actors. It is instead a solution for labour shortages and problems with domestic supply. Private health care providers are however accused of strategic recruitment.
- Deregulatory trends alter the relationship between the different institutional actors in labour market policy. These reforms and the social conflicts that can surround them open new opportunities for societal actors to organise themselves and to acquire influence.
- Immigration is hardly a topic of collective bargaining.
- Barriers against immigration are most likely to come from professional organisations that are seeking to safeguard their privileges.

5. Conclusion

The conclusion to chapter 4 identified distinct sectoral characteristics impacting on migration patterns. The logic of migration differs by sector: it is cost reduction in construction, need for specific skills in ICT and supply for shortages in health. Yet, how this logic converts into migration patterns depends to a large extent on the degree of institutionalisation within the specific sector. If we compare the sectors with regard to our analytical framework we come up with a general finding: the more institutionalised a sector is, the more homogenous the perception of reality (i.e. relevant policy paradigms, problems and possible goals) and as a consequence the more standardised recruitment decisions and strategies are. In less institutionalised sectors recruitment is more arbitrary so systematic links between organised interests, institutional contexts and migratory patterns can only be detected in more institutionalised sectors. Ranking our three sectors with regard to the level of institutionalisation the construction sector comes first, followed by the health and ICT sector. As it turned out, none of the three sectors is alike in all the PEMINT countries while no national patterns of institutionalisation would seem to exist. In sum, we conclude that apart from economic circumstances the degree of institutionalisation is a relevant factor for the explanation of migration patterns.

We now discuss the findings in the light of general institutional characteristics at the national level. This refers to the impact of welfare state institutions and patterns of industrial relations on institutional actors. Are there country specific features that appear through all sectors? We develop our analysis by drawing from the institutionalist hypotheses postulated in chapter 2.

Our first institutionalist hypothesis was that social partners play a greater role in regulating labour migration in countries with a higher degree of corporatism. We expected the social partners to be more influential in Germany, the Netherlands and Switzerland than in the other PEMINT countries. It is true that Germany and the Netherlands practice a form of macro concertation not found in the other countries and that an increased influence of societal actors on central regulations concerning migration is, therefore, more likely. However, after analysing the three PEMINT sectors in considerable detail we can no longer sustain this hypothesis. We found that the degree of corporatism at sectoral level is often quite different from the general country classifications of Table 3. Contrary to expectations, for example, we find corporatist patterns in the UK ICT and health sector and also fairly unorganised and weak social partners in the Swiss health sector. The hypothesis might regain its usefulness if we consider that construction is the only sector with what could be called classical or well-established industrial relations. In

this sector the typology fits. In the health and the ICT sectors there is no pattern of classical industrial relations – in health sector the role of the state is dominant and in the ICT sector employer-employee antagonism seems not to be a reality.

Our second institutionalist hypothesis was that employers' associations would be more influential in ›liberal‹ countries, while the unions would exert a greater influence in ›social-democratic‹ regimes. We are likely to find a balanced relationship between the two in ›conservative‹ welfare states, while ›southern‹ regimes should see strong unions, but a limited impact on economic and public policy. The best fit was found in our two southern European countries. In the construction as well as in the health sector of Italy and Portugal we detect a dual market structure and informal communication patterns that correspond well with the description given in section 2.1. Furthermore perceptions about the capacity to regulate differs between countries: In Italy and Portugal it seems that the state itself doubts its capacity to act and implement, especially concerning irregular work. In the ›social-democratic‹ Netherlands we find well-developed and balanced social partnerships, although there is no discernable tendency of a privileged position for unions.

The ›social-democratic‹ pattern seems to be relevant for immigration in the sense that employment possibilities for migrants are reduced by the pursuit of active labour market policies that aim to bring unemployed people back into the labour market. Some differentiation should be made about the Swiss case as a ›liberal welfare state‹: in the ICT sector a liberal orientation can be observed, there are no collective agreements and the state has no influence concerning the labour conditions and wage regulations. The de-commodification effects are low. In the construction sector however, where the regulations are tight, the state is not the initiator but acts as a guarantor of the status quo. In Germany (conservative welfare state) and the Netherlands (social-democratic welfare state) the non-wage labour costs are higher than in liberal and southern style welfare states. As a result of ›incomplete EU integration‹ these welfare states have come under greater pressure as non-wage labour costs differentials can be exploited through the posting of workers. Here we see some tension between the impulse of a liberalising EU and national social models.

These results have various implications for migration policy research. First of all, we showed that distinct dynamics operate in different sectors and that sectors too may differ in the extent to which they can be said to be national, European and international. We also demonstrated how, why, when and with what effects institutions can be brought into the analysis of migration policy both in terms of longer-term patterning and path dependencies, but also in terms of the ways in which migration processes are embedded

within particular sectors with their own characteristics which, in turn, influence the preferences and identities of actors within particular sectors. This has implications for migration research because (i) it suggests the utility of an approach that focuses on institutions as opportunities and constraints and (ii) it means that analyses need to emphasise the meaning given to various forms of migration and mobility in particular organisational and institutional settings.

Apart from opening new perspectives for migration research, our findings also have implications for migration policy in that distinct sectoral dynamics may well render attempts to construct ›managed migration‹ policies problematic. Migration policies may fail or produce unexpected consequences if they are not attuned to these sectoral dynamics. Our research might also suggest some limitations on the role of states when setting and enforcing migration policy. European economies and sectors within them are internationalised while there is a growing role for supranational laws and norms. We need not assume that these erode nation states in ways that render them redundant (in fact, our research would not support this), but it does suggest that there is a fine balance between state and market dynamics which can create real tension between forms of labour market organisation and social models in an EU where integration is ›incomplete‹ and likely to remain so.

