

# Diritto, Immigrazione e Cittadinanza

## Fascicolo n. 1/2024

CIRCULAR OR TEMPORARY?

MIGRATION MODELS IN THE EU, ITALIAN AND GERMAN  
LEGISLATION

By Michele Mazzetti

**Abstract:** Throughout the course of history, the global dynamics of migration have increased. The European Union (EU) and its Member States have found themselves at the centre of migration flows of varying magnitude caused by multiple humanitarian, economic and environmental crises. The proximity of European countries to the world's hotspots has facilitated these movements. In order to govern migration, European policies have adopted an ideological model of "circular migration". This article critically examines "circular migration" model in the EU, Italian and German Legislation, using a legal and historical perspective to reveal policy discord. In dissecting "circular migration", the paper explores its evolving conceptualization rooted in historical antecedents and neoclassical economic theories. Despite historical divergence, contemporary "circular migration" emphasises economic benefits, repetitiveness of the migration cycle and freedom of movement. The analysis delves into challenges in regulatory transposition, revealing a shift from "circular" to de facto "temporary migration". The findings highlight the gap between the rhetoric of "circular migration" and practical implementation, with temporality dominating policies. Security imperatives challenge theoretical paradigms, leading to a lack of coherence in legislative frameworks.

**Abstract:** Nel corso della storia, il numero complessivo di migranti è progressivamente aumentato. L'Unione Europea (UE) e i suoi Stati membri si sono trovati al centro di flussi migratori di varia entità causati da molteplici crisi umanitarie, economiche e ambientali. La vicinanza dei paesi europei ai punti caldi mondiali ha facilitato questi movimenti. Al fine di governare la migrazione, le politiche europee hanno adottato il modello della "migrazione circolare". Questo articolo esamina in modo critico il modello della "migrazione circolare" nella legislazione europea, italiana e tedesca, utilizzando una prospettiva giuridica e storica per rivelare il divario fra scelte di policy e prassi legislativa. Nell'analizzare la "migrazione circolare", l'articolo ne approfondisce la concettualizzazione in evoluzione, che affonda le sue radici negli antecedenti storici e nelle teorie economiche neoclassiche. Nonostante la divergenza rispetto alla prima teorizzazione, l'attuale nozione di "migrazione circolare" si fonda su due elementi strutturali: i benefici economici, la ripetitività del ciclo migratorio e la libertà di movimento. Il saggio approfondisce le sfide nella trasposizione normativa, rivelando il passaggio surrettizio dal modello migratorio "circolare" a quello "temporaneo". I risultati mettono in evidenza il disallineamento tra il piano retorico e quello pratico, con la temporalità che domina le politiche e si accompagna con una predominanza degli imperativi di sicurezza, portando a una mancanza di coerenza nei quadri legislativi.

# CIRCULAR OR TEMPORARY? MIGRATION MODELS IN THE EU, ITALIAN AND GERMAN LEGISLATION

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By Michele Mazzetti\*

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## 1. Introduction and Methodological Remarks

In recent history, there has been a notable transformation in global migration dynamics. Specifically, in 1970, the totality of international migrants stood at approximately 84 million; by 1980, this figure had increased to 101 million. Subsequent decades witnessed a further increase, with the numbers reaching 152 million in 1990, 173 million in 2000, 202 million in 2010, and a peak of 280 million in 2020. When compared to the worldwide population, these figures appear modest, given over 96% of the world’s population is considered sedentary<sup>1</sup>.

Looking at the data on migration patterns, Europe emerges as the predominant destination, accounting for approximately 30.9% of the global migrant population. Following closely, Asia constitutes 30.5%, North America accounts for 20.9%, and Africa represents 9% of the migratory demographic<sup>2</sup>. Migration flows to European countries are driven by a variety of economic, social, humanitarian, and environmental factors. The proximity of this region to global hotspots facilitates such migratory tendencies<sup>3</sup>.

Despite the relatively modest numerical representation of migrants, the European Union (EU) and its Member States have progressively embraced a paradigm of stringent migration policies. This trajectory is discernible through the incremental transposition of migration law from traditional domains to the spheres of criminal law and public security, encapsulated by the term “cimmigration.” This legal framework effectively operationalises the criminalization of the immigration status of foreign individuals, materialising in a tightening of sanctions for irregular entry, encompassing measures such as deportation and

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1. M. McAuliffe and A. Triandafyllidou, eds., *World Migration Report 2022*, International Organization of Migration (IOM), Geneva, International Organization for Migration, 2022, pp. 21-24, <https://publications.iom.int/books/world-migration-report-2022>; *World Migration Report 2000*, International Organization of Migration (IOM), IOM World Migration Report, Geneva, United Nations, 2000, pp. 3-5, <https://doi.org/10.18356/f31608c7-en>.

