

EU LABOUR IMMIGRATION POLICY: DISCOURSES AND MOBILITY

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This article seeks to present the labour immigration policy developed at the European Union level since the entry into force of the Amsterdam Treaty until the adoption of the first European law on labour immigration. The first part relates the European debates and discourses regarding the opening to new labour migration and it highlights the main steps of the policy debate at the European level. The European Commission discourse on labour migration is emphasised as well as the reactions of other actors, in particular the Member States. The second part examines the Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, also called the Blue Card Directive. This part highlights the features of the category of new labour migrants and points out the consequences of preferring temporary mobility. It also reviews other categories of workers such as seasonal workers and intra-corporate transferees. In the final section, the article questions the rationale of the on-going European Union discourse, the policy and its challenges. Despite new European Union discourse in favour of a certain kind of migrants; wanted migrants (skilled workers) are treated as non-wanted migrants.

Keywords: Europe, labour immigration policy, high-skilled workers, Blue Card Directive

1. Introduction

From the free circulation of persons to immigration policy, developments in European Union (EU) policy have challenged the concept of mobility. Today the Europeanisation of migration policies brings new debates on mobility and in particular those concerning access to the European labour market. Since the end of the 1990s, a new discourse promoting a relative openness to labour immigration has progressively emerged and coexists with the zero-immigration discourse. The objective of this article is to analyse the development of this new discourse and the resulting EU labour immigration policy.

European cooperation in matters of immigration control began in an inter-governmental framework where States pursued objectives of limiting immigration

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consistent with the doctrine of zero immigration developed in the second half of the 1970s. This restrictive trend “consists of (1) ending active labour recruitment, (2) more rigorously monitoring second migration to limit fraud and discourage potential applicants, and (3) combating illegal migration”.¹ Outside the European Community, several States created through intergovernmental agreements a Schengen area without internal borders with, as a corollary, the implementation of security measures to control the external borders. These external borders were securitised to the point that several observers and organizations denounced the implementation of a European fortress.² Since the Treaty of Maastricht entered into force in November 1993, the European immigration policy has basically developed emphasising the dissuasive/exclusionary axis of its immigration policy.

Despite political and economic considerations to close the borders, another trend was developing inside Europe with the promotion of the free movement of workers within the framework of the European Economic Community.³ European integration led to the development of a regime of free movement for European citizens in the various Member States of the Union. Hence, European citizens are free to move to the EU Member State of their choice and are permitted to stay and work therein. In principle, every European citizen thus enjoys freedom of movement within the EU. However, politically, this free movement is not considered as immigration. Using the terms “mobility” and “movement” of the “citizens of the Union” instead of European immigration or European immigrants is already revealing by itself. The differentiated usage of terminology is a direct reflection of the political will to distinguish between forms of “intra-European mobility” and “extra-European mobility”, more generally referred to as international migration. On the basis of this distinction, persons are subject to different treatments in terms of admission and deterrence/exclusion. In the present article, we consider both European immigration in the framework of free circulation and non-European immigration as international immigration.

Finally, two trends developed in Europe with regard to labour mobility: one authorises and promotes mobility and movement of potential migrants of Member States within the framework of realising an internal market; the other one, on the contrary, even aims at restricting immigration of external workers into the EU. However, since the end of the 1990s, a relative opening-up can be observed within certain States. Some indeed modified their legislations so as to allow or facilitate certain forms of labour migration,⁴ although maintaining their discourse on the closure of borders.

¹ G. Freeman, “The Decline of Sovereignty? Politics and Immigration Restriction in Liberal States”, in C. Joppke (ed.), *Challenge to the Nation-State: Immigration in Western Europe and the United States*, Oxford, Oxford University Press, 1998, 100.

² D. Bigo, “Europe passoire et Europe forteresse: la sécurisation/humanitarisation de l’immigration”, in A. Rea (ed.), *Immigration et racisme en Europe. Interventions*, Brussels, Editions Complexe, 1998, 203–241.

³ S. Collinson, *Beyond Borders: West European Migration Policy towards the 21st Century*, London, Royal Institute of International Affairs, 1993.

⁴ C. Boswell, *European Migration Policies in Flux: Changing Patterns of Inclusion and Exclusion*, Oxford, Blackwell, 2003.

Moreover, as immigration became a security issue since the mid-1980s, and as prevailing discourses were dominated by logics of closure, various Member States had more difficulty with openness to immigration. Openness nonetheless remained but not in a continuous way. In this regard, analysis of EU immigration policy has often focused on immigration control and securitisation.⁵ With this article we deliberately attempt to focus on the discourse that advocates some openness to labour immigration because little attention has been paid to it. The present article adopts a longitudinal approach from the entry into force of the Amsterdam Treaty on 1 May 1999 until the adoption of the Directive of the Council of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of a highly qualified employment.⁶

The article is mainly based on semi-structured interviews with individuals from European institutions and European civil society, as well as on a series of documents produced by European Institutions. The approach used is inspired by discursive institutionalism theoretically synthesised by Vivien Schmidt.⁷ We conceptualise discourse as not only a vector of ideas on labour immigration – ideas that are available on different levels: from worldviews to political solutions, through programmatic ideas – but also as the process of interaction between actors.⁸ Political solutions and programmatic ideas, which define the policy problems, are located at the forefront of the discourse whereas worldviews located in the background are ideologically or philosophically oriented.⁹ The chosen discourse centres on interaction and looks at how ideas are exchanged and transmitted between the actors. This approach considers that the chosen discourse, under certain conditions, may explain the change in public policy. Using the concept of discourse as defined by the discursive institutionalism can focus on the meaning given to public action (cognitive dimension) and understand how it is justified (normative dimension).

The first part of this article comes back to the debates and discourses of the EU regarding openness to new labour migration and highlights the main stages of the process. The second part examines the Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, also called the Blue Card Directive. This part focuses on the features of the category of new labour migrants and points out the consequences of preferring temporary mobility. It also reviews other workers categories. In the final section, we question the rationale of the on-going EU discourse, the policy and its challenges.

⁵ E. Guild, “Primary Immigration: The Great Myths”, in E. Guild & C. Harlow (eds.), *Implementing Amsterdam. Immigration and Asylum Rights in EC Law*, Oxford and Portland (Oregon), Hart Publishing, 2001, 65–94.

