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The return of the state: how European governments regulate labour market competition from migrant workers

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Abstract
What is the role of the market economy and of the European Union in shaping policies that limit migrants' access to the labour market? While much of the existing research has examined the development of border policies in Europe, less attention has been given to post-entry measures regulating the employment of Third Country Nationals. We examine the role of different market economies and the European Union in devising lesser-known measures that target migrant labour market competition. Focusing on the period from 1990 to 2020, we analyse four case studies: Austria, Germany, Ireland, and the United Kingdom. We hypothesize that these migrant labour market competition measures (MCM) have emerged in ways that challenge both the marketization of migration thesis and predictions from theories of EU immigration policymaking and varieties of capitalism (VoC). While the European Union's influence partially explains the adoption of some selective policies, the emergence of MCM transcends the VoC framework. Furthermore, contrary to marketization claims, states have sought to address labour market concerns about competition from migrants by adopting selective, rather than indiscriminate, regulatory approaches. We argue that the interplay between selectivity and measures restricting migrant labour market competition has become central to understanding how states regulate migration in the European Union.

Introduction

What is the role of the market economy and of the European Union in shaping policies that limit migrants' access to the labour market? In an influential article, Favell and Hansen (2002) argued that by the turn of the 21st century migration policy could no longer be adequately explained by state-centred institutionalist theories that emphasized the role of national politics, citizenship, and sovereignty. What was required was a market-driven analysis of new migration that would better explain the selective, expansive, and reconfiguring impact of market forces on European immigration policies. This argument was, of course, consistent with the then popular claim that mass migration, along with other aspects of globalization, had contributed to the declining sovereignty of the nation

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state and the waning of its capacity for unilateral action (e.g., Sassen, 2000; Holton, 2011).

In the years since Favell and Hansen presented their argument, anti-immigrant politics has surged across Europe (Dennison & Geddes, 2019) and so the idea that the state could help employers address labour shortages through migration, especially from outside Europe (Czaika & Di Lillo, 2018), became much more controversial. Over the same period, the European Union (EU) endeavoured to create a common EU migration policy which, aside from curbing migration, also sought to help the EU compete with the United States in seeking to attract highly skilled migrants (Boeri et al., 2012). In this context, supra-national organisations like the European Union are thought to provide a countervailing power against anti-immigrant politics within nation states (Acosta & Geddes, 2013; Block & Bonjour, 2013; Thielemann & Zaun, 2018). Simply put, they provide a forum for the depoliticization of migration politics at the supra-national level and so the EU has tried to prevent regulatory competition leading to a race to the bottom. Accordingly, it has intervened to prevent regulatory competition by passing directives and regulations that set a minimum floor of common rights for asylum seekers, refugees and economic migrants, equal across the whole of the EU, thus solving a coordination problem across the member states.

Drawing on what Hammar (1985) famously defined as 'immigrant policies', that is, the rights and regulations bestowed on migrants once they are in the host country, we examine how Favell and Hansen's marketisation of migration thesis fares when reviewed in the context of policies intended to restrict access to the labour market. More specifically, we refer to measures designed to limit the labour market competition that natives experience from immigrants (Ruhs, 2014). We label these policies: *Migrant Labour Market Competition Measures*, or MCM. These measures include labour market tests, minimum requirements, and qualifying periods (further defined below).

Our research thus answers a pivotal research question: What is the role of the market economy and of the European Union in shaping policies that limit migrants' access to the labour market? We do so by engaging with two sets of theories, the former related to the working of the labour market across countries associated with different varieties of capitalism (Hall & Soskice, 2001), while the latter focuses on the role played by the European Union in managing migration (Geddes et al., 2020).

Research on immigration policies has mostly focused on the restriction of entry and border control, with a consensus that in the countries of the European Union (EU) migration policies have become increasingly more selective over the last three decades (Beine et al., 2016; de Haas et al., 2016;). As Kukathas (2021) has pointed out, however, immigration control is not only about preventing outsiders from entering other countries, it is also about controlling what they do after they gain entry. Immigration control, in other words, does not stop at the border.

Despite extensive research on immigration control, scholars have so far overlooked the introduction of labour market competition measures (MCM) that are either preconditions for entry or govern the labour market access of immigrants. In our exploratory study, we focus on four European countries that represent distinct categories, according to the Varieties of Capitalism (VoC) literature, and which have differentiated relations to the EU. Our findings indicate that our selected case studies of Austria, Germany, Ireland, and the United Kingdom, - independently of each other - introduced similar series of

measures designed to prevent labour market competition from third country nationals (TCNs) over the same period. In our study, we conclude by confirming the irrelevance of the VoC structure in relation to changes in MCM, but find that the EU plays a pivotal, yet differentiated role in regulating MCM, but only in selected migration categories.

An additional advantage of this research is that it examines policy development over a substantial period (1990–2020) that included the eastward expansion of the EU in the early 2000s, the so-called A2 and A8 accessions.[1] We conclude the analysis in the year 2020 to avoid accounting for changes in migration policies due to the Covid pandemic and Britain's exit from the EU. We begin by discussing existing research on the development of migration policies in Europe, the role of the European Union and the VoC literature. We then outline the indicators of migrant labour market competition which we apply to five types of migration permits: humanitarian, seasonal, highly skilled, intra-corporate transfers (ICTs) as well as those of salaried migrants. One of our concerns is to understand whether and how the MCM measures vary according to the category or immigration as well as over time.

The marketisation of migration?

In setting out the case for a market dominated conception of migration, Favell and Hansen (2002) sought to challenge the popular notion of a Europe in which governments had full control of their borders and, consequently, that migration flows were to be understood as phenomena that were shaped largely by the policies of nation states. By the early 2000s, however, it had become clear that economic emigration from former Soviet countries and population displacement arising from wars elsewhere were bringing thousands of migrants and refugees into Europe (p. 595-6). At the same time, Germany and the UK broke with their decades-old position as 'zero immigration' countries and turned once again to immigration to address some of their economic and demographic challenges. This latter step was, of course, facilitated by the east-ward expansion of the EU and the subsequent initiation of east-west migration flows.