Conclusion

The insights provided by the preceding chapters have centred on analysis of the ways in which organisational settings within three economic sectors and in light of varying patterns of national, supranational and international regulation lead to differing migration outcomes. It is well known that migrant workers move into particular economic sectors. The chapters of this volume have taken this insight forward and illustrated the ways in which the organisation of the ICT, construction and health care sectors in six European countries ascribe meaning to movement. The chapters thus illustrate a novel approach to the analysis of migration, but also raise some important policy dilemmas as EU member states move from a period of ›migration control‹ to one of ›migration management‹. This conclusion explores the implications for migration research and migration policy in order to bring together the various preceding contributions and draw out some implications.

We know that migration is not a single, compact event and that there are many different forms of migration, for different motives and for different durations. The relationship between various forms of migration and the institutional and organisational setting that makes it visible will thus differ. Through its analysis of particular economic sectors, the PEMINT research has demonstrated the importance of analysing migration as comprising a diverse set of phenomena that become relevant in distinct organisational settings. It is also clear that these organisational settings can vary depending, as we show, on the national, European or international scaling of operations within particular forms of economic activity.

The concern of the papers within this volume has not been to produce national reports that describe situations in particular European countries. Rather the aim has been to focus on particular economic sectors and to explore transversal themes that link European countries. Moreover, this attempt to use the economic sector as the analytical base also draws into view European integration, or as we have seen the problems/opportunities of ›incomplete European integration‹, which we will discuss further below.

1. Theoretical Implications

The theoretical justification for this research strategy was the assumption that an approach centred on those who recruit workers in three sectors within which there has been a traditionally high presence of foreign workers could reveal answers to questions that have not been answered by more general theoretical approaches that stress macro-economic angles and overlook institutional, social and political factors.¹ By analysing recruitment processes, the PEMINT research facilitates an enhanced understanding of the impact on decision-making about recruitment of the functioning of different national labour markets, welfare and fiscal arrangements, as well as the evolving European and international frameworks governing labour mobility. Precisely because it provides a context in which these variables become socially meaningful, our approach could also facilitate a better appreciation of the impact of national and European migration policies. How, for example, can the EU seek to ›manage migration‹ in a context where needs for migrants are often closely linked to the organisational settings within particular economic sectors? Moreover, the ICT, construction and health care sectors may well interact in very different ways with national and European regulatory variables.

The research enabled us to analyse how employers assess the impact of national and international regulatory variables and how these then affect decisions about recruitment. We assume that employers' decisions (the demand side) provide a decisive context for understanding the dynamics and structure of migratory flows as these develop in their various forms (such as high or lower skilled, short or longer-term, legal or illegal, and EU as opposed to non-EU).

The remainder of this article develops its argument in four states. Next we explore the relevance of the PEMINT variables. Then we compare the health care, ICT and construction sectors. This is followed by analysis of the role of institutional actors. Finally we consider some implications of the PEMINT research for migration research and policy.

2. The Relevance of the PEMINT Variables

What impact do national and international regulatory variables such as welfare states, fiscal systems or the evolving EU framework have on recruitment processes and decisions to employ migrant workers? Three chapters of this volume analysed the structure of the PEMINT variables while the chapter on

1 E.g. Julian L. Simon, *The Economic Consequences of Immigration*, Oxford 1989; George J. Borjas, *Friends or Strangers. The Impact of Immigrants on the U.S. Economy*, New York 1990.

method noted that the relevance of these variables couldn't be presupposed. Our starting assumption was that taken together, international, European and national regulatory frameworks define relevant conditions for the decision-making processes within these organisations concerning recruitment and employment. The strategies that then evolve within the three sectors may or may not involve international migration.

This starting assumption however does not imply that these variables directly determine the outcomes of decision-making processes in organisations. The PEMINT-variables attempted to identify potentially relevant legal and political factors that may affect decision-making processes within organisations. These decision-making processes are concerned with the internal organisation of resources within organisations and external relationships (such as to systems of training and education).

Before moving on to analyse and discuss the PEMINT results it is useful to briefly step back and draw together some of the specificities of each sector after having, first, provided a short reminder of why the PEMINT project focused on organisations when dealing with problems of labour mobility and international migration. This focus on recruiters within organisations derived from the basic sociological insight that problems of labour are most evident at the organisational level. All modern organisations rely on labour. As Marx and Weber demonstrated, no modern organisations could exist without the institutionalisation of free labour.² Modern organisations are based on this ›simple‹ mechanism, which means that they need money. This need for money does not, however, imply that every organisation is an economic or capitalist organisation – an organisation spending money in order to earn money. In other words, organisations need money but not all of them get this money by spending money as a capitalist firm or as an entrepreneur (as defined by Marx or Weber). For example, educational institutions and the majority of health care providers rely on the state. Such health care and educational organisations are still modern organisations in the sense that they employ their members by paying salaries, but they tend not to reproduce the money they need by spending it. Rather, they engage in the largely consumptive use of money. This then forms the basis for a distinction be-

2 Marx e.g. in *Capital I*, chap. 4 and 10–13 and Weber e.g. in the famous introduction to ›The Protestant Ethics‹. The differentiation of modern organisations would have been impossible without the institutionalisation of free labour. It is extremely unlikely that historically millions of organisations would have found billions of individuals willing to learn and to do things they would never have thought of doing without a simple (and highly complex) mechanism, i.e. individuals accept the generalised expectation of organisations to do what they want these individuals to do (inside of a certain zone of indifference) in exchange for a similar general thing, i.e. money (defined by its general usability); see Niklas Luhmann, *Funktionen und Folgen formaler Organisation*, Berlin 1964.

tween organisations that rely on the recruitment of money by a) political decisions, b) fund raising or c) by markets.