⁶ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment, OJ L 155/17, 18 Jun. 2009.

⁷ V. Schmidt, “Discursive Institutionalism: the Explanatory Power of Ideas and Discourse”, *Annual Review of Political Science*, 11, 2008, 303–326.

⁸ *Ibid.*

⁹ *Ibid.*

2. European debates and discourses on new labour immigration

After a brief overview of the European discourse on labour immigration before the Amsterdam Treaty, the opening stage describes the ideas put forward by the European Commission in favour of new labour migration, and a Community labour immigration policy. This stage is followed by a deadlock period examined below. Finally, the last stage of the process (way-out) shows how the Commission modifies its discourse and how the first European law regarding labour immigration is adopted.

2.1. Discourses before the Amsterdam Treaty

From the beginning of the European construction, admission of workers has been encouraged in Member States.¹⁰ At the European level, it was made operational via the establishment of a right to admission right for European workers through the consecration of the freedom of movement within the Union.

[T]he European Union, from the beginning, has taken an extreme free market approach to movement of persons. The individual and his or her enterprise are acknowledged as best placed to exploit market niches, develop trade and industry and bring about innovation and development.¹¹

Until the early 1970s, the idea of a European cooperation regarding foreign labour was closely linked to a common employment policy. Then, there was an extension of the discourse of the European Commission, in particular via the *Action Programme for Migrant Workers and Members of their Families*,¹² where the coordination of migration policies was seen as a component of industrial, social, regional and development aid policies of the European Community.¹³ By the late 1980s, change occurred in the sense that cooperation on immigration matters became a component of the abolition of internal borders and related to the necessary creation of an internal market. In this context, cooperation on immigration matters has been formulated in a negative form of compensation measures related to the maintenance of internal security in a space in which internal borders have been abolished.

In the mid-1990s, despite restrictive national discourses, the Commission observed the *de facto* existence of a labour migration in Europe and promoted cooperation between States in relation to the needs of the labour market. Simultaneously, European cooperation on immigration evolved into a formulation of common response that Member States must develop to face migration

¹⁰ G. Callovi, "L'Europe des douze au défi de l'immigration", *L'Événement européen: Initiatives et Débats*, 11, 1990, 27–46.

¹¹ E. Guild & H. Staples, "Labour Migration in the European Union", in P. De Bruycker (ed.), *The Emergence of a European Immigration Policy*, Brussels, Bruylant, 2003, 207.

¹² Commission of the European Communities, *Action Programme for Migrant Workers and Members of their Families*, European Communities Bulletin, Supplement 3/76, 1976.

¹³ G. Callovi, "Regulation of Immigration in 1993: Pieces of the European-Community Jig-Saw Puzzle", *International Migration Review*, 26(2), 1992, 353–372.

pressures. The proposed added value of a common policy was supported by a common interest in addressing the causes of international migration. The need for cooperation on labour migration remained in the background.

2.2. First stage: the opening

In this first stage, the European context was characterised by a new institutional set up with the entry into force of the Amsterdam Treaty (1 May 1999). The Treaty established the legal and constitutional basis for a common immigration policy, but with temporal, institutional, and even geographical limits. Indeed, it provided for a transitional period of 5 years during which the Commission still had to share its right of legislative initiative with Member States. The European Parliament was only to be consulted. Thus, throughout this first period, only the Council could decide upon the binding instruments (i.e. directives and regulations) and, *a fortiori*, unanimously. Regarding labour immigration, this institutional situation continued up until the adoption of the Lisbon Treaty (2009).

Following the entry into force of the Amsterdam Treaty, the work programme that the Council agreed upon in the European Council meeting in Tampere determined the axes of this communitarisation, however without specific indications for labour migration.¹⁴ Overall, Europe at that time was in a favourable economic situation. At the national level, discussion of openness to labour immigration was thus initiated in some Member States (Germany or the United Kingdom).

In November 2000, the European Commission published the communication *Community Immigration Policy*.¹⁵ Since the new treaty, it was the first time that the question of a common labour immigration policy was discussed openly, herein the broader context of immigration in general. The Commission recalled that, although the first two channels of immigration were asylum and family reunification in quantitative terms, emphasis was to be placed on the need to develop an immigration policy designed to admit migrants mainly for economic reasons, as well as to address demographic decline and fight against irregular immigration.

This European discourse was different from the dominant discourse of Member States in terms of programmatic ideas and policy solutions at the national level. Indeed, rather than considering labour migration as a problem to be solved through restrictive policies or border closures, the new EU political idea presented it as a positive phenomenon, a solution to solve economic and demographic problems. Thus, the bases of this European discourse were the following cognitive ideas: first, immigration was seen as an inevitable and persistent fact and migratory flows were perceived as multidimensional; second, most Member States were countries of immigration. Normative programmatic ideas that flowed from these findings consisted of presenting labour immigration as a solution to demographic problems dramatically highlighted by the release of

¹⁴ Tampere European Council, *Presidency Conclusions*, 15 and 16 Oct. 1999.

¹⁵ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on a Community Immigration Policy*, COM(2000) 757 final, 22 Nov. 2000.

the United Nations Population Division report *Replacement Migration: It is a Solution to Declining and Ageing Population?*.¹⁶ This report argued that Europe should appeal to new migration, in particular labour migration, in the face of its declining and ageing population.

There was a window at that moment that was created by the U.N. Report on replacement migration which showed to everybody that there was a demographic issue and that we need migrants in Europe.¹⁷

The Commission also presented labour immigration as a solution to labour shortages and global competition. It defended a community-based approach as the best response to the multiple failures of restrictive national policies. According to the Commission, the repeated campaigns of regularisation, the persistence of irregular immigration and clandestine work, the migratory tragedies and the migration pressures demonstrated the inconsistency and ineffectiveness of these national policies described as unrealistic.

At this point, the discourse of the European Commission, and more precisely of the new Directorate-General Justice and Home Affairs (DG JHA), formed a coherent set of ideas that seemed in tune with the international concerns in regards to demography, but also with the emerging needs of workers in several Member States. This consistency was relative because DG Employment and Social Affairs, who objected to the association of migration with the Lisbon Strategy, did not necessarily share the normative ideas of openness to new labour migration.