For Favell and Hansen, the market-building drive of the EU has led to a more liberal and expansive approach to immigration that 'does not necessarily end even at the borders of the EU's accessions partners (p.587). What has emerged is a new international labour market that responds to employer-led demands for the recruitment of non-European and intra-European migrants whether at the low- or high-skill ends of the labour market. The emergence of employer-friendly immigration policy across Europe has not, however, received the support of public opinion, which has become increasingly hostile to market led demands (p. 593-4) (see also Lavenex, 2017).[2]

Instead of viewing immigration policy as a contest between state and market, the concept of the immigration policy trilemma offers a more fruitful way of analysing policy choices. The trilemma is that governments must strike a balance between the imperatives of markets, the liberal states' obligation to immigrant rights, and domestic political pressures to circumscribe them (Lahav & Messina, 2023: 4). The challenge, in other words, is to manage populist pressures for labour market protectionism against

[1] Croatia joined the EU in 2013; however, we did not include Croatia in our analysis, mainly as it came after the A8 and A2 accession and because of the smaller size of its economy, it did not influence on its own the shift in migration policies of the other EU countries.

[2] Hostility to free movement and migration played an important role in the successful Eurosceptic campaign for Brexit (Dennison & Geddes, 2018).

employer demands for more labour while trying to prevent exploitation by providing a minimum floor of economic and social rights for migrant workers (Marsden et al., 2021). What Favell and Hansen argue is that the focus has shifted decisively toward meeting employers' labour market needs because governments feel compelled to support an expanding economy (p. 598).

The decades since the turn of the century, however, have been characterised by the pronounced rise of anti-immigrant politics across western Europe. Increased migration following the accession to the EU in 2004 of eight European countries (known as A8), and further increases following the accession of Romania and Bulgaria (A2) three years later, led to rising concerns about labour market competition and demands on housing and public services (Kahanec and Zimmerman 2010). Fuelled at least in part by negative coverage in media outlets (Eberl et al., 2018), immigration gained salience in the minds of the electorate and its persistence as a political issue led to changes in political behaviour, with one of the most significant being the rise of anti-immigrant political parties in some fifteen European democracies (Dennison & Geddes, 2019). As immigration increased in salience and as populist', 'radical' or 'far right' parties made dramatic gains in elections, politicians and political parties from across the political spectrum began to take pride in being tough on immigration. What followed was a surge in legislation that sought to increase border control, and restrict entry for irregular migrants, family members and asylum seekers. A significant feature of this new wave of legislation was an emerging distinction between wanted and unwanted immigrants as measures to increase restrictiveness for asylum seekers and labour migrants were accompanied by others providing entry to select graduates, professionals, and investors. Studies using different policy indices, from DEMIG to IMPALA and IMPIC, all point towards increases in selectivity and restrictiveness as migrants' and refugee numbers increased (Beine et al., 2016; de Haas et al., 2016; Helbling & Kalkum, 2018).

Though domestic politics may be the primary source of such restrictions, and while we were aware that elements of MCM had appeared in the UK (Ruhs, 2014), we want to explore whether such labour market competition measures have emerged elsewhere. The first question we examined was whether such measures were introduced in other countries with different types of economies and a different relationship to the EU. The second was whether states were distinguishing between different types of immigrants when introducing anti-competition measures. If so, then it could be taken as indicating that, at least in terms of labour market regulation, a state-centred approach was still relevant to understanding the relationship between labour markets and migration.

The European Union and Liberal constraint

One of the possible sources of variation that we examine is the claim that supra-national organisations like the European Union provide a countervailing power against anti-immigrant politics within nation states. Here a growing literature on the EU has sought to conceptualise it as a source of 'liberal constraints' on member state governments who no longer have complete control over European migration governance (Acosta & Geddes, 2013; Kaunert & Léonard, 2012). Delegation to international institutions such as the European Union strengthens non-majoritarian policy dynamics and shields EU policymakers from populist pressures that confront national governments. Whereas national politicians must subject themselves to the political preferences of the public, policies

developed by supranational organisations are made possible by the 'relative "insulation" of technocrats and judges from the harsher glare of electoral politics' (Geddes, 2000: 633). Consequently, such institutions can curb member states' quest for immigration restriction and so the result is more liberal policy making.

Empirical support for this still contested thesis is growing. Kaunert and Léonard (2012), for instance, argue that the Commission, the European Parliament, and the Court are 'more "refugee-friendly" than Interior ministers' (p. 1406). Block and Bonjour (2013) claim that the Commission and the Court 'are asserting themselves as strong protectors of family migration rights' (p. 223). In the area of asylum, the introduction of EU law has prevented a race to the bottom in national deterrence measures, reduced free-riding opportunities, and raised the standards for refugee protection in member states. All of this has been attributed to the role of supranational institutions in formulating EU policies (by establishing minimum standards) and to their influence in the implementation phase when the Commission and Court overseeing the introduction of EU migration law within member states (Thielemann & Zaun, 2018). Here the Commission and the Court tend to adopt a more 'rights-oriented' role that enhances the rights of migrants and makes it more difficult to act more restrictively (see Acosta & Geddes, 2013).

Among the limited existing research on MCMs, Jesse's (2012a, Jesse, 2012b) research is one of the few to examine the influence of the EU on regulations for third country nationals. Jesse reports that EU legislation provided many opportunities for restrictions on employment but it left considerable discretion to Member States to implement whatever barriers they thought appropriate in the form of labour market tests, preference rules, and waiting periods. It also left it open to member states to decide if TCNs could compete for posts in the public sector (Wollenschläger et al., 2018: 20).