If we now examine the three PEMINT-sectors we see that the economic effects of *the health sector* are of extreme importance but for various reasons the health sector cannot simply be counted as just one part of the economy. It is driven by socially institutionalised and differentiated criteria of health, on the one hand, and the capacity of the sector to mobilise the necessary economic resources partly by private demand and fund raising but mainly as a result of political decisions. These decisions concern the system of financing (e.g. obligatory insurance systems or national health systems run through general taxation), as well as the position and power of health care providers and medical professionals.³ The need for labour is highly structured by these conditions that affect not only the numbers of doctors, nurses or care workers but also the qualitative conditions of employment, i.e. qualifications and training, occupational mobility and salaries. This indicates the decision-making context in which international migration from within and outside the EU becomes relevant for health organisations. In other words, the ways in which the PEMINT-variables affect health care organisations is mediated by the structure of health care provision that then influences decisions concerning recruitment of migrant workers.

The construction and ICT sector are very different from the health care sector. Both ICT and construction operate on markets in the sense that they spend money in order to earn money. Two specific features of the construction sector are the immobility of its products such as buildings and roads and that much of the demand within the sector emanates from government. Political decisions are thus highly relevant for construction. As a result construction firms come to rely to a significant extent on political knowledge. At the same time, there is a strong EU dimension because provisions concerning free movement by service providers have been a central aim of EU policies and tenders for large projects are advertised in the Official Journal. Additionally the construction sector has long been the sector with the highest rates of employment of foreign workers.

Our research shows the ICT sector to be the most spatially unbound or international sector. Compared to health care and construction, the products and production sites within the ICT sector are of the most general character. Hardware and software can be produced and sold worldwide dependent only on demand and the recruitment of appropriately qualified labour. Put

3 Obviously we leave out in our analyses the pharmaceutical and other industries which provide goods and services for organisations in the health system. The subject of our study are organisations that provide health services. These provisions are directly or indirectly based on money dependent on the politically institutionalised structure of the health system.

another way, ICT companies act in a global market and the PEMINT variables become relevant to the extent that they allow or hinder ICT companies to act within this global marketplace. This has important effects on the recruitment and use of labour in transnational organisations.

Comparatively speaking, the three sectors provide an ideal vantage point to observe the political economy of migration in an integrating Europe. If we distinguish between international, European and national levels then we have a sector that is a good exemplar of each:

The *global international conditions* of trade, services and labour in world markets are of utmost importance for ICT companies. National and EU tax, welfare, trade and migration systems gain relevance to the extent that global players expect them to be adapted to their needs so that tax systems and migration policies do not impede movement by their staff. Aside from this practical concern, ICT companies attempt to exploit national and regional differences. What we see is that international migration within the ICT sector becomes a form of international mobility for a section of high-qualified labour with migration often occurring *within* organisations. If these companies also provide housing, health care and educations for the employee's children then the host state fades as a significant factor for this type of migrant worker. It could also be added that the diminished relevance of the state also implies that this form of migration fades as a topic of concern for migration research focused on the classic dilemmas of regulation of movement and integration of immigrant newcomers.

Within the *construction sector* the *European level* is very important. Free movement for service providers within the EU has had important effects on recruitment and employment and has transformed major parts of the various national sectors into an increasingly Europeanised sector. Over the last twenty years or so, large parts of the construction sector have become highly interrelated. Intra- and extra-EU-migration and changing migration patterns have played a major role in this process.

The *health sector* is where *national* frames retain their significance. Health care systems are based on the different histories of welfare states. All the PEMINT countries have been involved in major efforts to rebuild their health systems in view of endemic budget problems and demographic changes. It becomes clear that the relevance of international migration in this context is highly dependent on the different structural problems of the national health systems and the highly regulated conditions concerning employment and recruitment. One of the most important results here is that the nationally diverse and dynamic structures of international migration in this sector are not adequately understood if they are understood as being solely a direct outcome of rapid demographic changes. Rather, they are an outcome

of the internal structural problems of the sector in each country, of which demographic change may be a component.

3. Comparing the Three Sectors

The chapters on each of the three sectors demonstrated that intra- and extra-EU migration occurs under highly specific conditions. By comparing the sectors we can then identify the relevance of the PEMINT findings and develop a better understanding of the political economy of migration in an integrating Europe.

The cases demonstrate that migration is not a compact or homogenous event. Rather it comprises a series of highly differentiated events located within specific social processes. It is an interesting part of ›the immigration problem‹ that these diverse events tend to be registered as ›the immigration problem‹ when in fact the dilemmas of migration policy centre precisely on the multiplicity of phenomena that fall under the broad heading of international migration. We return to this point later when some policy implications of the research are drawn out

The comparison that now follows selects some of the results presented in the three chapters on each sector and highlights their significance by comparing them with the findings in the other sectors. We begin with the ICT sector. The ICT sector attracted much political attention at the turn of the twenty first century because of a perceived need for migrant workers in the ICT sector. Most famously, in Germany a major shift of migration policy occurred when Chancellor Schröder made his famous announcement that it was in the interest of modern industries to open the German labour market to new migration by creating something akin to a US Green Card system. Schröder found general support for this view from industrial organisations, the churches and – albeit more reluctantly – the trade unions. This made it difficult for the Christian Democrat opposition to insist on the continued resonance of the idea that Germany was not an immigration country.