To address this problem, the Commission proposed an orderly immigration process, accompanied by a discourse that emphasised the benefits of immigration and cultural diversity. The political solution proposed was intended to facilitate immigration of skilled and unskilled workers through an open, transparent, and proactive policy with indicative objectives. In short, “a common policy for the controlled admission of economic migrants”.¹⁸ The instruments proposed in 2001 to operationalise the political solution were, on one hand, a directive (*Proposal for a Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Paid Employment and Self-Employed Economic Activities*)¹⁹ and, on the other hand, a soft political cooperation which would include the definition of common guidelines (*Communication on an Open Method of Coordination for the Community Immigration Policy*).²⁰

¹⁶ United Nations Population Division, *Replacement Migration: Is it a Solution to Declining and Ageing Population?*, New York, United Nations, 2000.

¹⁷ Interview with European Commission former official, Brussels, 28 May 2009.

¹⁸ Commission of the European Communities, *Communication on a Community Immigration Policy*.

¹⁹ Commission of the European Communities, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purpose of Paid Employment and Self-Employed Economic Activities*, COM(2001) 386 final, 11 Jul. 2001.

²⁰ Commission of the European Communities, *Communication from the Commission to the Council and the European Parliament on an Open Method of Coordination for the Community Immigration Policy*, COM(2001) 387 final, 12 Jul. 2001.

This solution did not create a right of admission but it indeed had, as its objective, the facilitation of admission of all potential migrant workers. The proposal defended the admission of workers (employees or independents) by issuing a combined work and residency permit with two basic principles: a preference based on Community and economic need (admission subject to the needs of the labour market) while providing a number of exceptions (seasonal workers, cross-border workers, *au pairs*, interns).

This opening stage was featured by an openness to labour migration encouraged by the European Commission and by the legislative initiative for a Community labour immigration policy based on the new institutional arrangement.

2.3. Second stage: the impasse

I think the most reluctant are the EU Member States – on labour migration on having some community-based principles on labour migration. And it's also what is interesting – the same Ministers or the same State Secretaries that give the presentation here in Brussels are extremely positive about labour migration giving a real understanding on the demography, on the economic needs, on the labour market at home, on the international labour market, on competitiveness, and on the needs of having labour migration taking place. And, the same Minister, kind of going of home, and – you have some specific countries that I could name but I am not doing it but you know them all – they are going home and they say: “Labour migration only over my dead body! Not taking place with me.”²¹

However, neither the proposed directive on labour migration nor the open method of coordination is accepted by the governments of Member States represented in the Council. The second stage of the process looks like an impasse in the sense that the policy change proposed by the European Commission did not succeed. It began in mid-2001 and ended in early 2004. It was marked by the attacks of 11 September 2001 in the US. This major and unprecedented event overturned national, international, and European agendas. Despite the efforts of the Belgian Presidency, the issue of labour migration was sent back into the background as evidenced by the conclusions of the European Council in Seville (2002). This stage was also marked by the largest EU enlargement. With 10 new Member States, some of the 15 Member States applied transitional measures to most of their nationals. Most of them thus opted for a restrictive approach. How then could they consider opening up Europe to migrant workers from third countries?

²¹ Interview with a representative of the International Organization for Migration (IOM), Brussels, 9 Jun. 2009.

The beginning of this phase of bargaining was marked by the discursive dissonance with the issues rising on the agenda, such as the fight against terrorism and asylum. Moreover, because of the legal basis of the Treaty, the Council did not consider the programmatic ideas applicable. Some Member States considered also that in respect to the discrepancy between the needs of various labour markets of the Member States, the political solution proposed violated the principle of subsidiarity. Since this issue was controversial, but also difficult to assess, another criterion for admission was put forward, namely the admission or absorption capacity. This notion is equally vague, but far less controversial and will remain an emerging criterion of admission until the end of the process.

At the level of the Council discourse, the favourite policy solutions remained closing the borders and transitional measures in anticipation of the 2004 enlargement. It was based on the fear of a migration flood into current Member States as the debate also focused on appropriate migrant “quotas” with the recurrent question of who is qualified to decide the number of admissible labour migrants within the EU. In the context of drafting the constitutional treaty, the Convention on the Future of Europe provides an answer.²² It confirms the competence of the Community on immigration policy, but specifies that the authority to determine the number of migrants rests with the nations themselves.

Elsewhere, several Member States amended their laws to facilitate the admission of some workers, even creating specific systems for highly skilled migrant workers. In January 2002, the UK launched a pilot programme for highly skilled migrants.²³ This system awards points according to qualifications, work experience, previous earnings, and career success.²⁴ Belgium has also relaxed the conditions of entry and residence of highly skilled workers. Whereas their working permits were previously limited to 4 years in Belgium, they were extended by the legislation in force since April 2003.²⁵ In Italy, new legislation was adopted in July 2002.²⁶ It aims in particular to facilitate the entry of highly skilled migrant workers.²⁷ These opening measures do not concern exclusively highly skilled workers. Actually, several States, especially in southern Europe, were also looking for low-skilled labour for horticulture, agriculture, construction, household care, and support for the elderly. In 2002, Spain reformed its system of quotas and agreements with

²² European Convention, Final Report of Working Group X “Freedom, Security and Justice”, CONV 426/02, 2 Dec. 2002.

²³ G. McLaughlan & J. Salt, *Migration Policies towards Highly Skilled Foreign Workers*, London, Home Office, Research Development and Statistics Directorate, 2002.

²⁴ *Ibid.*

²⁵ Royal Decree of 6 February 2003 amending the Royal Decree of 9 June 1999 Enforcement of 30 April 1999 Law on the Employment of Foreign Workers, *Belgian Official Gazette*, 27 Feb. 2003.

²⁶ Law 189/02 of 30 Jul. 2002, so-called Bossi-Fini law (entry into force: 26 Aug. 2002).

²⁷ D. Paparella & V. Rinolfi, “New Legislation Regulates Immigration”, *EIROOnline*, 9, 2002, available at: <http://www.eurofound.europa.eu/eiro/2002/09/feature/it0209103f.htm> (last visited 22 Aug. 2013).

several countries.²⁸ There has been a split becoming more and more obvious in this regard between northern States and southern Europe. While the former States have been struggling to recognize the need for immigration facing hostile public opinion, the latter – new immigration countries – have been seeking solutions to deal with migration pressures and in particular irregular immigration.