2. McAuliffe and Triandafyllidou, *World Migration Report 2022*, cit., p. 24.

3. C. Cantat, A. Pécoud, and H. Thiollet, *Migration as Crisis*, in *Am. Beh. Sc.*, 2023; European Parliament, *Exploring Migration Causes: Why People Migrate*, in *News European Parliament*, 2023, <https://www.europarl.europa.eu/news/en/headlines/world/20200624STO81906/exploring-migration-causes-why-people-migrate>; European Parliament, *Asylum and Migration in the EU: Facts and Figures*, in *News European Parliament*, 2022, <https://www.europarl.europa.eu/news/en/headlines/society/20170629STO78630/asylum-and-migration-in-the-eu-facts-and-figures>; T. Bauer and K. Zimmermann, *Causes of International Migration: A Survey*, in *Crossing Borders*, ed. C. Gorter, P. Nijkamp, and J. Poot, London, Routledge, 2018.

administrative detention<sup>4</sup>. Concurrently, these regulations reflect a broader predilection for meticulous control over access to state territory.

Within the ambit of this overarching restrictive policy, particularly pronounced in discourse concerning migrants regularly entering the state's territory, a favourable presentation of the regulatory model emerges through the concept of "circular migration"<sup>5</sup>. Central to these deliberations is economic migration, intricately entwined with the globalising trends of the past two decades. While economic liberalisation has facilitated unhindered movement of commodities and capital, a commensurate freedom of movement for individuals remains unrealised.

According to its advocates, "circular migration" is the panacea for all international migration problems<sup>6</sup>. These problems affect both countries of origin and destination: the former suffer from economic depression due to a lack of human capital<sup>7</sup>, while the latter face problems with the perception of security and the economic and social integration of migrants<sup>8</sup>. The model of "circular migration" is presented as a solution for these problems as it is a "triple win":

«It offers destination countries a steady supply of needed workers in both skilled and unskilled occupations, without the requirements of long-term integration. Countries of origin can benefit from the

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4. M. J. Guia, J. van der Leun, and M. van der Woude, eds., *Social Control and Justice: Crimmigration in the Age of Fear*, The Hague, Eleven International Publishing P.O., 2013; R. Rosenberg-Rubins, *Crimmigration under International Protection: Constructing Criminal Law as Governmentality*, London, Routledge, 2023; J. P. Stumpf, *Crimmigration and the Legitimacy of Immigration Law*, in *Ar. Law Rev.*, XLV, No. 1.2023, pp. 113-60.

5. Regarding the public narrative of migrants and refugees, please refer to the series of reports prepared by the Overseas Development Institute (ODI) on various European countries: K. Hargrave, K. Homel, and L. Dražanová, *Public Narratives and Attitudes towards Refugees and Other Migrants: Poland Country Profile*, 2023; A. Bailey-Morley and C. Lowe, *Public Narratives and Attitudes towards Refugees and Other Migrants: Greece Country Profile*, 2023; C. Kumar and D. Donoghue, *Public Narratives and Attitudes towards Refugees and Other Migrants: Ireland Country Profile*, 2023; K. Holloway, D. Faures, and C. Kumar, *Public Narratives and Attitudes towards Refugees and Other Migrants: France Country Profile*, 2022; A. Bailey-Morley and C. Kumar, *Public Narratives and Attitudes towards Refugees and Other Migrants: Denmark Country Profile*, 2022; K. Holloway, D. Faures, and C. Kumar, *Public Narratives and Attitudes towards Refugees and Other Migrants: Italy Country Profile*, 2021; K. Holloway, I. Mosel, C. Smart, D. Faures, G. Hennessey, C. Kumar and A. Leach, *Public Narratives and Attitudes towards Refugees and Other Migrants: Germany Country Profile*, 2021; K. Holloway, C. Smart, D. Faures, C. Kumar and A. Leach, *Public Narratives and Attitudes towards Refugees and Other Migrants: UK Country Profile*, 2021; K. Holloway, D. Faures, and A. Leach, *Public Narratives and Attitudes towards Refugees and Other Migrants: Sweden Country Profile*, 2021; C. Kumar and D. Faures, *Public Narratives and Attitudes towards Refugees and Other Migrants: Spain Country Profile*, 2021.