With hindsight, this overwhelming support for a Green Card style system was driven more by symbolic politics than by empirical evidence of economic need.⁴ As it turned out, ICT companies in Germany did not make intensive use of the Green Card system. Instead, migration within the ICT sector appears most often as a form of migration within organisations as multinational companies deploy their staff across their sites in various countries. This form of internal migration fulfils the need of these organisations to make a task driven and flexible use of their staff resources. The chapter on

4 We may conclude (again) from this that there is only a loosely coupled relation between the needs of politics and economic or organisational demands.

this sector demonstrates that international migration in the ICT sector in all the PEMINT countries is mainly mediated by the internal labour markets of these large, multinational companies.⁵

These patterns have social implications. Migration of this type barely registers in social terms because this kind of migration is not linked to the questions of regulation and social integration that typically pre-occupy policy-makers and researchers. Companies may well arrange housing, education and health care for their employees.⁶ This outcome is dependent on specific conditions within this sector that require more elaboration.

The sector is dominated by large and transnational organisations. These are preconditions for the use they make of an internationally mobile workforce. With this background then measures such as the so-called Green Card in Germany and comparable schemes in other PEMINT countries were of relevance to smaller companies that could not rely on a broad and internationally distributed pool of employees. These schemes allow for some recruitment flexibility by hiring individuals from non-EU countries.

This leaves another question outstanding. Why did big companies make only limited use of these schemes? At the very least they would improve recruitment options when they cannot rely on their internal staff. But our research suggests that even this doesn't seem to be the case. A closer look at the data and the kind of answers to the questions posed in the interviews reveal that international migration in the ICT sector is mediated by internal labour markets⁷ and does not have the primary function of filling labour shortages or reducing labour costs (as in the construction sector). Rather, international migration is becoming part of the normal career path for highly qualified employees.⁸ Positions and qualifications in ICT companies seem to

5 Achim Wolter, *Globalisierung der Beschäftigung. Multinationale Unternehmen als Kanal der Wanderung Höherqualifizierter innerhalb Europas*, Baden-Baden 1997; Thomas Straubhaar/Achim Wolter, *Globalisation, Internal Labour Markets and the Migration of the Highly Skilled*, in: *Intereconomics. Review of International Trade and Development*, 32. 1997, no. 4, pp. 174–181.

6 William T.S. Gould, *Recruitment Agencies and British International Migration*, in: *Area*, 1987, no. 19, pp. 374–376.

7 The term 'internal labour market' is somewhat misleading; it is at least foggy: in which sense is it a market?

8 A formal indicator of this is the low elasticity of wages in this sector. See Jay R. Galbraith/Andres Edström, *International Transfer of Managers: Some Important Policy Considerations*, in: *Columbia Journal of World Business*, 11. 1976, pp. 44–55, Andres Edström/Jay R. Galbraith, *Transfer of Managers as a Coordination and Control Strategy in Multinational Organizations*, in: *Administrative Science Quarterly*, 22. 1979, pp. 248–263, Allan M. Findlay, *New Technology, High-Level Labour Movements and the Concept of the Brain Drain*, in: OECD (ed.), *The Changing Course of International Migration*, Paris 1993, pp. 149–159; Kazuo Koike, *Internal Labor Markets. Workers in Large Firms*, in: Shirai Taishiro (ed.), *Contemporary Industrial Rela-*

be understood in relation to specific organisational needs. We found less institutionalised and generalised career patterns in the ICT sector based on educational and occupational status linked. There are internal and external reasons for this.

An important internal reason is that large ICT companies have built their own structures of positions, careers and salaries.⁹ There are of course common elements. Members of ICT companies are usually highly qualified and we can describe these organisations as relying on professionals in a Parsonian sense.¹⁰ Yet, these professionals do not seem to possess typical, more or less standardised, training as, for example, mathematicians or IT students. Instead, they come from different backgrounds. Whether or not they ›fit‹ seems to become clear within the organisations based on internal criteria. The main channels for recruitment are networks. External individuals known to employees of particular ICT companies have the biggest chance of being recruited. These ›hire a friend‹ networks have several advantages: they reduce uncertainties; lower recruitment costs; and increase internal loyalty and bonds within the organisation.¹¹ The reasons for this are, first, that education systems do not appear to have yet produced formalised and generally accepted qualifications that are seen by the ICT industries as adequate formal prerequisites and, second, as a corollary to this, companies have not defined

tions in Japan, Madison/London 1983, pp. 29–62; Sami Mahroum, *Highly Skilled Globetrotters. The International Migration of Human Capital*. OECD Workshop on Science and Technology Labour Markets. 17 May 1999, and for a case study on Volkswagen: Martin Posth, *Internationale Personalentwicklung bei Volkswagen*, in: *Betriebswirtschaftliche Forschung und Praxis*, 42. 1990, no. 5, pp. 369–378. In the perspective of the human capital approach migration is not so much due to the short term effort to earn more money but becomes part of an investment in the future. See Gary Becker, *Human Capital*, Chicago 1980.