In 2003, the Commission revised its specific and programmatic ideas via a new communication (*Immigration, Integration and Employment*) arguing that immigration of workers may actually offer a solution to skill shortages as long as appropriate migrants are attracted.²⁹ First, labour immigration was no longer presented as *the* solution but as a partial one to the demographic challenges. Even if the Commission recognized that only permanent immigration can compensate for the declining population, it left this aspect pending.³⁰ Second, labour immigration was considered a solution to migration pressures. Without being able to establish a clear correlation between opening up channels for labour migration and reducing irregular immigration, it was at least recognized that openness can serve as leverage for negotiating the readmission of irregular immigrants.³¹ Finally, political solutions involved selecting and attracting suitable migrants able to adapt and integrate. The integration of migrants was an additional stake in the debate even if the actors did not necessarily agree on the meaning of integration and therefore, what it implied in terms of policy.

This phase ended when both the Commission and the Council stated that the adoption of the proposed directive on the conditions of entry and residence of third-country nationals to purposes of paid employment and self-employed economic activities was impossible.³² The Commission recognized that the scope of the original proposal and the principle of Community preference on the national labour market needed be clarified.³³ This phase thus ended with the unresolved issues and debates just outlined. However, it was recognized that whatever European system would be implemented, it should never be a system of quantitative control. Finally, despite the refusal of the Council, there was an agreement to follow up the discussion with the Commission in a new informal group, the Committee on Immigration and Asylum (CIA). In 2002, the CIA was created at the initiative of the Commission and in reaction

²⁸ N. Ortega Perez, “Spain: Forging an Immigration Policy”, *Country Profile, Migration Information Source*, 2003, available at: <http://www.migrationinformation.org/Profiles/display.cfm?ID=97> (last visited 22 Aug. 2013).

²⁹ Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions on Immigration, Integration and Employment*, COM(2003) 336 final, 3 Jun. 2003.

³⁰ *Ibid.*, 16.

³¹ *Ibid.*

³² 2848th Council meeting, Justice and Home Affairs, Brussels, 27–28 Nov. 2003.

³³ Commission of the European Communities, *Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions, Study on the Links between Legal and Illegal Migration*, COM (2004) 412 final, 4 Jun. 2004.

to Member States' refusal to create an open coordination. Several respondents recognized that the CIA would be a space of discussion in the policymaking; it would allow the Commission to test some ideas behind closed doors.

2.4. *Third stage: way out*

In order to maintain labour migration on the agenda and to revive the debate, at the beginning of 2005 the European Commission launched an open consultation via the publication of a *Green Paper on an EU Approach to Managing Economic Migration*.³⁴ It reasserted the relevance of community action and of the openness to labour immigration. The analysis of Member States' contributions to the *Green Paper* shows their discursive reluctance to openness. Most of them, and especially the most important States politically (France, Germany, Spain, and UK), positioned themselves in favour of conditional or limited opening.³⁵ The demographic argument was in this regard perceived in a mitigated way. Member States admitted that, at most, migration could be a partial solution to demographic problems. They dodged in this way the debate on permanent immigration.³⁶ The idea of circular migration proposed in the *Green Paper* was consistent with this. Concerning claims of job shortages, Member States focused on the difficulty of defining precisely the needs of labour immigration. Member States emphasised the needs disparity among them and questioned the value that would result from a Community response. However, they recognized a clear need for highly skilled workers. Finally, Member States showed little belief in the provision that a European policy opened to labour migration could reduce migration pressures. They believed that other factors had to be taken into account. At the Member State level, immigration kept being conceptualised as a problem rather than a solution.³⁷

The views expressed by Member States around the *Green Paper* gave the Commission the opportunity to synthesise and explicitly evaluate its main arguments, as well as to put forward those able to convince decision-makers. Thus, the *Policy Plan on Legal Migration* presented by the Commission at the end of 2005 included arguments and ideas of the initial discourse, though differently presented.³⁸ The need of manpower of all categories of skills, the lack of highly skilled workers and the persistence of irregular workers in some areas showing a

³⁴ Commission of the European Communities, *Green Paper on an EU Approach to Managing Economic Migration*, COM (2004) 811 final, 11 Jan. 2005.

³⁵ France contribution available at: http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/france_fr.pdf (last visited 22 Aug. 2013). United Kingdom response available at: http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/united_kingdom_en.pdf (last visited 22 Aug. 2013). Spain response available at: http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/spain_es.pdf (last visited 22 Aug. 2013). Germany response available at: http://ec.europa.eu/home-affairs/news/consulting_public/0016/contributions/germany_en.pdf (last visited 22 Aug. 2013).

³⁶ *Ibid.*

³⁷ All contributions of Members States and civil society are available at: http://ec.europa.eu/dgs/home-affairs/what-is-new/public-consultation/2005/consulting_0016_en.htm (last visited 22 Aug. 2013).

³⁸ Commission of the European Communities, *Communication from the Commission, Policy Plan on Legal Migration*, COM (2005) 669 final, 21 Dec. 2005.

need for seasonal workers were put forward.³⁹ Based on this diagnosis, the Commission opted for differentiated immigration. Regarding the lack of workforce, the Commission focused on four categories of workers representing the common “needs and interests”: highly skilled workers, seasonal workers, intra-corporate transferees, and remunerated trainees.⁴⁰ The Commission also considered cutting measures for all migrant workers via a framework directive with a single-permit – a political solution already proposed in 2001. Nevertheless, it was a “differentiated” approach of labour immigration that was adopted instead of the undifferentiated one proposed in the first 2001 directive proposal. This phase was marked by pragmatism and acceptance on the part of the Commission to address migrant workers according to job categories.

In October 2007, the *Proposal for a Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment* (so-called Blue Card Directive) and the *Proposal for a Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State* (so-called Single Permit Directive) were simultaneously presented.⁴¹ According to the European Commission, all Member States more easily accepted the worker category targeted by the Blue Card Directive.⁴² Several reasons were put forward such as the lack of highly qualified workers, which was already acknowledged at the European level, and the international competition for these talents. Moreover, the Directive concerned a limited number of migrants and therefore no rejection from public opinion was expected. Finally, highly skilled migrant workers were expected not to disturb social cohesion and integrate easily, as developed further in the next section.

