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Has immigration led to a new form of labour market protectionism in Europe?

*Has immigration led to a new form of labour market protectionism in Europe? Drawing on a study of legislative changes in Austria, Germany, Ireland and the UK, **Pat McGovern**, **Eiko Thielemann** and **Omar Hammoud-Gallego** identify a new development in immigration control that extends beyond borders into the workplace.*

Over the past couple of decades, European governments have quietly introduced a range of measures to limit labour market competition from immigrant workers. As public concerns about **controlling immigration** have been preoccupied with restricting entry at the border – with the latest worries in the United Kingdom being irregular migration via “small boats” – our research shows that several European countries have introduced **migrant labour market competition** measures to little or no fanfare.

These measures are designed to limit labour market competition by placing restrictions on access to employment through labour market tests, minimum salary requirements or qualifying periods before migrants can be considered for a job.

The fact that these policies emerged independently in such contrasting economies as those of Austria, Germany, the Republic of Ireland and the United Kingdom, could mean that they may well appear in others. What makes these developments especially interesting is that they are a form of labour market protectionism in an era in which markets are supposed to be increasingly deregulated and free from government intervention.

Identifying labour market restrictions

A fruitful way of thinking about immigration policy is to view it as a **trilemma** in which governments strive to strike a balance between employers' need for labour, the liberal state's obligation to provide economic and social rights to migrant workers, and populist political pressures to circumscribe them.

Or, to put it another way, governments try to juggle economic growth with hostility to immigration while trying to ward off the exploitation of migrant labour. The received wisdom is that the balance has moved firmly in the direction of employers' labour needs and the associated demand for a buoyant economy at the expense of migrant rights.

While the creation of the European single market enabled the free movement of goods, services and people across the now 27 member states, migrants from outside of Europe ("Third Country Nationals" or TCNs) – do not have the right to free movement within the EU. Having observed the restrictions that the UK imposed on TCNs in an **earlier project**, we wanted to know if similar developments were occurring in other countries that had very different histories of immigration (Germany and Austria) or had only begun to receive immigrants in recent decades (Ireland).

Specifically, we examined whether these countries had introduced the following restrictions: 1) labour market availability tests, where an employer can only hire an immigrant after it has been established that no native, or migrant with full access to the labour market, can take the job; 2) minimum salary or education requirements; 3) requirements regarding the length of time for which TCNs are legally bound to their employer before they can look for another job; and 4) waiting times for asylum seekers before they are able to legally access the labour market.

Using a now standard form of migration policy analysis (see the **IMPALA** project) we codified the primary and secondary legislation for each country across five types of migration permits: humanitarian, seasonal, highly skilled, intra-corporate transfers (ICTs) and those of salaried migrants.

Policy convergence

What we found was that, over the course of thirty years, each of the countries introduced a range of new legislation and policy that included most of these measures (Figure 1). What is especially notable is that two countries – Austria and Ireland – which had barely any restraints on labour competition at the start of the period, had the same restrictions as long-standing countries of immigration – Germany and the UK – by the end of the period. Significantly, none of our chosen immigration categories were exempt from such measures with even highly skilled migrants being subject to labour market availability and salary threshold tests.

Figure 1: Spread of migrant labour market competition measures across four European countries

	Shortage requirement		Labour market test		Salary threshold		High skill threshold	
	1990	2019	1990	2019	1990	2019	1990	2019
Austria	Yes ¹	Yes ²	Yes ³	Yes	Yes ⁴	Yes	No	Yes
Germany	Yes ⁵	Yes	Yes ⁶	Yes	Yes ⁷	Yes	No	No
Ireland	No	Yes ⁸	No	Yes ⁹	No	Yes ¹⁰	No	Yes ¹¹
UK	No	Yes ¹²	Yes ¹³	Yes	Yes	Yes	No	No ¹⁴

Note: "Yes" represents a change since 1990. 1 – AUT: Seasonal workers; 2 – AUT: Humanitarian; 3 – AUT: Humanitarian/Seasonal workers; 4 – Highly skilled (employer sponsored); 5 – DEU: Seasonal workers; 6 – DEU: highly skilled (employer sponsored); 7 – DEU: highly skilled (employer sponsored); 8 – IRL: Highly skilled (employer sponsored); 9 – IRL: if a shortage occupation; 10 – IRL: Highly skilled (employer sponsored); 11 – IRL: if shortage occupation; 12 – GBR: Humanitarian – asylum seekers can only apply for shortage occupations; 13 – GBR: highly skilled (employer); 14 – GBR: suspended in 2011.

What might explain this extraordinary convergence in labour market protectionism that targets migrants? An obvious starting point would be the European Union, but the EU played no role in devising policies to provide labour market access until the mid-2000s (Figure 2). Even then, the initial Council Directive, which related to the reception of asylum seekers, asked only that member states determine a 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. By that stage, each of the countries under study had already introduced most of the measures to limit labour market competition.

Figure 2: EU directives on access to employment for Third Country Nationals

Note: Compiled by the authors.

We do however believe the main reason behind such policy convergence was EU related, though not in the form of directives or regulations from Brussels: with the expected entry of 10 new member states with lower GDP per capita than that of existing members of the EU in 2004 (the A8 plus Cyprus and Malta), most western European Countries expected substantial inflows, especially from those seeking routine and low skilled jobs.

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 migratory systems were needed to adjust to these new circumstances, thus limiting the immigration of low skilled TCNs, while adapting migration systems to meet the labour market needs of the **different industries** within each country.

An easy win

Given that these anti-competition measures emerged in such different contexts, we would expect them in other countries too as they can be considered a “sweet spot” in the trilemma. Labour market availability tests, education and salary thresholds, and waiting periods are not the kinds of topics that dominate public concerns about immigration. These anti-competition measures constitute an “easy win” as governments are seen to act to provide preferential labour market access to local born workers while simultaneously helping employers meet skills’ shortages.

For their part, employers are not going to oppose what they may see mostly as “tick box” exercises aside from the restriction on freedom of employment, which may even be welcomed because it provides them with an exceptional gift: a legal guarantee for continuity of employment. In normal circumstances, such a restriction would be viewed as an infringement on employee rights, but the dependency of TCNs on would-be employers means that they are unlikely to turn to the courts. In short, they represent an “easy win” for politicians and employers and a tolerable *quid pro quo* for economic migrants.

For more information, see the authors’ accompanying paper in [Comparative Migration Studies](#).

Note: This article gives the views of the authors, not the position of EUOPP – European Politics and Policy or the London School of Economics. Featured image credit: [SasinTipchai](#) / [Shutterstock.com](#)

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