- 9 This is the way neo-institutionalists explain structure building of organisations. See John W. Meyer/Brian Rowan, *Institutionalized Organizations. Formal Structure as Myth and Ceremony*, in: *American Journal of Sociology*, 83. 1977, no. 2, pp. 340–363; Paul DiMaggio/Walter W. Powell, *The Iron Cage Revisited*, in: idem (eds.), *The New Institutionalism in Organisational Analysis*, Chicago/London 1991, pp. 63–82.
- 10 Talcott Parsons/Gerald M. Platt, *The American University*, Cambridge, MA 1973.
- 11 Richard Layard/Stephen Nickell/Richard Jackman, *Unemployment – Macroeconomic Performance and the Labour Market*, Oxford 1991; William T.S. Gould/Allan M. Findlay, *Refugees and Skilled Transients. Migration between Developed Societies in a Changing World Order*, in: idem (eds.), *Population Migration and the Changing World Order*, Chichester 1994, pp. 17–25, here p. 22; Felicitas Hillmann/Hedwig Rudolph, *S(Z)eitenwechsel – Internationale Mobilität westlicher Hochqualifizierter am Beispiel Polen*, in: Ludger Pries (ed.), *Transnationale Migration (Soziale Welt. Sonderband 12)*, Baden-Baden 1997, pp. 245–263.

their positions in a way that necessarily require individuals possessing formal occupational prerequisites.¹²

The external corollary to this internal factor is that within the ICT sector there is a loosely coupled relationship between companies and the education system. There is undoubtedly a huge demand for higher qualifications but these qualifications in terms of their usability for the employers are mainly produced inside these companies based on tests and social networks. In other words, because this is a ›young‹ sector, recruitment tends not to be based on institutionalised occupations while larger ICT companies tend to produce highly specific knowledge that is not easily transferable. At the same time, general qualifications that may be relevant for the ICT sector are now produced worldwide by many national education systems competing with each other.

How is this related to external and internal migration in this sector and the limited use made of migration schemes such as the so-called German Green Card? The predominant type of international migration is not a phenomenon linked to labour market needs or the reduction of labour costs but to the flexible use made of labour inside internationally operating organisations. Most European states have provided the legal framework that permits the internationalisation of employment.¹³ But even if there are labour shortages the use of schemes such as the Green Card is limited. The reason for this seems to be that these schemes suppose that individuals are recruited on the basis of formal qualifications and experience.¹⁴ But this is the case only to a limited extent because our research shows that ICT organisations rely to a large extent on networks. This means that they use knowledge held by current employees about potential future employees and thus reduce uncertainties arising from the relative absence of institutionalised occupations. This

12 This can be concluded from a result which in the first instance appeared as a methodological problem of research: The ›occupations‹ we defined as those we wanted to concentrate our research on simply didn't mean very much to the organisational members we interviewed about their recruitment strategies. They had only minor relevance for understanding the positional structure of these organisations.

13 Gail McLaughlan/John Salt, *Migration Policies towards Highly Skilled Foreign Workers*. Report for the Home Office, London 2002. For the USA Vivian Hermann/Uwe Hunger, *Die Einwanderungspolitik für Hochqualifizierte in den USA und ihre Bedeutung für die deutsche Einwanderungsdiskussion*, in: Uwe Hunger/Holger Kolb (eds.), *Die deutsche ›Green Card‹. Migration von Hochqualifizierten in theoretischer und empirischer Perspektive* (IMIS-Beiträge 22), Osnabrück 2003, pp. 81–98.

14 The so-called German Green Card allows for immigration if the applicant can prove to have an exam in information or communication technologies. The additional regulation which requires an income of 51,000 € seems to acknowledge the loosely coupled relation between formal qualifications and access to positions in the ICT sector.

explains why, for external recruitment, international migration seems to be of minor relevance. The predominant type of international migration in the ICT sector (internal migration within the organisation) also explains why national welfare regulations are of little relevance. Migrating individuals do not change welfare systems. Usually they stay in the system of their country of origin. To be sure, different national tax systems do have major effects on the 'buying power' of their salaries in different countries. This explains why ICT companies have to equalise the costs of international staff transfer. They are, therefore, interested in welfare and tax systems not for the reason of reducing costs via migration (as we find in the construction sector) but for the reason that these affect their capacity to make a flexible use of their labour power.

It is now useful to consider the case of construction as a strongly contrasting sector. Here we find organisations that make use of migration through subcontracting on the basis of EU 'freedom of services' provisions. This migration can subvert national welfare regulations and the related institutionalisation of occupations within national labour markets. This process was particularly evident in PEMINT countries with high labour costs such as Germany and the Netherlands and has been driven by efforts to reduce labour costs under the pressure of growing international competition.

The way that costs reductions have been carried out can be easily summarised: EU internal migration allows the importation of cheaper labour from EU member states where social costs are lower. The reliance of the construction sector on subcontracting is also linked to an ongoing process of de-institutionalisation of the occupational structure of the construction sector that mainly affects skilled labour, the related wage structures, negotiations between employers and employees and facilities for training and apprenticeship.¹⁵ Consequently, within the construction sector migration is an internal element of the reconstruction of the whole sector concerning the competitiveness of companies and the structure of workplace and industrial relations. It is worth underlining that it has not been the migration of individual workers that has had these structural effects but rather it has been migration under the specific conditions of 'freedom of services'.¹⁶ This European frame

15 An empirical indicator for this are the high unemployment rates in Germany of those occupational groups seeking employment in the construction sector.

16 Labour migrants employed in the construction sector under the national conditions of employment were affected by subcontracting and their effects on labour costs to the same extent and are hit by unemployment to the same extent as the indigenous labour population (Uwe Hunger, *Der 'rheinische Kapitalismus' in der Defensive. Eine komparative Policy-Analyse zum Paradigmenwechsel in den Arbeitsmarktbeziehungen am Beispiel der Bauwirtschaft*, Baden-Baden 2000). Therefore we do not find in the construction sector an unspecified interest in recruiting migrants but only to the extent that it allows to reduce labour costs and to circumvent institutionalised labour relations.

established a context for the exploitation of differences between member states with the outcome of integrating the various national construction sectors in a peculiar way. What we mean by peculiar is that they integrated and ›Europeanised‹ less in the sense of homogenising the sector but in the sense of relating the different structures to each other and establishing mutual dependencies and restrictions. Internal EU migrants in high cost countries on the basis of subcontracting moved from low cost countries. In these low cost countries they are then substituted by (often irregular) from outside the EU. It is important to note however that the European framework has gained relevance to differing extents in PEMINT countries depending on the use made of the freedom of services, the economic business cycle and the preparedness of the different states to accept the de-regulatory effects of freedom of services. This acceptance occurred much earlier in the Netherlands than in Germany.