3. Highly skilled workers, favourite migration

Only the Blue Card Directive was eventually adopted. It is worth noting that, as negotiations begun for the Blue Card proposal, another draft directive was on the table for several months. It was a draft directive aimed at harmonising minimum administrative sanctions, financial and criminal proceedings against employers who employ irregular migrant workers.⁴³ The Commission proposed a

³⁹ *Ibid.*, 6.

⁴⁰ *Ibid.*

⁴¹ Commission of the European Communities, *Proposal for a Council Directive on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, COM (2007) 637 final, 23 Oct. 2007. Commission of the European Communities, *Proposal for a Council Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State*, COM (2007) 638 final, 23 Oct. 2007.

⁴² Interview with a European Commission Seconded National Expert, Brussels, 8 Apr. 2009.

⁴³ Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council Providing for Sanctions against Employers of Illegally Staying Third-Country Nationals*, COM(2007) 249 final, 16 May 2007.

Community instrument to reduce migration pressures by addressing what is considered a major factor in attracting unwanted migrants, i.e. informal work. It suggested that employers were required to verify legal residence before hiring foreign workers and that Member States carried out a minimum number of annual inspections of these, depending on the risks of economic sectors.⁴⁴ This proximity has helped to make the opening discourse on immigration more convincing. Interactions in the context of labour migration is thus doubly expanded and echoed in other discourses.

It was the Employment and Social policy Council meeting together with Justice and Home Affairs Council. And it coincides, if my memory serves me correctly, with the presentation of the two proposals: one was the Blue Card proposal and the other was the Sanctions against Employers employing illegally third country nationals. And the impetus from that was driven very much by the Portuguese presidency who wanted to focus on the inter-connections [...] in terms of labour policy and migration policy. And I think equally the Commission was very much in favour of broadening the discussion on those proposals and putting them in that slightly wider context. And uh . . . in a sense, it gave delegations the opportunity to look at those proposals in a slightly broader context than would have normally been the case if they were simply being presented within one framework rather than the other. Now the Council, you know, legally is a single body, so in that sense it doesn't matter to which councils a proposal may be brought or within which framework but it was, at the same time, I think, in terms of creating a consensus around the proposal, an approach of that kind can sometimes be useful and both those proposals have been seen through to completion within a relatively short period.⁴⁵

On the one hand, a measure of admission was negotiated and simultaneously a deterrent one. There was a kind of balancing of interests between those who wanted a Community instrument to attract desired labour migrants and those who wanted above all to curb unwanted migrants and reduce illegal immigration (zero-immigration discourse). On the other hand, the issue of labour migration was for the first time at the Community level of discussion between the Ministers of Employment and those in charge of immigration.

Finally, the discourse developed by the European Commission echoed the various issues that have been significant for the Member States: the fight against illegal immigration, the link between migration and development that is high on the international agenda, and the renewal of the Lisbon Strategy. Above all, as the Commission now advocated a "differentiated approach" to immigration. The ideas became relevant for policymakers especially concerning highly skilled workers. The *European Pact on Immigration and Asylum* adopted by the Council in 2008 attested to some extent that the ideas emerging from the Commission

⁴⁴ *Ibid.*

⁴⁵ Interview with an official of the European Council, Brussels, 29 May 2009.

discourse were consistent with those of the Council.⁴⁶ Thus the European Pact reminded that labour immigration should be based on demand and on the principle of Community preference and the needs of labour markets. It must be attractive for highly skilled workers (but also students and researchers) and should be temporary or circular and, finally, accompanied by a policy of integration.⁴⁷

The original discourse has changed, less in terms of worldview, which is strongly marked by an instrumental or utilitarian conception of migrant workers, but in terms of programmatic ideas and policy solutions. Moreover, the issue of migrant integration is increasingly taken into account, in conformity with Member States' concerns. The argument to reduce migration pressure is maintained, but complemented by another political solution that addresses these pressures.

3.1. *The Blue Card Directive*

Apart from the Directive 2005/71 on a specific procedure for admitting third-country nationals for the purposes of scientific research,⁴⁸ the Directive 2009/50 on the conditions of entry and residence of third-country nationals for highly qualified employment⁴⁹ is the first Community law that comes through common action, the decision to admit third-country workers, which remains under the sovereignty of each Member State. The Directive provides common rules on entry and residence for workers for the purposes of highly qualified employment and for their families. It establishes that workers who meet certain criteria may be admitted to the EU territory to reside and work for an initial period of 1–4 years.

The three admissions criteria are: (1) the existence of an employment contract or job offer according to the laws of the Member State, (2) higher professional qualifications, and (3) compliance with a salary threshold.⁵⁰ Thus, the salary stipulated in the contract or offer must be at least 1.5 times the average gross annual salary of the State (threshold that can be reduced to 1.2 times the average gross annual salary of the State for some occupations where there is an acute shortage).⁵¹ The Directive sets common criteria that Member States must impose on blue card applicants without prejudice to more advantageous conditions provided by national legislation.⁵² The worker admitted under this scheme

⁴⁶ European Council, 15 and 16 Oct. 2008.

⁴⁷ European Council, *European Pact on Immigration and Asylum*, EU Doc. 13440/08 ASIM 72, 24 Sep. 2008, point I §(a), (b), (c) and (g), 5–6.

⁴⁸ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research, OJ L 289/15, 3 Nov. 2005.

⁴⁹ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

⁵⁰ *Ibid.*, Chapter II, Conditions of admission, Art. 5, Criteria for admission, points 1 and 3.

⁵¹ *Ibid.*, Chapter II, Conditions of admission, Art. 5, Criteria for admission, points 3 and 5.

⁵² *Ibid.*, Chapter III EU Blue Card, Procedure and Transparency.

receives a European Blue Card (EBC), a work and residence permit that entitles the migrant to multiple entries, residence in the State of issuance, and employment.⁵³ During the first 2 years, changing employers is only allowed if the State authorises it.⁵⁴ After a year and a half (18 months), EBC holder can go and work in other EU Member States with their family members, provided he/she receives the authorisation of that Member State. The EBC holders are thus allowed to move but not so freely. They are entitled to European mobility under control of the Member States. Under the provisions of the Directive, EBC holders enjoy equal treatment with nationals of the Member State regarding working conditions, including requirements in terms of pay and dismissal, freedom of association, education, training and recognition of qualifications, a number of provisions of national laws on social security and pensions, access to goods and services including procedures for obtaining housing, information services and consulting, and free access to the entire territory of the Member State concerned, within the limits set by national legislation.