Moreover, the EU's institutional environment has also been understood as an effective tool to overcome collective action problems relating to policy issues such as migration or security (Block & Bonjour, 2013; Thielemann & Zaun, 2018). As de Mesquita defines them (2016), collective action problems are those in which an individual's contribution to a common policy has potentially sizable positive externalities. Yet contributing imposes individual costs that are possibly higher than the 'social benefits' it produces and so an individual might decide not to contribute to the common good (101).[3] In our case, to solve the lack of action derived from member states' incapability of organising to regulate MCM successfully, the EU will take on the responsibility and do so. We thus hypothesise that the EU will step in to regulate MCM in two cases: to either create some 'minimum standards' and so avoid a race to the bottom led by free riders, or to solve a 'coordination problem' that members' states individually do not have an incentive to coordinate.

Varieties of capitalism: varieties of labour market protection?

Finally, scholars have also tried to explain variation in immigration policy including MCM through a VoC approach. Using data from their original immigration policy index (ImPol), Consterdine and Hampshire (2020) examine policy changes in five European countries (France, Germany, Italy, Spain, and the United Kingdom) as they relate

[3] As Bueno de Mesquita (2016) defines it, a 'coordination problem' refers to situations where individuals benefit from taking coordinating action and solving coordination failures (no coordination) or coordination traps (suboptimal levels of coordination). A 'commitment problem' instead arises in dynamic settings where no enforceable contracts or institutions exist, thus leading to various types of inefficiencies.

to three admission categories: general, high-skilled, and low-skilled. They hypothesise that the deregulated labour markets of Liberal Market Economies (LMEs), such as the United Kingdom, should provide relatively unfettered access for both low- and high-skilled migrants while in Coordinated Market Economies (CMEs), such as Germany, they expect employers to lobby for skilled migrants who can fit easily into the existing production model, especially when there are skill shortages. They also assume that CME employers will be much less inclined to recruit labour migrants for more routine jobs to avoid unwanted levels of labour market competition and excess migration.

A second attempt at using the VoC framework to study MCM is that of Ruhs (2018), who examines differences across political regimes (democracies versus autocracies) and types of capitalism (LMEs vs. CMEs) using data on labour immigration policies across 33 high-income countries. Significantly for our purposes, he includes five employment indicators among his economic and social rights (free choice of employment, equal pay, equal conditions other than pay, right to join trade unions, redress in case of contract violation). Ruhs finds that autocracies are more open to labour migration but have more restrictions on economic and social rights. Furthermore, temporary migration programmes in LMEs impose fewer limits on the employment conditions of migrants than in CMEs, though he adds that they place more restrictions on migrants' social rights. Ruhs concludes by noting that the latter is an expected result as public policies in LMEs are likely to be more employer friendly than in CMEs where the labour market is subject to a greater degree of regulation.

Based on the expectations set by the VoC literature, it might therefore be expected that the structure of the market economy will be a good predictor of a country's attitude towards MCM. More specifically, we expect LMEs, which maintain a tradition of relatively open labour markets and prefer to import rather than cultivate vocational skills, to be less likely to pursue restrictive MCM. By contrast, CMEs, which operate a more regulated set of markets arising from agreements between peak associations of employers and trade unions, will seek to protect their workers by adopting restrictions wherever possible. Some form of selectivity may also be present though the major fault line should be between countries like the UK and Ireland on one side and Austria and Germany on the other.

Conceptualising migrant labour market competition measures (MCM)

Drawing on the work of Consterdine and Hampshire (2020) and Ruhs (2018), we develop hypotheses about the emergence of selective labour market protection measures by focusing on three kinds of immigrant employment regulations as indicators of MCM. The first specifies certain labour market conditions that must be met before migrant workers can take the job. Perhaps the most obvious example of a measure designed to prevent labour market competition is that of the *labour market availability test*, or LMT, on which we focus. Here an employer can only hire an immigrant to fill a post after first advertising the job within the country for a legally mandated minimum period. Though Ruhs' (2014) analysis of labour market protectionism focuses only on such measures, others are known to exist.

The second type of labour market restriction measure we focus on is whether a job must have a *minimum salary or educational requirement* before it can be filled by someone from a TCN. The salary threshold is set above the average required for that job so

that local employees cannot be undercut by foreign labour. Another restriction may be that workers are admitted on condition that they work in a particular occupation or region. Even if they are designed to address specific labour shortages, this is on the basis that they do not engage in general labour market competition with local workers.

Third, we examine freedom of employment.[4] Ruhs' survey (2013) finds that the vast majority of these temporary migration programmes tie migrant workers to a particular employer (87–88). In such instances, workers are unable to bargain over wages and conditions and so the employer, with the assistance of the state, dictates the structure of the employment relationship. Freedom of employment is usually granted after a '*qualifying period*' of employment with the first employer within the country, although not all countries under study allow such transition. To summarise, qualifying periods prevent workers from flooding onto the market while labour market availability tests and salary thresholds try to make jobs available only where there is a labour or skills' shortage.

We engage with our hypotheses by analysing how these three labour market requirement conditions for migrant workers have developed in our case studies over the 1990–2020 period and especially following the A2 and A8 accession: (1) the labour market availability test (LMT), (2) the minimum salary/educational requirements as well as sector-specific employment restrictions, and (3) freedom of employment regulations.