Seen from the perspective of construction and ICT, the *health sector* is another instructive case. In contrast to construction and ICT, the health sector receives most of its money as a result of political decisions. Quite independent from the precise internal structure of the various national health systems – either insurance based or politically organised supply – this is linked to strict national regulations concerning occupational or professional preconditions for employment which have to be fulfilled by the employees testified by national exams. In other words, the political institutionalisation of occupations and professions in the health sector is very strong and defines one of the major filters for the recruitment of migrants in this sector. Our research thus demonstrates the importance of the national base of health care organisation and funding and the continued relevance of professional qualifications as barriers to migration and mobility.

Yet, even if occupations and professions function as filters for international migration in the health sector the way they do this depends on the emergence of needs in different national health systems. At a general level we can say that insurance based systems until recently displayed a tendency to oversupply with the consequence of ›cost explosions‹. The more recent need for labour and efforts to recruit external migrants (doctors, nurses, care workers) seem to be an outcome of structural mismatches resulting from struggles between governments and insurance companies that seek to reduce oversupply and the affected occupational and professional groups and health providers on the other side who try to defend working conditions, incomes and other privileges.¹⁷ Tax based health systems have a structural tendency

17 E.g. the most recent shortage of doctors in Germany is a clear outcome of successful efforts of the professional associations of doctors during the early 1990s to limit the supply of medical places at universities in order to reduce competition.

towards undersupply that has been compensated for - especially in Britain in recent years where health care spending has increased substantially - by recruiting international migrants who fill vacancies at all occupational levels. For this reason international migration had a much greater importance in these countries than in the former.

The current efforts to reform national health systems are clearly driven by the fear that actual and future demographic changes will imply a high demand for health services linked with serious problems of financing. The structure of international migration found for the various occupational groups so far however is not due to these demographic changes in the simple neo-Malthusian sense that is often articulated publicly, i.e., that an ageing population will create a huge demand for migrant workers to care for the elderly. Instead the type of migration that we found in the health care sector is to a large extent the outcome of the structural inconsistencies either linked with the unplanned outcomes of political decisions and internal struggles to limit the tendency of oversupply in insurance based health systems or the effort to compensate for supply deficiencies by recruiting migrants from abroad as a result of planning failure.

One important general reason for the reluctant use of foreign recruitment in the health sector needs further discussion because of its overall relevance for migration research. This is the meaning given to linguistic and cultural requirements within the health care sector. Our field research makes it clear that in all countries linguistic and cultural competencies are highly relevant and perceived as hindrances for the recruitment of foreign migrants. The general relevance of this aspect in the health sector explains why in principle it is relatively easy for the UK to recruit health care workers at all occupational levels not only in former colonies but also in many other countries since English has become in many parts of the world the second language while structures of education and training systems are designed in ways that are often influenced by the British model. In the health sectors of the other PEMINT-countries we found that migrants are usually recruited from culturally and linguistically akin countries. The general importance of this aspect, i.e. the meaning of cultural and linguistic skills for international migration becomes clear if we compare the required communicative competences in our three chosen sectors. Cultural and linguistic skills seem to have a varying relevance in each sector: very important in the health sector, important in the ICT sector depending on the task, and less important in the construction sector. The ICT is characterised by a twofold situation. On the one hand the main skills required of internal international migrants are less centred on the needs of social interaction but ability to use software programmes. The *lingua franca* here is formal languages and English. Professional competences of social interaction and the related cultural and linguistic skills become relevant

when the application of programmes to the needs of customers is required. The relevance of cultural and linguistic skills for the recruitment of staff therefore depends on the nature of the task. The construction sector presupposes basic social interaction skills concerning especially the understanding of instructions but this requirement is usually fulfilled by linguistically competent middle-men. The main tasks are centred on the physical manipulation of objects. For this reason the recruitment of migrants in the construction sector does not depend particularly on linguistic and cultural skills.

In comparative terms we can see that international migration in the most internationalised sector (*ICT*) involves highly qualified individuals migrating on the basis of organisational membership. The institutionalisation of occupations and professions is rather weak and we see two effects: 1) Internal labour migration in this sector becomes part of a career structure emerging from the expectations of both, the companies and the employed individuals who start to capitalise on this form of migration. 2) The rather low relevance of migrants for the recruitment practices in this sector since this is based to a large extent on networking. In the most Europeanised sector, i.e. the *construction sector* organised migration based on the freedom of services and subcontracting becomes part of a process of de-institutionalisation of national occupational structures affecting skilled labour by eroding wages structures, industrial relations and training and apprenticeship facilities. In the most national sector, i.e. the *health sector* institutionalised occupational structures are still strongly protected and defended by almost all relevant interest groups and institutional actors.

The results of this comparison are instructive cases for the effort to understand some of the heterogeneous dynamics linked with international migration in an ›integrating Europe‹:

1. In each case ›migration‹ refers to different needs and problems and the ways in which migration is understood is strongly related to the organisational settings within the health care, ICT and construction sectors.
2. The relationships between the three sectors and markets, welfare structures, education systems, and tax systems differ significantly.
3. There is a strong relationship between the types of tasks in each sector and the perceived potential of migrants. In the health sector, linguistic and cultural competencies are a major requirement based on the functional importance of social interaction in this field. In the ICT sector the importance of these competences is task dependent whereas in the construction sector they are of minor relevance and not a hindrance to the recruitment of migrants.