6. Regarding the debate on the favourable or unfavourable role of 'circular migration' model, please refer to: D. R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, in *MPI Policy Brief*, 2007; S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, in *Global and Asian Perspectives on International Migration*, ed. Graziano Battistella, Cham, Springer, 2011, pp. 27 ff.; P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, in *GURN Discussion Paper*, Geneva, International Labour Office, Bureau for Workers' Activities, 2011, pp. 5-8; G. Hugo, *Circular Migration and Development: An Asia-Pacific Perspective*, in *Boundaries in Motion: Rethinking Contemporary Migration Events*, ed. O. Hofírek, R. Klvaňová, and M. Nekorjak, Brno: Centre for the Study of Democracy and Culture, 2009, pp. 190-265; Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action. Report of the Global Commission on International Migration*, 2005, p. 31; M. Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, Geneva, 2005.

7. An interesting research has been published on the impact of 'permanent migration' on the economy of the country, see K. Chernyshev, *The Study of Permanent Migration of Economically Depressed Regions*, in *Ec. Soc. Ch.*, X, No. 4.2017, pp. 259-73, <https://doi.org/10.15838/esc.2017.4.52.15>.

8. Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action. Report of the Global Commission on International Migration*, cit., 17 ff.

inflow of remittances while migrants are abroad and their investments and skills upon return. The migrants are also thought to gain much, as the expansion of circular migration programs increases the opportunities for safer, legal migration from the developing world»<sup>9</sup>.

The interpretation of “circular migration” given by its promoters is mainly economic (i.e., neoclassical understanding of migration theory)<sup>10</sup> and presupposes the repetitiveness of migratory cycles (departure, stay, return) and the freedom of movement of persons<sup>11</sup>. These are the two core elements common to all definitions. Furthermore, even the advocates of “circular migration” emphasise that the concept should be handled with caution:

«Yet when considering anything - particularly an approach to global policy - that portends to be a kind of magic bullet, caution should certainly be taken. The “wins” of the win-win-win scenario may not be as mutual as imagined»<sup>12</sup>.

Nevertheless, based on the favourable opinion of the Global Commission on International Migration (GCIM) in 2005, echoed by the European Commission in 2007 and recalled by the governments of Germany and France, “circular migration” has become the backbone of the migration policies of the EU and its Member States<sup>13</sup>. This policy orientation stems from a reevaluation of the conventional paradigm explaining migration causes. Todaro’s “root causes” perspective posits that migration primarily results from economic disparities among regions<sup>14</sup>, suggesting development as the remedy for migration<sup>15</sup>. While discernible in the 2015 European Agenda for Migration<sup>16</sup>, this paradigm has yielded to the “migration hump” model<sup>17</sup>. Envisaging that short-term development intensifies migration flows, while long-term uniformity diminishes them; this revised approach informs the EU’s contemporary comprehensive migration policy. This policy, with its distinct objectives,

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9. D. R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, cit., p.

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10. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 28.

11. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., 9.

12. S. Vertovec, *Circular Migration: The Way Forward in Global Policy?*, in *Ar. Gl.*, III, No. 2.2006, p. 44.

13. Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action. Report of the Global Commission on International Migration*, cit. 31; European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Circular Migration and Mobility Partnerships between the European Union and Third Countries*, COM(2007) 248, Brussels, 2007; V. Gomes and J. Doomernik, *State-of-the-Art on Temporary Labour Migration Schemes in Europe*, in *ADMIGOV Paper D3.1*, 2020, p. 13.

14. S. Castles and N. Van Hear, *Root Causes*, in *Global Migration Governance*, Oxford, Oxford University Press, 2011, pp. 287-306; M. P. Todaro, *A Model of Labor Migration and Urban Unemployment in Less Developed Countries*, in *Am. Eco. Rev.*, LIX, No. 1.1969, pp. 138-48.

15. For a theoretical overview of migration policies see: H. De Haas, *Migration and Development: A Theoretical Perspective*, in *Int. Mig. Rev.*, XLIV, No. 1.2010, pp. 227-64.

16. European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions a European Agenda on Migration*, COM (2015) 240, Bruxelles, 2015.

17. N. Berthiaume, N. Leefmans, N. Oomes, H. Rojas-Romagosa and T. Vervliet, *A Reappraisal of the Migration-Development Nexus: Testing the Robustness of the Migration Transition Hypothesis*, in *Policy Research Working Paper 9518*, 2021, p. 2.

seeks to reduce irregular migration, combat human trafficking, and foster economic advancement in countries of origin<sup>18</sup>.