Migration trends

Before introducing our methodological approach, we briefly present recent migration trends across the four countries under study. Migrants as a percentage of total population increased substantially in these four countries over the last 30 years (EUROSTAT, 2011). In Austria, for instance, between the 1980s and 1990s the number of foreign residents increased sharply with the fall of the Iron Curtain. Austria also became a significant destination for asylum seekers in the late 1990s and, by European standards, has a relatively high proportion of immigrants (15.2% of its 8.4 million population). Those outside of Europe account for 9.1% of the total population (EUROSTAT, 2011: 23 – 4). Germany, on the other hand, gradually became a major destination for immigrants though it came to accept this only around the beginning of this century when it had already become the world's second largest destination for immigrants after the United States. In 2011 some 11% of its 80 million population were immigrants with 7.5% of the migrant population originating from outside of Europe (EUROSTAT, 2011: 23 – 5).

During the late 1990s the United Kingdom began to receive more immigrants than at any point in its history as citizens of the other countries of the European Union exercised their right to move to the UK under the freedom of movement principle. Even so, the larger proportion of the population (7.5%) came from outside the EU rather than from the other member states (3.5%). Finally, although it has traditionally been a country of emigration, Ireland became a destination for immigrants from inside and outside the European Union since the mid-1990s when the so-called 'Celtic Tiger' economy grew dramatically before a spectacular crash in 2008. However, immigration picked up again after 2010 and accounted for 14.1% of the 4.5 million population in April 2011 with those from outside the European Union comprising 3.1% of the population. Fig. 1.

[4] State imposed restrictions on the freedom to change employers featured in earlier Marxist analysis of unfree labour (Miles 1987). Our focus is the growth of a much wider range of restrictions since the 1990s.

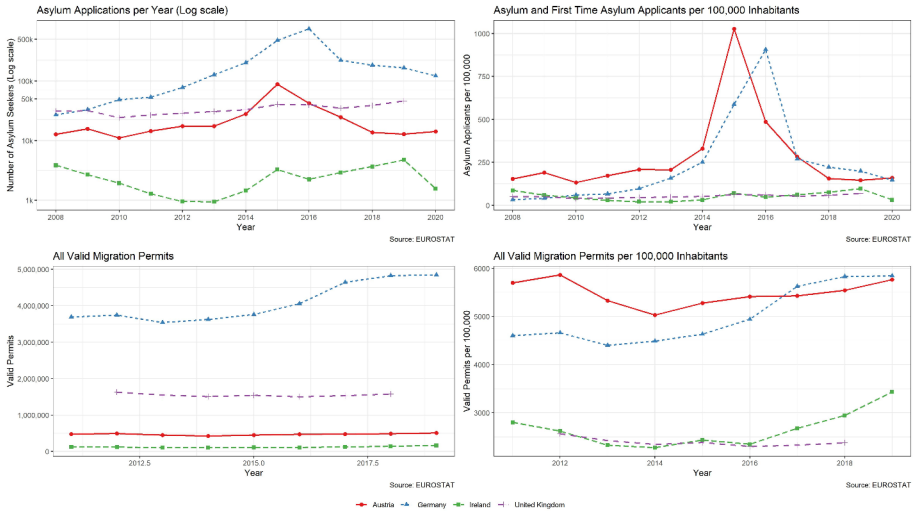

Fig. 1 Migrants as % Total Population over last 30 years

Methods and data

To conduct our analysis of change in MCM, we follow a long-established form of migration policy analysis, i.e., we codify primary and secondary legislation using the methodology of an existing migration policy index, the IMPALA database (Beine et al., 2015, 2016; Gest et al., 2014). Multiple migration policy indices have developed over the last decade as methodologies to establish policy change. As of 2017, according to Scipioni and Urso (2017) at least 12 migration policy indices had been developed, with many more published since (Blair et al., 2022; Consterdine & Hampshire, 2020; Hammoud-Gallego, 2022; Hammoud-Gallego & Freier, 2023).

Compared to most policy indices, IMPALA stands out as it is based on the direct codification of primary and secondary legislation, unlike most other indicators that are based on indirect sources such as reports (Blair et al., 2022; DEMIG, 2015; de Haas et al., 2014). This provides the methodological advantage of better conceptual validity, easier measurement, and clear-cut transparency in the codification process that enables easy replicability. Moreover, IMPALA follows a clear methodology in that it is designed to compare policies across countries over time, using inductively developed questionnaires.

For our study, we codified MCM-relevant legislation focusing on five categories of migration– called 'tracks'– that already exist in IMPALA: humanitarian, seasonal, highly skilled, intra-corporate transfers (ICTs) as well as salaried migrants. We develop further questions to codify changes in MCM for the three indicators of interest: (1) the labour market availability test (LMT), (2) the minimum salary/educational requirements as well as sector-specific employment restrictions, and (3) freedom of employment conditions. For more information on the codification, see the appendix. Our findings are based on the codification of legislation for the four countries under study according to the methodology described here.

Research findings

Until the early 2000s, the European Union played no role in shaping policies regarding access to the labour market for TCN of any category (Fig. 3). Even then, the initial Council Directive, which related to the reception of asylum seekers, asked only that Member

States determine a maximum period from the date of the application for asylum in which the applicant would not have access to the labour market (Directive, 2003/9/EC). A further directive for TCNs in long term employment followed in 2004 but it has only been in the years since 2010 that the EU began to introduce regulations on the employment of third country nationals.

And yet, in the four cases under study, regardless of their belonging to the Justice and Home Affairs (JHA) pillar of the EU, all– independently of each other– undertook radical reforms of their migration systems between 2004 and 2008, around the time of the EU's eastward accession. In Germany, the 1965 Aliens Law that determined how migrants were granted access to the labour market, was substituted in 2005 by the Residency Law (AuslBG, 1990; Zuwanderungsgesetz, 2004). Similarly, the 1975 Foreign Employment Law in Austria, was reformed in 2004 with the approval of a new package of reforms of the whole migration system, called the 'Fremdenrechtspaket' (Package of foreigners' rights) (AusIBG, 1975; Biffl, 2011). Following the same trend, also Ireland undertook a series of reforms of its migration system between 2004 and 2006 (Gusciute et al., 2015; Quinn & O'Connell, 2007) as did the UK by adopting a new Tier-based migration system in 2008, that was updated again in 2020 into a points-based one (Home Office, 2019, 2020HC, d (iii), 1; Migration Advisory Committee, 2010).