The Directive aims to offer migrant workers attractive conditions of residence and mobility. To do so, it departs from two previous Community instruments, namely the Directive on the right to family reunification⁵⁵ and the Directive concerning the status of third-country nationals who are long-term residents.⁵⁶ It gives the highly skilled worker more favourable provisions. Indeed, for an EBC holder, the reunification of family members is not conditioned by the prospect of permanent settlement (the right to obtain a right of permanent residence) nor by a minimum period of residence (up to 2 years in the Directive on family reunification).⁵⁷ In addition, family members of EBC holders have access to the labour market immediately; the Member States cannot apply the 1-year delay.⁵⁸ Conditions and integration measures are applicable only when the reunification has happened.⁵⁹ They do not determine or condition family reunification. Finally, the reunification procedure is speeded up since the waiting period is limited to 6 months instead of 9.⁶⁰ The Blue Card Directive therefore provides an easier immediate family reunification with fewer procedural constraints. These conditions are in turn conducive to respect the right of migrant family life and limit the negative impact of immigration on family life.

⁵³ *Ibid.*, Art. 7 EU Blue Card, point 4.

⁵⁴ *Ibid.*, Chapter IV Rights, Art. 12 Labour market access, point 2.

⁵⁵ Council Directive 2003/86/EC of 22 September 2003 on the right to family reunification, OJ L 251/12, 3 Oct. 2003.

⁵⁶ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents, OJ L 16/44, 23 Jan. 2004.

⁵⁷ Council Directive 2009/50/EC, Chapter IV Rights, Art. 15 Family members, point 2.

⁵⁸ *Ibid.*, point 6.

⁵⁹ *Ibid.*, point 3.

⁶⁰ Council Directive 2009/50/EC, Chapter IV Rights, Art. 15 Family members, point 4.

The granting of long-term residency is determined by length of residence calculated here with more flexibility for the EBC holder.⁶¹

On the other hand, the Directive has removed the objectives of the original proposal, which claimed to establish an immigration policy competitive with non-European policies, such as the US system, and with added value compared to national systems. Some examples show that the final provisions adopted are less attractive than in the draft directive. Thus, the proposed period of validity of the EBC is changed from a minimum of 2 years to a range of 1–4 years.⁶² The procedure for obtaining the EBC increases to 90 days instead of 30.⁶³ Above all, while geographical mobility is more rapidly authorised (after 18 months instead of 24), access to work must be authorised by the second Member State whereas the proposal required a simple notification.⁶⁴ So even though the Directive repeats its aims to encourage admission, its potential for attracting workers is substantially reduced. Security conditions of residence are lower for workers and consequently their mobility is not much encouraged. It cannot compete with the US green card that grants the holder permanent resident status, is valid for 10 years, and allows mobility and work in all 50 States. Several interviews highlight this situation as does the following statement by a representative of an international organization:

If you look for example at the blue card, it is not open enough from our perspective. If you really want to hire highly skilled people you don't give them a hard time, you are as open and as inviting as possible. Because those people, they can select where they go and they don't want to argue if their spouse is allowed to work or if after five years they should leave again or if they lose their job, then they should leave after a specific . . . this is not what they are looking for. They say, "thank you very much" . . . And you don't get the best, you get the second class.⁶⁵

Moreover, if the Directive lays down a number of common rules, Member States keep some room for manoeuvre including the introduction of measures more favourable than those prescribed by the Directive.⁶⁶ They can also set quotas for the admission of highly skilled workers.⁶⁷ The system of the EBC does thus not replace national systems for the admission of highly skilled workers but somehow comes to coexist with domestic ones. Therefore, the adoption of the Directive certainly marks a further step in the development of a Community immigration policy, but is not seen as a great victory by the Commission whose initial ideas

⁶¹ *Ibid.*, Art. 16 EC long-term resident status for EU Blue Card holders.

⁶² *Ibid.*, Chapter III EU Blue Card, Procedure and Transparency, Art. 7 EU Blue Card, point 2.

⁶³ *Ibid.*, Art. 11 Procedural safeguards, point 1.

⁶⁴ *Ibid.*, Chapter V Residence in Other Member States, Art. 18 Conditions.

⁶⁵ Interview, IOM, Brussels, 9 Jun. 2009.

⁶⁶ Council Directive 2009/50/EC, Chapter I General Provisions, Art. 4 More favourable provisions.

⁶⁷ *Ibid.*, Chapter II Conditions of admission, Art. 6 Volumes of admission.

were not followed. The added value of a European system of admission is considered lost. The following quotes a former European Commissioner who cannot hide his bitterness at finding, once again, a partial failure regarding European immigration cooperation:

I believe that Member States miss the point. And the point is that in a few years . . . We are already in an atmosphere of competition for talents . . . this competition is already there. And in the knowledge-based economy, those who will win are those who have the ability to attract the best of the best in the world because it is an inevitable consequence of globalization. Unfortunately, I fear that European States have not yet understood that they must all be in this competition and they must use the existence of the EU as an area expanded as a lever to improve the competitiveness in this market for brains.⁶⁸

The transposition of the Blue Card Directive into national law was scheduled for 19 June 2011. Several States have already passed the deadline that again shows their reluctance toward it. At this point, it is still too early to evaluate how the EBC is practically implemented.

3.2. *Pre-integrated immigration*

Through this policy process, the European discourse elaborates a new figure of the labour migrant: the highly skilled workers. These workers, because they are desired, are described with objective and subjective characteristics that distinguish them from the current undocumented immigrants, from the ancient guest workers, or from settled regular migrants. Highly skilled workers are described and considered as manageable and able to be easily integrated. They quickly demonstrate their ability to integrate, so that integration is not a concern anymore (in terms of public opinion or financial costs). It seems that the widely recognized need for these workers – and that makes them so necessary – overestimates their integration ability. It is based on the one hand, on their expected and secured integration on the professional and economic plans (i.e. they will have a job), but also, on the other hand, on their social integration, or even socio-cultural one, as they are seen as non-problematic, perhaps because of their education level. In any case, because of the presumed ability of these professionals to integrate, European actors estimate that it will be easier to legitimise – and thereby get support for – their immigration.