However, from a legal point of view, the implementation of EU and Member States' policies aligns more closely with a "temporary migration" paradigm, restricting access to the European labour market for migrant workers. According to Abella, temporary migrants are the non-nationals «whose legal status is temporary, regardless of the amount of time they may have actually stayed in a country»<sup>19</sup>. Under this approach, residing and working based solely on a temporary work permit does not grant a right to permanent stay in the host country<sup>20</sup>. Consequently, upon the expiration of temporary permits without obtaining permanent resident status, migrants are expected to either return to their country of origin or seek migration elsewhere. Notably, this definition does not exclude the possibility of temporary migrants eventually obtaining permanent residence in the destination country<sup>21</sup>.

This research aims to critically analyse the theoretical framework and legislation of the EU and its Member States, illuminating the inherent conflict between them. This research employs a qualitative socio-legal methodology to comprehensively explore the complexities of labour migration from non-EU countries. Movements within the EU are not considered. The approach integrates legal analysis with socio-empirical evidence, offering a nuanced understanding of the multifaceted issues at hand. The research adopts a socio-legal lens, delving beyond legislative sources to incorporate social and empirical evidence<sup>22</sup>.

A historical-analytical framework is applied, particularly in examining "circular migration" as opposed to "temporary migration" and "permanent migration." This approach traces the historical evolution of key conceptual frameworks.

Meticulous scrutiny of legal and policy documents forms a cornerstone of the methodology. Through this examination, an assessment is made of the consistency between theoretical concepts (such as "circular migration") and practical legislative implementations. This involves identifying any disjunctions or tensions between theoretical frameworks and enacted policies.

The article is structured thematically, allowing for an organised exploration of key concepts and issues. Firstly, circular migration (Section 2) and temporary migration (Section 3) are conceptualised. Then the normative transposition of these notions is considered, assessing the migration policy of the EU (Section 4), Italy and Germany (Section 5). Finally, the correspondence between the theoretical model and practical legislation is assessed (Section 6 and 7).

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18. M. Pompò, *La Migrazione Circolare Come Politica Di Sviluppo e Crescita*, in *Pluralismo Confessionale e Dinamiche Interculturali. Le Best Practices per Una Società Inclusiva*, ed. A. Fuccillo and P. Palumbo, Napoli, Editoriale Scientifica, 2023, pp. 86-87; For a critical reading on EU migration policy see: J. Silga, *The Ambiguity of the Migration and Development Nexus Policy Discourse*, in *UCLA Journal Int. Law and For. Aff.*, XXIV, No. 1.2020, pp. 163-200.

19. M. Abella, *Policies and Best Practices for Managing Temporary Migration*, in *International Symposium on International Migration and Development*, 2006, p. 4.

20. M. Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, cit., p. 2.

21. For definitory purposes, this research does not concur with the definition of temporary migration of D. R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, cit., p. 3. The scholars characterise permanent migrants not only as individuals with permanent residency or citizenship but also encompass those holding transitional visas, signifying a progression toward permanent residency or citizenship. This perspective assumes that migrants inherently accrue rights over time, viewing temporary migration as an initial stage toward eventual permanent residence.

22. I. Dobinson and F. Johns, *Legal Research as Qualitative Research*, in *Research Methods for Law*, ed. M. McConville and W. H. Chui, Edinburgh, Edinburgh University Press, 2017, p. 19.

The methodological approach, characterised by its interdisciplinary nature and structured thematic analysis, aims to contribute a rigorous and comprehensive assessment of labour migration dynamics in the EU.

## 2. Circular Migration: A Conceptual Challenge

The foundational inquiry into the meaning of “circular migration” reveals a persistent lack of consensus, engendering a conceptual challenge marked by diverse interpretations<sup>23</sup>. This diversity manifests itself in doctrinal and legal interpretations. While scholars tend to embrace the whole aspects of the phenomenon, legal instruments capture only some of its aspects<sup>24</sup>. For instance, although the International Labour Organization (ILO) conventions such as the Migration for Employment Convention (Revised), 1949 (No. 97), and the Migrant Workers (Supplementary Provisions) Convention, 1975 (No. 143), as well as the United Nations (UN) International Convention on the Protection of All Migrant Workers and Members of Their Families, 1990, do not explicitly mention “circular migration,” the European Commission’s 2007 Communication on Circular Migration and Mobility Partnerships has embraced a distinct policy stance on this matter<sup>25</sup>. Keeping a policy perspective, in 2005 the Global Commission on International Migration (GCIM) affirmed that «the old paradigm of permanent migrant settlement is progressively giving way to temporary and circular migration»<sup>26</sup> and the International Organization for Migration (IOM) suggested that developing countries would have been benefitted by “circular migration”<sup>27</sup>.