While the European Union per se did not actively impose any such changes in the migration policies in any country of the EU in this period, all of them reformed their migration system following the accession of eight Central and Eastern European countries– known as the A8– into the European Union. However, while 12 out of 15 European countries decided to impose transitional restrictions for A8 nationals to access their labour markets, Ireland, and the UK together with Sweden decided otherwise. The decision not to impose restrictions– motivated by high economic growth in the former two countries– resulted in 70% of migrants from A8 countries moving to either Ireland or the UK (Koikkalainen, 2011; Salt, 2011).

What the reforms of all these migration systems have in common, is a tendency towards making the entry of low skilled TCN more difficult, by setting a series of educational and salary thresholds, as well as prioritising the immigration of people with certain skills deemed to be lacking in the country, as shown below. The reasons for these changes were straightforward: with the expected entry of 10 new member states with lower GDP per capita than that of current members of the EU in 2004 (the A8 plus Cyprus and Malta), most Western European Countries expected substantial migratory inflows from these countries, especially low skilled. That led to the natural conclusion that in most cases, the demand for low skilled migrants would be met by the new member states alone. Therefore, new migration systems were needed to adjust to these new circumstances, thus limiting the immigration of low skilled TCN, while adapting migration systems to meet the labour market needs of the different industries within each country (Consterdine & Hampshire, 2020).

To be able to explain the intervention of the EU and the structure of the market economy in regulating MCM following the eastward expansion of the EU, we first discuss how specific indicators of MCM changed over time in our four case studies, followed by a discussion of both factors.

Labour market competition measures

As part of the overall reforms of migration systems across our four case studies, governments introduced a series of labour market competition measures to increase the selectivity of migrants across all major migratory categories. These measures included the introduction of labour market tests (LMT), education and salary thresholds, as well as qualification periods in which the TCN are tied to their employer– or freedom of employment. Finally, we also look at shifts in waiting periods before being able to access the labour market, which is limited to asylum seekers.[5]

Regarding the former, LMTs– common in all the migratory regimes under study– were introduced to protect native workers from labour competition from abroad and consist of three features: (1) they establish the labour priority of natives over TCNs,[6] (2) they include a minimum amount of time for which jobs have to be advertised, before TCN candidates can be considered, (3) the process to confirm either of these two steps can be divided into two categories: those that required 'attestation', that is, a simple declaration from the employer that they have advertised the job and not found a native or resident suitable for it, versus 'certification' systems, where the national employment agency checks that no suitable native or resident candidate was found for the position advertised.

Of our case studies, only the United Kingdom does not have a 'certification' system, which was proposed by the UK Migration and Advisory Committee (MAC) but refused on practical grounds (Ruhs, 2014: 73). Our other three cases, including Ireland, do have a 'certification' system in place, thus creating an additional bureaucratic layer that further protects native workers from foreign competition (See Appendix).

LMTs are common for most migratory categories, with few exceptions, such as seasonal workers, highly skilled migrants (under certain conditions) and intra-corporate transferees (ICTs). In Austria, for instance, an RWR (Red-White-Red) card can be issued to both salaried employees and highly skilled migrants on the condition of having passed an LMT, unless their job features in the country's 'shortage list'. Alternatively, highly skilled migrants can enter the country and seek employment for six months without the need for an LMT, but only in case they have reached enough points to qualify. In Germany instead, the decentralised Federal Employment Agency (FEA) approves the LMT for both salaried employees and highly skilled, unless their occupation features in the FEA's shortage list. Additionally, after the introduction of the EU Blue Card, TCNs applying for that visa are exempted from the LMT, provided they meet a certain salary threshold (Aufenthaltsgesetz, 2020: Sect. 19.a, 4; BAMF, 2012; DEMIG, 2015; Kreienbrink & Rühl, 2007; OECD, 2006, p.182).

Among the LME countries included in our small sample, Ireland is an outlier in that it not only requires certification but also has an extended period of advertisement as part

[5] Based on the 1951 Geneva Convention on Refugees, asylum seekers are the only category of migrants that– if they manage to enter a country– cannot be sent back without first going through the recognition process. In most cases, a positive result entails the recognition of the applicant as a refugee or– in the case the EU– a subsidiary status holder, with similar rights to those of a refugee (UNHCR, 1951). As the recognition process can take a long time, applicants are usually allowed to work after having waited a set number of months, with a few exceptions (see below).

[6] This prioritisation of EU nationals over TCNs in countries across the EU is also known as "Community principle". For an overview of it, see Robin-Olivier (2016).

of its LMT.[7] The advertising period is of eight weeks in Ireland (Ruhs, 2014), whereas in the United Kingdom was of two weeks (before being increased to 4 in 2010). Still, like both Austria and Germany, Ireland has a 'Highly Skilled Eligible Occupations List' (HSEOL) that allows highly skilled migrants to accept employment without the need for an LMT by receiving a 'Critical Skills' Employment Permit (CSEP). Finally, the United Kingdom does operate an LMT as well but it does not run exceptions depending on the formal skills of the TCN, having discontinued its highly skilled migration visa (the Tier 1) in 2011 (Gusciute et al., 2015; Home Office, 2010; Migration Advisory Committee, 2010; Pandiella, 2016: 16; Quinn et al., 2007; Sheridan, 2020; UKBA, 2010).