The highly skilled migrant is also described in positive terms. The term ‘migrant’ is avoided. This shift from highly skilled migrants to “highly skilled workers” or “highly skilled persons” or simply “highly qualified” or “expatriates” indicates a willingness to distinguish them from irregular immigrants or migrants, for which another vocabulary is used as “economic migrants” or “stock of irregular migrants”. The positive construction of the migrant is associated

⁶⁸ Telephone interview with Antonio Vitorino, 3 Jun. 2009.

with the favour granted in the proposed directive card such as early family reunification.

Finally, taking into account the integration potential of the migrant is also indicative of a broader trend of considering integration as a prerequisite for immigration, as a condition of admission. Some Member States, such as the Netherlands, have already included an integration test for candidate immigrants in their immigration procedure in close collaboration with their consulates. In this way, immigration policy aims to select immigrants based on their integration capabilities. According to this approach, highly skilled workers are a type of ideal migrant, as they are presumed highly capable, as if already integrated migrants. Consequently, no specific conditions are requested for them and not even for their family members.

And the idea was that nobody . . . or that there will have very few resistances if we limit our opening to migration on highly qualified. Because first, highly qualifies are not so many. Second, nobody could dispute that in some cases we need the people that we don't have – It was also a time where we had all this about Germany which was missing, UK, etc. etc. – And third, if they are highly qualified, probably they are highly educated. And in general, there are no problem of integration with highly educated.⁶⁹

3.3. *Other workers categories*

In comparison with the period analysed in the previous sections, the institutional situation nowadays is quite different. Indeed, due to the entry into force of the Lisbon Treaty, the immigration policy is henceforth a responsibility of the EU. In other words, decisions about labour immigration in the EU are subjected to a co-decision procedure between the Council and the European Parliament. However, Article 79 of the Lisbon Treaty states that the EU powers in this area “shall not affect the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed”.

Three directive proposals regarding labour migration have been discussed at the Council and European Parliament level. First the above-mentioned draft transversal directive on single permit and set of rights published in 2007, second the one on seasonal employment, and finally the one on intra-corporate transferees both presented in 2010.⁷⁰

⁶⁹ Interview with an official of the European Commission, Brussels, Mar. 2009.

⁷⁰ Commission of the European Communities, *Proposal for a Council Directive on a Single Application Procedure for a Single Permit for Third-Country Nationals to Reside and Work in the Territory of a Member State and on a Common Set of Rights for Third-Country Workers Legally Residing in a Member State*, COM (2007) 638 final, 23 Jul. 2007; Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Seasonal Employment*, COM 379 (2010) final, 13 Jul. 2010; Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on Conditions of Entry and residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer*, COM 378 (2010), 13 Jul. 2010.

The draft Single Permit Directive is a hybrid proposal with, on the one hand, elements specific to the migrant workers admission procedure (single permit) and, on the other hand, elements to ensure that migrant workers or migrants are allowed to work having equal treatment to nationals workers. The proposal is cross-cutting as it aims to define rights for all workers (“third-country workers”). It covers both migrant workers (who are admitted for work purposes) and immigrants authorised to work after their entrance and residence were authorised for other reasons (family reunification, asylum, and studies) and who did not yet obtain the status of long-term residents. In its scope and its instrument, the proposal includes political solutions already put forward in the proposed Directive on the admission of migrant workers in 2001. The Council could not reach a unanimous agreement on the proposal before the Lisbon Treaty. After its entry into force, the European Parliament has been involved in the decision-making process and has already adopted amendments. After quite long negotiations because of disagreements between the Council and the European Parliament on some points, such as the question of issuing additional documents with the single permit or the transfer of pension rights, the Directive 2011/98 was adopted on 13 December 2011.⁷¹ Even though the Directive leads to a procedural simplification with a single permit covering both residence and work permits, its scope remains quite narrow. Regarding the provision for a common set of rights for third-country workers legally residing in the EU, the Directive grants the right to equal treatment to nationals but with several restrictions. Finally, in spite of its horizontal character, the Single Permit Directive reflects a “differentiated” approach to immigration.

The two other proposals are still under negotiation. The proposal on immigration for seasonal work proposes a fast-track procedure for the admission of seasonal workers while also providing safeguards to prevent their settlement.⁷² The maximum period of stay is set at 6 months. Accordingly, neither integration measures nor the right to family reunification is provided. Seasonal work is defined as an “activity dependent on the passing of the seasons”.⁷³ This proposal is a typical example of a political solution supported both by the Commission and the Member States: circular migration is defined as “a form of migration that is managed in a way allowing some degree of legal mobility back and forth between two countries”. The second proposal aims at simplifying the conditions of entry, residence, employment and mobility of workers from third-country nationals, including their family members when they are transferred inside a

⁷¹ Directive 2011/98/EC of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State, OJ L 343/1, 23 Dec. 2011.

⁷² Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on the Conditions of Entry and Residence of Third-Country Nationals for the Purposes of Seasonal Employment*, COM(2010) 379 final, 13 Jul. 2010.

⁷³ *Ibid.*

multinational from a third country into the EU.⁷⁴ Contrary to seasonal workers, intra-corporate transferees would have the right to family reunification.

The above proposals on specific categories of migrant workers highlight the continuity of the immigration approach set up in 2005, the “differentiated” approach. This strategy has been adopted by the Commission in order to support its own process of getting around institutional and political difficulties encountered in the development of a Community immigration policy. It is implemented at the level of Commissioners and their offices, and also at the Council presidencies. At the European Commission and the Presidency, even if the Council establishes priorities, the actors can make a strategic choice, in order to channel their efforts towards probable success. Hence the priority given to what is seen as being the least controversial.

4. Conclusion

This article aimed to explain how the European labour immigration policy has been elaborated and developed, and in particular, how the European Commission has endorsed a discourse favourable to a new labour immigration in Europe after decades of a doctrine of zero immigration and despite restrictive positions of the Member States. At the beginning of European integration, European cooperation on labour migration related to free movement and to the creation of an internal market. By the late 1980s, it took the form of compensatory measures to the abolishment of internal borders.