4. The Role of Institutional Actors

International migration is made visible by the territorial, organisational and conceptual borders of European states. Migration policies thus seek to regulate movement that transgresses these borders. The focus for these policies has typically been the nation state, although the competencies of the EU have grown in this area and seem likely to continue to develop. If we understand international migration in these terms and relate it to the borders of European states (and emergent EU borders) then we can see migration in its many and various forms as being moderated by all kinds of political interventions.¹⁸ In the European context within national welfare states the basis for these kinds of political interventions are observations about the effects of migration on welfare provision or political loyalty.

EU migration policies are characterised by a peculiar ambivalence in that they are concerned with efforts to institutionalise internal freedom of mobility for goods, services and individuals while the EU also assumes some border management functions. In that sense the EU is characterised by a kind of structural hypocrisy (in a Brunsonian sense) placed in that it seeks to both encourage and restrict international migration.¹⁹

The PEMINT-project is interested in the relevance of EU internal and external migration in the three chosen sectors ICT, construction and health mainly at the level of organisations because these provide the organisational setting within which migrants are recruited. These organisations will be affected by political decisions and seek political influence. Typically institutional actors such as employers' organisations, trade unions, professional associations are reflexive mechanisms in the sense that they combine and organise (voluntarily or obligatory) specific perspectives and interests of their membership and claim to pursue their members' interests.

Institutional actors understood in this way have their own history, produce their own world views and, with this background, engage in politics. This political engagement will, of course, be embedded within different national political contexts that have been described by political scientists as corporatist, étatist etc. The chapter on the role of institutional actors in this volume referred to the two traditions of comparative welfare state research and research on corporatism which provide general frames for the analysis of the position, role and effects of institutional actors. From this a number of hypotheses were derived concerning the role of institutional actors in the ICT health care and construction sectors. An important general outcome of this

18 Michael Bommers, *Migration und nationaler Wohlfahrtsstaat. Ein differenzierungstheoretischer Entwurf*, Opladen/Wiesbaden 1999.

19 Andrew Geddes, *The Politics of Migration and Immigration in Europe*, London 2003.

chapter was that these approaches are too general and omit two important aspects, one, the internal dynamics of institutional actors and, two, the sectoral embeddedness of their actions. More importantly a third factor can be added because there seems to be only a loosely coupled relationship between the ways in which migration becomes relevant at the organisational level within the three sectors, the ways in which migration policies are designed, and the ways in which institutional actors engage in these political processes.

Not surprisingly given its international structure and relative youth the *ICT sector* (with the exception of Britain) is characterised by the absence of institutionalised communications about migration policy. Political responses to the ICT sector occur on the basis of an image that motivates the various states and political actors to design political measures affecting ICT in ways that makes them appear ›modern‹. The ICT sector is seen as a sector that is global, future oriented and a key to successful efforts to keep up with the demands of the ›knowledge based society‹. Only a small part of these political measures, which rather deal with the structural requirements of education and training and tax policies, is concerned with migration. While countries try to keep up with the perceived needs of the ICT sector, this is not an outcome of migration policies negotiated by institutional actors but instead of the image of the ICT sector as a core sector in a ›knowledge based society‹. The meaning of migration here is also very different from the other sectors. It is positively described as part of growing international mobility and seen as an element of a win-win game for migrants and the countries they move to.

The *construction sector* provides a different picture. Here we find two country groupings with comparable institutional contexts (Germany, the Netherlands and Switzerland in one group and Italy, Portugal and the UK in the other). In the first group industrial relations were highly developed with collective agreements established by the social partners and the government playing only a minor role. This led to many regulations concerning pensions, insurances schemes, training and wages. Notwithstanding certain differences, the countries in this group shared the existence of such rules negotiated at a sectoral level. This implied a history and tradition of cooperation and of trust between employers and employees and a similar perception of problems and needs of the sector, including shared norms of behaviour.

One major effect of the restructuring of the sector under the European framework of ›freedom of services‹ has been the erosion of these traditional relations. In recent years, social partnership has come under pressure and the cooperative style is increasingly hollowed out. This trend is strongest in Germany but also exists in the Netherlands and Switzerland. The reasons behind this trend are manifold and include, aside from increasing international competition, the reduced capacity of employers to support the costs of social partnership, the growing heterogeneity of interests within associations and,

more generally, the neo-liberal climate, and the issues raised by the posting of workers within the EU. The dynamics of this process are evident and independent of good will or intransigent behaviour since construction companies cannot individually decide to abandon sub-contracting once this has been established as a general option in a highly competitive Europeanised environment. Institutional actors claiming to represent the interests of their members risk losing their legitimacy and – in the end – their members if they stick to institutionalised forms of concertation and partnership.

The result of this process is not the complete abandonment of cooperation, but their hollowing out since participants begin to perceive them as losing their meaning. For migration policy this means that there is consensus among all partners that illegal migration and employment should be prevented, but there is dissent about the best ways to achieve this. Aside from illegal migration employers tend to favour a more or less open economy but their general opinions on migration are as diverse and heterogeneous in the construction sector as in the whole economy. Nevertheless the reliance on subcontracting and resultant competitive pressure allows them to force the unions to agree to lower wages. The labour unions tend to be more homogeneous but at the same time more or less helpless. They vote for strong measures against social dumping and for the principle of ›same wages for the same work in the same place‹. But they are confronted with a dynamic whereby it is not only their employers that exploit differences of an incompletely integrated Europe but also their fellow labourers from southern Europe and the UK. The governments of Germany and the Netherlands are trying to compromise by introducing obligatory minimum wage levels for all individuals employed in the sector²⁰ but they do not question the EU regulatory framework of ›freedom of services‹ and this means that differences between *non-wage labour costs* can still be exploited. Only Switzerland as a non-member opts out from this framework and acts like a classical nation state by protecting the welfare regulations of the construction sector against external competition since the legal regulations encompass the alignment of non-wage labour costs.