To summarise, all the countries in our sample adopted LMTs following the eastward expansion of the EU, with Ireland adopting some of the most stringent measures, in terms of both length of time a position needs to be advertised before being open to TCNs, as well as for the need to complete a formal 'certification' process, rather than a simple 'attestation'. The United Kingdom falls somewhere in the middle, with a shorter waiting period than Ireland, and an informal 'attestation' process, whereas Austria and Germany, do not have a minimum period in which the position needs to be advertised before it is open to TCNs, if the minimum criteria are met, but a 'certification' process is required.

A second widely implemented set of labour market competition measures are *educational* and *salary thresholds*. The diffusion of these policies across Europe– as exemplified in our sample– shows how, following the A8 and A2 accession to the EU, countries across the Union decided to update their migration systems. While Austria adopted in the early 2000s a Canada-style point-based system, which also includes a minimum salary requirement, Germany adopted a different migratory regime, which gives more discretion to its Federal Employment Agency, but still requires a nation-wide minimum salary threshold to be met (Aufenthaltsgesetz 2020, § (2)0.5.). The UK point-based system instead - like Austria's - while requiring a minimum salary threshold, did not specify a minimum educational attainment to be met when summing up points for the approval of the Tier 2 (general) visa.[8] Likewise, Ireland's Employment Permit system also requires a minimum threshold, which varies according to the presence or absence of the occupation of the TCN in the HSEOL. For instance, a highly skilled TCN whose job is not in the HSEOL can still take up employment, but the minimum salary requirement raises from 32,000 Euros to 64,000 per year.[9]

Thus, all the four countries under study introduced salary thresholds to ensure that migrant workers might not be seen as undercutting the wages of natives. Educational requirements, on the other hand, were less popular as measures, except for highly skilled visas, where the TCN could access the country for a limited time to seek employment. However, that option is currently only possible in Austria, but not in any of the other countries under study. [10]

[7] Irish governments are probably sensitive to labour market competition given the country's long history of emigration and high unemployment.

[8] It is also important to note that for those jobs in the UK included in the Occupational Shortage List, the salary threshold is lower.

[9] The minimum salary required for a CSEP was increased in January 2020 from 30,000 euros to 32,000, and from 60,000 euros to 64,000 respectively (Citizensinformation.ie 2024).

[10] The UK had a Tier 1 visa, allowing for highly skilled individuals to come into the country to seek employment, but the scheme was suspended in 2011. Similarly, Ireland had a 'human capital' scheme, called Green Card, which was suspended in 2014.

Finally, a third labour market competition measure widely adopted in these last decades has been the introduction of a qualification period, that is, a minimum period in which the TCN is tied to their employer before they get unrestricted access to the labour market. In Germany for instance, Blue Card holders need the approval of the local foreign ministry offices (Ausländerbehörde) if they wish to change employer within the first two years holding that visa (Aufenthaltsgesetz 2020, § 18b (2)), before being granted unrestricted access to the labour market, while in Austria RWR Card holders are tied for one year (extended to two years in 2017) with their first employer, before being able to apply for an RWR Card Plus, which grants unrestricted access to the labour market. Tellingly, LMEs such as the United Kingdom and Ireland are more restrictive than that, with the United Kingdom allowing Tier 2 holders only to work for the employer mentioned in their certificate of sponsorship, with no unrestricted access to the labour market. Similarly, EP holders in Ireland are also tied to their employer for their first year, and only after that can they apply for another EP permit with another employer, thus without being able to get unrestricted access to the labour market.

Additionally, while all these labour market competition measures apply to several migratory categories, one of such measures has been applied to the humanitarian category only: waiting periods for asylum seekers to access the labour market. Asylum seekers differ from any other migratory category in that their arrival is not planned by migration authorities and once an applicant reaches its destination country, they cannot be refused access to the refugee recognition process, which - if granted - provides unrestricted access to the labour market. Over the last three decades, these waiting periods for asylum seekers have often changed as shown in Fig. 2, led by the role of the EU in this process having set through its 2003 Reception Directive (2003/9/EC) a maximum of a 12-month waiting period for all JHA-bound EU member states, which was decreased to nine months with the 2013 Reception Recast (2013/33/EU). While in both Austria and Germany access to the labour market is possible - provided a LMT is passed - after three months, for Ireland this increases to nine months without a LMT, whereas the United Kingdom still requires a 12-month waiting period, plus a LMT.

Before concluding this section, we want again to point out how these labour market competition measures show how the European countries under study gradually increased the selectivity of TCN migrating for employment purposes. TCN migrants in other categories such as ICTs and seasonal workers were also affected by EU Directives (2014/66/EU and 2013/36/EU respectively), but being these 'temporary' migration categories, their importance in the public discourse around migration has been limited so far. Finally, in the next section we compare these findings with the expectations set out by the literature on the role of the European Union and structure of the market economy as laid out in the VoC literature, and what these tell us about broader trends in access to employment for TCN across the EU.

The EU as a collective action problem solver

As discussed above, the structure of the migration systems of the countries under study was drastically updated following the eastward expansion of the EU in the first decade of the 2000s. Yet, while migration policies were mostly driven by national legislation, in some instances EU legislation was implemented to regulate them. Why is this the case? Let's start by looking at how this engagement developed. As shown in Fig. 3 below,