The entry into force of the Amsterdam Treaty was a major institutional change. It formed a legal basis for a common immigration policy. The European Commission and in particular the new DG JHA presented immigration and specifically new labour migration as a solution to salient economic and demographic problems in Europe. In a first stage of the policy-making process, the Commission proposed an orderly immigration policy in order to facilitate skilled and unskilled workers’ immigration. However, the Council of Member States did not accept the proposals made by the Commission, and followed the usual rationale of borders closure. This second stage of impasse is also featured by the 11 September 2001 attacks shifting European agenda and by the preparation of the 2004 EU enlargement to 10 new countries. The European discourse was dominated by security concerns on the one hand and fear of migration floods on the other hand. Meanwhile, some European countries created specific immigration programmes to attract highly skilled migrants (in the North) or low skilled migrants (in the South of Europe). In a last stage, the European Commission modified its discourse and proposed a “differentiated” migration. It aims at selecting and attracting suitable migrant workers who are able to integrate.

⁷⁴ Commission of the European Communities, *Proposal for a Directive of the European Parliament and of the Council on Conditions of Entry and Residence of Third-Country Nationals in the Framework of an Intra-Corporate Transfer*, COM(2010) 378 final, 13 Jul. 2010.

From there, the EU labour migration policy was elaborated according to job categories (*Policy Plan on Legal Migration*, 2005).

The first category presented is the highly skilled migrant workers (*Proposal for a Directive on the Condition of Entry and Residence of Third-Country Nationals for the Purposes of Highly Qualified Employment*, European Commission, 2007). The so-called Blue Card Directive was finally adopted in 2009. According to it, migrant workers may be admitted to the EU for a period of 1–4 years if they meet three criteria (contract or job offer, higher qualifications, and compliance with a salary threshold). They receive a work and residence permit (European Blue Card). They enjoy equal treatment to EU nationals regarding working conditions and access to other socio-economical rights, and they are allowed controlled mobility. The highly skilled migrant worker is described in the European discourse as a type of ideal migrant worker. The European stakeholders presume that as they are highly educated, they would also integrate smoothly and automatically. No integration condition is requested, they are, in a way, already integrated.

The second legislation adopted after the Blue Card Directive is the Single Permit Directive (2011). This hybrid Directive leads to a procedural simplification with a single permit covering both residence and work permits and it grants the right to equal treatment with nationals but with several restrictions, reflecting the “differentiated” approach. Other categories of workers (seasonal and intra-corporate transferees) are discussed in the same way, but discussion at the EU level is still pending.

Throughout the process of policymaking, the European Commission has recognized the sustainability of international migration but also its ineluctability, both because it cannot be fully controlled – although it is not expressed directly – and is necessary for the economy and possibly for maintaining a balanced population. However, the way to address international migration remains dominated by the rationale that has prevailed during the recruitment period of guest workers, that is, the belief that labour migration is a way to respond “to situations of low” economy (according to a Commission official). The idea that labour migrants can be used to absorb economic shocks has continued in the European States.⁷⁵ The measures taken by some Member States in the wake of the October 2008 economic recession demonstrate that. Like the Member States, the Commission is positioning itself in favour of temporary immigration. So there is a contradiction between the cognitive idea, which is about the long term, and the normative idea that remains rooted in the short or medium term.

In fact, the answer to the question of settlement is never explicitly stated in terms of political objectives. But the result in terms of policy choices lies in encouraging circular migration, namely a type of temporary immigration. Interactions of the European Commission and the Council show that Member States have been reluctant to plan a Community immigration policy, which

⁷⁵ J. Hollifield, *Immigrants, Markets, and States. The Political Economy of Postwar Europe*, Cambridge/London, Harvard University Press, 1992.

would ultimately be a policy of settlement. The political costs of this change would be high for States where public opinion is deemed reluctant toward immigration and where a rise of xenophobia and racism is nowadays observed. Furthermore, agreeing to consider that migrants are “useful” in the long term would have implications in terms of granting rights and settlement to these migrants. That would oblige Member States to regard migrants in the relatively near future as potential citizens. In a period marked by the development of new forms of populism in politics of different Member States, immigration may continue to be a catalyst of the frustrations of many European populations, further exacerbated by the consequences of the economic crisis.

Temporary labour immigration remains the preferred option at the national level. “This is the will of the governments (and businesses) to define the foreign worker as a commodity that can be controlled, distributed and managed according to market rules as part of a system of free trade.”⁷⁶ Here we find the paradox of liberalism where immigration is addressed in a cost-benefit logic so that “individuals occupy a sacred place in the liberal democratic systems, where the rights often prevail over the market rules”.⁷⁷ In terms of production of an immigration policy as a construct, the instrumental approach to immigration continues. This approach remains a means of achieving political or economic objectives. Immigration continues to be understood as a phenomenon largely exogenous to States that do not really see themselves as immigration States. Even if some of them acknowledge that they are *de facto* immigration countries, they do not draw such conclusions in terms of public policy.

On the part of the Commission, there is an acknowledgement that in the context of a liberal democratic EU, with the foundations and values of the EU, it is not possible to regulate immigration exclusively in a defensive mode. This is particularly relevant as the Commission considers that this mode is not in the interest of an EU operating in an interdependent world, characterised by economic globalisation and its effects, especially on labour markets (movement of workers, labour market segmentation and relocation). Therefore, the Commission claims a more “pragmatic” approach to mobility with a gradual shift from migration control to “migration management”.

Finally, another paradox appears within the issue of new labour migration that questions the distinction between immigration policy and immigrant policy. Within the development of a Community labour immigration policy, a discourse on the integration of migrants arises. Because since the late 1980s issues related to the integration of resident immigrants have dominated the discussion in several Member States, when it comes to considering the opening of borders, political concepts as the “absorption ability” or integration have emerged. Does integration also not imply settlement? Does a contradiction emerge from favouring the temporary while simultaneously fostering permanency? The way out of

⁷⁶ J. Hollifield, “Immigration et logiques d’Etats dans les relations internationales”, *Etudes internationales*, 24(1), 1993, 32.

⁷⁷ *Ibid.*

this paradox would be to make integration a condition of admission or to build on the categories of specific migrants who are alleged as already integrated as in the case of highly skilled workers. The question of integration is then disposed of since what matters is that the migrant is already integrated or allegedly so to be granted entry. In addition, from the time integration becomes a condition of admission, rather than a consequence of it, the authority that decides on the entry also exercises responsibilities in terms of integration of new populations. The line between immigration and immigrant policy is increasingly blurred. Ultimately, the barriers always prevail as obstacle, perhaps more for impressing emigration countries than host societies.