Notwithstanding this variance, Wickramasekara grasps the very essence of the notion, stating that this phenomenon is based on «repeated migration experiences involving more than one emigration and return.»<sup>28</sup> Hence, it is a situation in which migrants are free to move between the country of origin and one or more destination countries on a regular and repeated basis, for longer or shorter periods<sup>29</sup>. Consequently, a broadly accepted definition characterises “circular migration” as the iterative movement involving multiple instances of emigration and return.

Originating in the historical milieu of the 1960s and 1970s, the concept of “circular migration” emerged as a response to the substantial shift in migration patterns from rural to urban areas, thereby challenging established notions of permanent (internal) migration<sup>30</sup>.

23. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 28.

24. A. Thormann and A. Koch, *Circular and Temporary Migration. Empirical Evidence, Current Policy Practice and Future Options in Luxembourg*, Luxembourg, 2011, pp. 12 ff.

25. M. Borzaga, *Le Migrazioni per Motivi Umanitari e per Motivi Economici Nel Quadro Regolativo Internazionale, in Migranti e Lavoro*, 2020, pp. 29-48 and European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Circular Migration and Mobility Partnerships between the European Union and Third Countries*, cit.

26. Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action. Report of the Global Commission on International Migration*, cit., p. 31.

27. International Organization for Migration, *World Migration 2005: Costs and Benefits of International Migration*, Geneva, International Organization for Migration, 2005, p. 288.

28. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., p. 9.

29. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, in *Int. Mig.*, L, No. 3.2012, pp. 46-47.

30. R. Skeldon, *Managing Migration for Development: Is Circular Migration the Answer?*, in *Whitehead J. Dipl. Int. Rel.*, XI, No. 1.2010, p. 23; R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., pp. 44-45; R. Bedford, *Circular Migration: Reflections on an Enduring Debate, Paper Presented at the Swedish EU Presidency Meeting*

The initial usage of the term “circular migration” characterised the mass migration from rural to urban zones driven by the industrialisation and urbanisation of African, Asian Pacific, and Latin American nations<sup>31</sup>. Notably, this migration occurred under no legal constraints..

The inception of scholarly inquiries into “circular migration” during the 1970s sought to scrutinize rural-urban migration dynamics and dispel the prevailing assertion from the preceding decade that internal migration possessed an inherently permanent character. Pioneering research by scholars such as Bedford, Chapman, Prothero, Connell, and Goldstein, spanning the period from 1973 to 1985, robustly illustrated the temporariness of migration, emphasising its cyclicity and recurrent return movements<sup>32</sup>. Subsequent confirmation of these findings was furnished by later studies conducted by Deshingkar, Farrington, and Skeldon<sup>33</sup>.

Wickramasekara, Bedford, and Skeldon underscore that the discourse on “circular migration”, both as an empirical phenomenon and a theoretical construct, has longstanding roots<sup>34</sup>. However, the contemporary usage of this term and its conceptual underpinnings has undergone significant transformation, with a discernible shift from a focus on mobility and urbanisation in developing countries to an emphasis on population movement, labour markets, and social cohesion in developed nations<sup>35</sup>.

Moreover, Fargues notes that the current conceptualisation of “circular migration” diverges from its historical usage, and this innovative shift has invigorated discussions surrounding the concept<sup>36</sup>. Yet, it is imperative not to overlook that the initial manifestation of “circular migration” pertains to internal migration, and this historical precedent continues to shape contemporary definitions<sup>37</sup>. This observation is noteworthy because, in the context of internal migration, except for very few cases, there are no limits to the displacement of individuals or groups<sup>38</sup>. Consequently, the effectiveness of “circular migration” is contingent

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on *Labour Migration and Its Development Potential in the Age of Mobility*, October 15-16, Malmö, 2009, p. 6; P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., pp. 9 ff.; S. Vertovec, *Circular Migration: The Way Forward in Global Policy?*, cit., p. 5.

31. R. Bedford, *Circular Migration: Reflections on an Enduring Debate*, cit., p. 6.

32. R. Bedford, *A Transition in Circular Mobility: Population Move? Ment in the New Hebrides, 1800-1970*, in *The Pacific in Transition. Geographical Perspectives on Adaptation and Change*, ed. Harold Brookfield, Canberra, Australian National University Press, 1973, pp. 187-227; M. Chapman, *On the Cross-Cultural Study of Circulation*, in *Int. Mig. Rev.*, XII, No. 4.1978, pp. 559-69; S. Goldstein, *Circulation in the Context of Total Mobility in Southeast Asia*, in *Papers of the East-West Population Institute*, 1978; M. Chapman and R. Mansell Prothero, *Themes on Circulation in the Third World*, in *Int. Mig. Rev.*, XVII, No. 4.1983, pp. 597-632; J. Connell, *Cocoa, and Cash: Terminal, Temporary and Circular Mobility in Siwai, North Solomons*, in *Circulation in Population Movement: Substance and Concepts from the Melanesian Case*, ed. Murray Chapman and R. Mansell Prothero, London: Routledge, 1985, pp. 119-48.