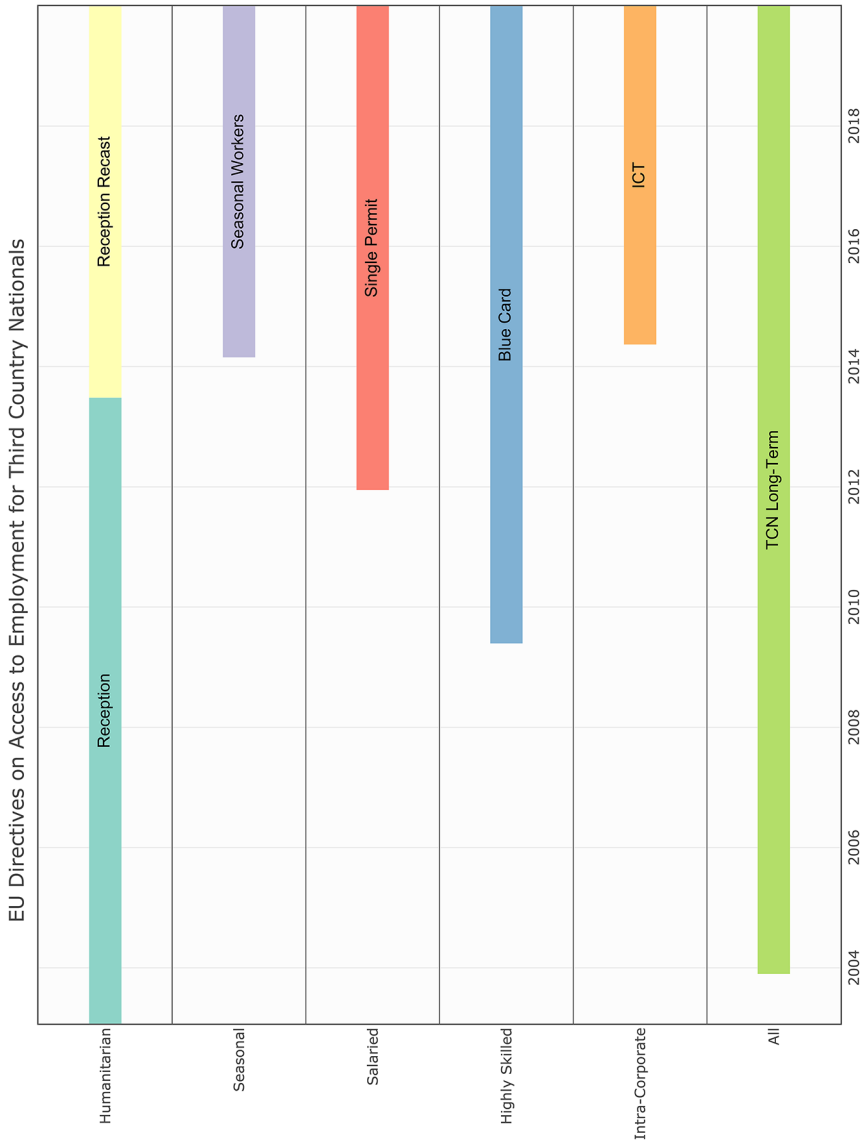

Fig. 2 Timeline Access to Employment for Asylum Seekers

over time the EU legislated increasingly across different types of migration. In 2003, it adopted the first Reception Directive aiming at asylum seekers and refugees, and the TCN directive, relating to the rights of TCN long-term residents across the Union. This was followed in 2009 by the Blue Card Directive aimed at highly skilled TCNs, the Single Permit Directive in 2011, followed by the Seasonal Workers' and ICT Directives in 2014.

The evident increase in the EU's involvement on migrants' rights seems to have been motivated by two sets of collective action problems. The former, relates to a coordination problem, with EU member states seeking to avoid a race to the bottom in the provision of migrants' rights, especially concerning asylum seekers and refugees. This problem relates to the belief that those states that provide more rights, especially regarding employment, to asylum seekers might experience what has been termed as 'asylum shopping', that is, individuals seeking to apply for asylum in the country where more rights are provided to them, although little empirical evidence exists to support this idea.

Another instance where the EU's role as a coordination problem solver is evident is in its adoption of the Blue Card or ICT Directives, where it essentially sought to ensure to increase its international competitiveness, especially in relation to the United States' Green Card, by ensuring that a clear legislative framework for the highly skilled and for international companies existed.

However, its role in the promotion of the Seasonal Workers' Directive for instance, does not seem to reflect the need to solve a coordination problem. Instead, it seems that in that specific instance, the adoption of the policy reflected the acknowledgment that in certain member states, seasonal workers were routinely abused. As suggested by Zoeteweij-Turhan (2017), to ensure some minimum standards in this case, they opted to introduce the Directive, thus solving a commitment problem that existed between the EU and certain of its members. The lack of the EUs' involvement in any of the other migration categories where no coordination or commitment problem existed, seems to validate a broader theory about its involvement in regulating migrants' rights and their Labour Market Competition measures.

Conclusion

Our starting proposition was that the surge in immigration control legislation was accompanied by a less researched set of measures designed to prevent or curtail labour market competition from economic migrants and asylum seekers. Over the course of thirty years, and especially since the A8 and A2 accession, all the countries included in our study introduced a range of new legislation and policies that could all be characterised as a form of labour market protectionism. What is especially notable is that two countries - Austria and Ireland - which had barely any restraints on labour competition at the start of the 1990s had roughly the same restrictions as long-standing countries of immigration– Germany and the UK– by the year 2020. Significantly, none of our chosen immigration categories were exempt from such measures with even the highly skilled being subject to labour market availability and salary threshold tests.

To investigate our starting proposition, we chose to examine evidence from countries with different types of economic structures and relationships within the EU, at least when it came to immigration policy. Regarding the EU, the solitary instance of a liberal constraint on national protectionist measures was in the area of humanitarian migration where it sought to prevent 'asylum shopping' by creating a common qualifying period

before employment could be sought, while also ensuring that countries would not fall below certain 'minimum standards'. Similarly, legal frameworks such as the Seasonal Workers Directive ensure the existence of similar 'minimum standards', eased by the fact that– given their temporary nature– seasonal workers' schemes often do not encounter strong populist backlash. On the other hand, EU's involvement in regulating highly skilled employment and ICTs clearly represents an effort to solve a 'coordination problem' among the Unions' many members.