The Southern European PEMINT-countries are characterised by a two-fold structure based on internal segmentation of the sector with dual labour markets: one core segment regulated and linked to forms of social partnership and one peripheral segment characterised by deregulation and high levels of employment of illegal migrants. The issue of migration is dealt with in a peculiar manner. Illegal migration is more or less accepted with recurrent measures of regularisation. It seems to be the basis for a peculiar kind of integration of a type of migration that at least to some extent is based on the

20 An institution alien to and formerly unknown in the German tariff structure.

interdependencies between the different national construction sectors as an outcome of the EU framework.

Migration is not a main issue in most *health sectors* in the PEMINT countries. Although it might be a dominant topic in the domestic debate in the UK and recently in Germany (specifically with regard to doctors), in the other countries migration is a side issue with employees mainly concerned about their own working environment and with employers and governments pre-occupied with cost-containment policies. In general, migration is incidental rather than part of a strategy used to exploit comparative advantages and hence needing regulation or control by institutional actors. Migration is instead an unintended consequence of planning failures with regard to training and education, working conditions, the regional distribution of health services and recent reforms that may reduce the attractiveness of the professions for indigenous workers.

There are differences between countries. As a consequence of the dominance of the state as the main funder of the health care systems, migration can be used as a common instrument when labour needs are identified. This is especially the case in the UK, Switzerland and Italy. In contrast, in the Netherlands, Germany and Portugal the situation is different. In the highly cooperative Netherlands there exists a consensus among all the institutional actors that labour migration is not a solution to shortages. The employees together with employers and government prefer labour market policies directed at the domestic supply. Such strategies also apply to the UK and Switzerland, but in these countries migration is seen as a necessary and relatively unproblematic supplement.

Generally institutional actors do not see migration and migration policies as major issues. It seems that under the protection of the regulatory frameworks the actors do not see themselves as being threatened by migration but rather by the internal dynamics of change and reform of the health systems that are trying to cope with the twin pressures of cost explosion and demographic change.

5. Consequences for Migration Research and Policy

The PEMNT research departed from the insight that migrants tend to move into particular economic sectors and that the effects of migration can thus be very specific and linked to the particular sectoral characteristics. We selected the ICT, health care and construction sectors in six European countries because they are all sectors within which foreign workers have been present. Our cases also provided divergent regulatory variables at national level connected to the EU framework (except for Switzerland which was interesting because of the comparable resonance of the issues, but within a non member

state). We also sought to eschew the development of national case studies because of cross-national similarities in the organisation of the sectors and the importance of exploring transversal themes. We thus set out to analyse the impact on recruitment decisions within health care, ICT and construction organisations of the impact of national, supranational and international regulatory variables. We sought to understand sense-making processes within organisations and thus the meaning given to migration within these organisational settings. This conclusion has sought to bring together the various chapters and demonstrate how, why and when decision-making processes within the three sectors have led to particular migration outcomes. We also saw that the impact of our ›PEMINT variables‹ differed to a significant extent depending on the organisational setting within the three sectors. This was shown to be the case for the *international* ICT sector, the *European* construction sector and the *national* health care sector. The implications for migration research of these findings are, first, the relevance of the sector as the unit of analysis. Second, the state has been the classical reference point for migration research and the point at which issues associated with the regulation of migration and the integration of immigrant newcomers have been articulated. Our research suggests that, while states retains an important role, the characteristics of particular sectors can lead to migration outcomes for which the point of reference is not the state. This may be the forms of international migration encapsulated within organisations that we found in the ICT sector, or the irregular migration flows that were attendant to the posting of workers within the EU (for example, Portuguese workers moving to Germany to be replaced by irregular migrants from Portugal's former colonies or east European countries). The third implication of migration research is that PEMINT demonstrates the relevance of incomplete European integration as both a problem and an opportunity. We understood incomplete European integration as referring to the patchwork of EU competencies that are highly developed in some areas (such as free movement for EU citizens) and far less developed in others (such as welfare and fiscal provisions). We have not adopted a simplistic teleological perspective that assumes that this incompleteness will be eroded as the EU moves to a state of complete European integration. For one thing, it is far from clear what ›completeness‹ would involve. Rather, we assume that incomplete European integration draws into view the relationships between national, supranational and international regulatory variables and that the articulation between them will be central to the understanding of patterns of labour migration and that specific effects will be viewed at the level of sector that will have different relations to these multi-level variables.

This leads to some policy implications of the PEMINT research. First, it becomes abundantly clear that migration cannot be usefully understood as

single, compact, homogenous event. International migration comprises a highly diverse set of phenomena that involve the crossing of state borders but for different reasons and for different durations. Moreover, this migration is not something that ›happens‹ to receiving states. Rather, the territorial, organisational and conceptual borders of these European states ascribe meaning to various forms of international population mobility. More specifically, as our research shows, the organisational settings provided by the ICT, health care and construction sectors provide important contexts within which meaning is given to migration as a solution to the dilemmas faced by recruiters. What we also have seen is that ›problems of migration‹ can often be more general symptoms (rather than causes) of restructuring processes within sectors. This has important implications for perceptions of migration, as migrant workers cannot, for example, be held responsible for the more general ways in which health care systems must respond to cost consciousness and demographic change. The current interest in migration management will thus depend upon a nuanced understanding of migratory phenomena with a strong focus on the sectoral level.

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