33. P. Deshingkar and J. Farrington, eds., *Circular Migration and Multilocational Livelihood Strategies in Rural India*, New Delhi, Oxford University Press, 2009.

34. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., p. 8; R. Skeldon, *Managing Migration for Development: Is Circular Migration the Answer?*, cit. 23; R. Bedford, *Circular Migration: Reflections on an Enduring Debate*, cit., p. 6.

35. R. Bedford, *Circular Migration: Reflections on an Enduring Debate*, cit., p. 6.

36. P. Fargues, *Circular Migration: Is It Relevant for the South and East of the Mediterranean? CARIM Analytic and Synthetic Notes 2008/40*, Florence, Robert Schuman Centre for Advanced Studies, 2008, p. 5.

37. For instance in D. R. Agunias, *From a Zero-Sum to a Win-Win Scenario? Literature Review on Circular Migration*, Washington, Migration Policy Institute, 2006.

38. Z. Liang and M. J. White, *Internal Migration in China, 1950-1988*, in *Demography*, XXXIII, No. 3.1996, pp. 375-84, <https://doi.org/10.2307/2061768>; Z. Liang, Y. Por Chen, and Y. Gu, *Rural Industrialisation and Internal Migration in China*, in *Urb. Stud.*, 2002, <https://doi.org/10.1080/0042098022000033926>.

upon the absence of impediments to the movement of people. Unsurprisingly, Wickramasekara contends that «[t]he best example of circular migration is internal migration, where rural workers often come to urban locations in search of work and return to home areas.»<sup>39</sup>

The reference to internal migration and the unrestricted movement of individuals holds significance as it establishes a connection between the traditional and contemporary conceptions of “circular migration”. While the latter shifts its focus from internal to international migration, it retains, at least in theoretical terms, the fundamental principle of freedom of movement.

According to Skeldon, international migration manifests in the form of “circular migration” due to «newer ideas on transnationalism and the importance of social networks for shaping patterns of movement and residence.»<sup>40</sup> Furthermore, advancements in technology have facilitated international “circular migration” by preserving transnational connections between migrants and their countries of origin, thereby enabling such migration even in the absence of direct physical movements<sup>41</sup>. Skeldon illustrates this phenomenon with the example of “shuttle migration”, where individuals moved from Eastern to Western Europe after the Cold War. This migration was made possible by the enlargement of the EU to include Eastern countries and the consequent increase in the freedom of movement for people<sup>42</sup>.

Contemporary debates, steeped in the influences of neoclassical economic theories<sup>43</sup>, delineate “circular migration” as a fluid trajectory characterised by recurrent cycles and unimpeded freedom of movement. The conundrum, however, lies in the endeavour to transpose this theoretical paradigm onto the canvas of international migration, where the preservation of freedom of movement becomes an intricate task within the confines of established institutional frameworks.

The paramount challenge in elucidating “circular migration” emanates not solely from definitional disparities but from the inherent dynamism of the term. Evolving from historical applications rooted in internal migration, the contemporary understanding of “circular migration” has undergone a profound metamorphosis. The contemporary lens places a distinctive emphasis on the interplay between population movement, labour markets, and social cohesion in developed countries, diverging significantly from the historical focus on mobility and urbanisation in developing nations.

This transformation is accentuated by the nuanced observations of scholars such as Fargues, who astutely posit that the current incarnation of “circular migration” diverges substantively from its historical predecessor<sup>44</sup>. This innovative conceptualisation not only propels an evolving discourse on the subject but also necessitates a judicious recognition of its historical lineage, particularly as derived from internal migration patterns, where movement was largely uninhibited.

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39. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., p. 8.

40. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 29.

41. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, p. 45-46; S. Vertovec, *Circular Migration: The Way Forward in Global Policy?*, cit., pp. 38-44; S. Vertovec, *Transnationalism*, London, Routledge, 2009.

42. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., p. 46.

43. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 28.

44. P. Fargues, *Circular Migration: Is It Relevant for the South and East of the Mediterranean? CARIM Analytic and Synthetic Notes 2008/40*, cit., p. 5.