Regarding the relevance of the market economy, we found that measures to prevent or curtail labour market competition from migrant workers were introduced in all four countries regardless of their classification in the Varieties of Capitalism literature. No clear fault line could be detected between the co-ordinated market economies of Austria and Germany and the liberal market economies of the UK and Ireland. It could be argued that the fact that the UK allows employers only to 'attest' that they have conducted a labour market test while in the other countries employers need only to provide some form of certification would indicate a more liberal 'hands off' approach (see also Ruhs, 2014). But the basic fact remains that each of these countries use labour market availability tests regardless of the specific bureaucratic requirements. Our findings are therefore broadly in line with those of Consterdine and Hampshire (2020) who conclude that the VoC may set broad parameters, but the direction and timing of policy changes is led by domestic politics and party competition over immigration.

So, what does this mean for claims of the marketisation of migration and the need to shift attention away from state-centred analysis? First, presenting it as a contest between market and state constrains our understanding of what has occurred over the past few decades. The basic insight from the trilemma is that the state must balance the three elements of markets, migrant rights and domestic politics. Our interpretation is therefore that the state has strived to reduce labour market fears about competition from economic migrants while simultaneously enabling the recruitment of immigrant workers by employers by increasing the selectivity of migrants. In terms of economic rights, what is also worth noting here is that member states can give preferential access to local born workers because third country nationals do not enjoy the same rights as EU citizens. Though some rights have been aligned (e.g. family reunification), and they are supposedly entitled to equal treatment with EU citizens, TCNs do not enjoy the same mobility rights (Wollenschläger et al., 2018). What has emerged is that the legal situation of TCNs has altered so that they now face an additional set of labour market regulations designed to prevent or limit economic competition. So far, there is no indication that these regulations will be challenged through the courts or other form of 'liberal constraint' even if there are good legal reasons for aligning the treatment of long-term resident migrant workers from non-EU countries with those from other member states (Weingerl & Tratnik, 2022: 37 – 8).

The notion of Europe as a "fortress" must be reevaluated, given that nation-states have implemented a wide array of measures designed to limit labour market competition from immigrants. While Europe may resemble a fortress, it is one with numerous entry points and bridges that permit significant numbers of migrants to enter. These are often carefully selected based on market demands and political priorities, yet pathways are open for many. This selective approach, combined with measures to curb labour market competition, is becoming central to understanding how countries regulate migration. Such

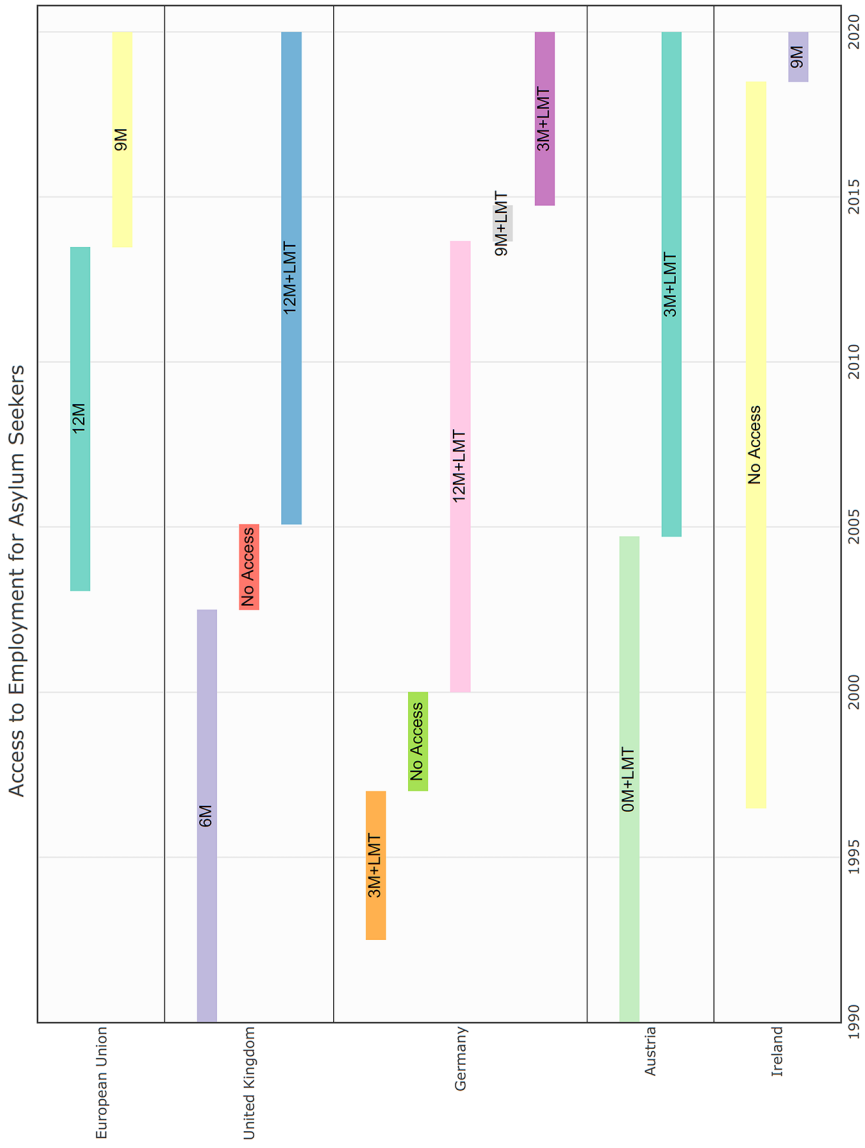

Fig. 3 EU Directives on Access to Employment for Third Country Nationals timetable

selectivity can be seen as an effort to differentiate among various migratory profiles, particularly those involving lower-skilled workers. However, in many cases, this approach may not significantly reduce the overall number of immigrants entering a country.

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Conflict of interest
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