Integral to this understanding is the recognition that the contemporary conceptualisation of “circular migration” imparts a distinct character to the EU and its Member States’ migration policies. Grounded in the neoclassical understanding of migration theory<sup>45</sup>, this (micro- and macro-) economic paradigm, originating in the 1950s<sup>46</sup>, perceives migrants primarily as financial assets<sup>47</sup>, guided by a rational economic cost benefit assessment<sup>48</sup>. While macroeconomic theories deal with the general causes of migration, microeconomic theories seek to explain why individuals migrate.

Macroeconomic theories – developed by Lewis, Ranis and Fei, and Harris and Todaro – stress that the cause of migration is the existing differential in economic development, economic needs, and wages in different areas<sup>49</sup>. Therefore, migration is a way to balance these differentials. Microeconomic theories – developed by Sjaastad, Todaro and Borjas – explain why individuals migrate by stating that migrants act rationally to pursue their economic interest<sup>50</sup>. According to Todaro, «continued existence of rural-urban migration in spite of substantial overt urban unemployment represents an economically rational choice on the part of the individual migrant»<sup>51</sup> and «the decision to migrate from rural to urban areas will be functionally related to two principal variables: (1) the urban-rural real income differential and (2) the probability of obtaining an urban job.»<sup>52</sup>

Contemporary proponents of “circular migration,” operating within this neoclassical framework, assert that macro-level “circular migration” initiatives serve to balance economic and wage differentials between areas and that individuals join on the basis of a cost-benefit calculation, counting on the possibility of returning to their country of origin<sup>53</sup>. This perspective advocates a “triple win” scenario, postulating benefits for destination countries through the provision of cost-effective labour without the integration demands of permanent migration, advantages for countries of origin through remittances and the repatriation of skilled workers, and enhanced opportunities for migrants to access developed countries’ labour markets legally and safely<sup>54</sup>.

Navigating the multifaceted discourse on “circular migration” reveals fundamental features that distinguish it from alternative migration models. These include the imperative of repetitiveness, embodied in bidirectional or multidirectional migratory cycles between the origin and destination countries, and the centrality of freedom of movement, affording

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45. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 28.

46. W. A. Lewis, *Economic Development with Unlimited Supplies of Labour*, in *Manchester School*, XXII, No. 2.1954, pp. 139-91.

47. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 28.

48. J. R. Harris and M. P. Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, in *Am. Eco. Rev.*, LX, No. 1.1970, pp. 126-42.

49. W. A. Lewis, *Economic Development with Unlimited Supplies of Labour*, cit., pp. 139-191; G. Ranis and J. C. H. Fei, *A Theory of Economic Development*, in *The American Economic Review*, LI, No. 4.1961, pp. 533-65; J. Harris and M. Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, cit., pp. 126-142.

50. L. A. Sjaastad, *The Costs and Returns of Human Migration*, in *Journal Pol. Eco.*, LXX, No. 5.1962, pp. 80-93; M. P. Todaro, *A Model of Labor Migration and Urban Unemployment in Less Developed Countries*, cit., pp. 138-148; G. J. Borjas, *Economic Theory And International Migration*, in *Int. Mig. Rev.*, XXIII, No. 3.1989, pp. 457-85.

51. J. Harris and M. Todaro, *Migration, Unemployment and Development: A Two-Sector Analysis*, cit., p. 127.

52. M. Todaro, *A Model of Labor Migration and Urban Unemployment in Less Developed Countries*, cit., p.139.

53. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, p. 29.

54. D.R. Agunias and K. Newland, *Circular Migration and Development: Trends, Policy Routes, and Ways Forward*, cit.,

migrants the flexibility to return at their discretion<sup>55</sup>. These characteristics collectively set “circular migration” apart from paradigms such as “permanent migration,” “return migration,” and “temporary migration.”

### 3. Temporary Migration: A Complex Notion

In delving into the intricate landscape of migration models, the distinction between temporary and circular migration serves is crucial to understand labour migration policies. In the current global landscape, temporary labour migration stands at the forefront of discussions, captivating attention due to its complex interplay of temporariness and regulation<sup>56</sup>. The latter two poles are also capital in circular migration.

To understand the evolution of temporary labour migration, it is crucial to study its historical foundations, particularly the practices of colonial indentured labour and guest work<sup>57</sup>. These historical parallels, stemming from the late 19<sup>th</sup> century to post-World War periods, laid the foundations for contemporary temporary labour programmes. Colonial indentured labour often involved individuals bound by contract to work in the colonies under harsh conditions, shaping early migration patterns<sup>58</sup>. The most infamous example is Indian colonial indenture system began with the end of slavery in 1833 and continued until 1920. It was a nearly forced servitude and labour model to which almost two million Indians were subjected. These people were transferred to various colonies of the European powers to provide labour for the plantations<sup>59</sup>.

Guest work encompassed temporary employment in a foreign country with an early return, similar to today’s temporary labour migration<sup>60</sup>. Indeed, between 1870 and 1914, the industrial revolution in Europe increased the demand for labour exponentially and some countries – such as Germany, France and Switzerland – developed temporary work programmes to prevent workers from settling permanently<sup>61</sup>. However, the peak period for temporary work programmes occurred in the 1950s and 1960s as countries tried to reconstruct. A particular example is the United Kingdom, which recruited 90,000 temporary workers, mostly from among refugees<sup>62</sup>. Another historical example is the North American

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55. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., p. 47; P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., p. 16; A. Thormann and A. Koch, *Circular and Temporary Migration. Empirical Evidence, Current Policy Practice and Future Options in Luxembourg*, cit., p. 14.

56. J. Howe and R. Owens, *Temporary Labour Migration in the Global Era : The Regulatory Challenges*, Oxford, Hart, 2016, p. 3.

57. Ivi, p. 4.

58. J. Connell, *From Blackbirds to Guestworkers in the South Pacific. Plus Ça Change ...?*, in *Eco. Lab. Rel. Rev.*, XX, No. 2.2010, p. 111, <https://doi.org/10.1177/103530461002000208>; S. Rosewarne, *Globalisation and the Commodification of Labour: Temporary Labour Migration*, in *Eco. Lab. Rel. Rev.*, XX, No. 2.2010, pp. 99–110, <https://doi.org/10.1177/103530461002000207>; R. Abramitzky and F. Braggion, *Migration and Human Capital: Self-Selection of Indentured Servants to the Americas*, in *Journal Eco. Hist.*, LXVI, No. 4.2006, pp. 882-905, <https://doi.org/10.1017/S0022050706000362>.

59. R. Sturman, *Indian Indentured Labor and the History of International Rights Regimes*, in *Am. Hist. Rev.*, 2014, <https://doi.org/10.1093/ahr/119.5.1439>.

60. Organization for Economic Cooperation and Development, *International Migration Outlook 2011*, Paris, OECD, 2011.

61. J. Howe and R. Owens, *Temporary Labour Migration in the Global Era : The Regulatory Challenges*, cit., p. 4.

62. S. Castles, *The Guest-Worker in Western Europe — An Obituary*, in *Int. Mig. Rev.*, XX, No. 4.1986, p. 761, <https://doi.org/10.1177/019791838602000402>.

“Bracero Programme”, which between 1942 and 1965 provided for the annual entry of over 100,000 Mexican seasonal workers into the United States<sup>63</sup>.

These historical antecedents set the stage for the resurgence of temporary worker programs in recent decades, presenting intricate regulatory challenges for governments and supranational entities. Not surprisingly, albeit often under a different name<sup>64</sup>, the phenomenon of temporary migration has resurfaced in recent years and both states and international actors have been confronted with the challenges it poses. To address these challenges, scholars have emphasised the principle of “dignity of work” and “equality” while also stressing the role migration plays in helping to balance inequalities between areas of the world<sup>65</sup>. Although these principles are central to the narrative, the doctrine points out that the real economic beneficiary of the temporary migration model is capital. However, according to Howe and Owens:

«Acknowledging capital as a primary beneficiary of temporary labour migration is not to deny its transformative potential for migrant workers. Temporary labour migration is now, even more than it ever was, deeply aspirational, as migrant workers seek to take advantage of increased remuneration and job opportunities available abroad. However, the desire of many to improve their life chances through temporary labour migration has encouraged the increasing commercialisation of migration, which has opened up new global possibilities for capital, via its myriad entrepreneurial endeavours, to exploit.»<sup>66</sup>

The dominant regulatory approach of destination states is rooted in economic rationale, treating temporary labour migration as a means to create a more extensive and flexible labour market. The role of globalisation is pivotal, intensifying international economic integration and influencing migration patterns. An example of this migration policy is the case of the Australian “457 Visa Program”. This visa is designed to address skill shortages in regional areas by allowing skilled workers to live and work in a specified regional area of Australia for up to 3 years<sup>67</sup>.

This brief historical reconstruction leads to the central issue of temporary migration: the definition. As Howe and Owens point out «[d]efining “temporary labour migration” is no straightforward matter.»<sup>68</sup> The scholarly discussion on the definition presents both narrow and broad perspectives. While some academics define temporary migration exclusively in terms of those who migrate for employment, others broaden the concept to encompass those who travel for various reasons (such as students, holidaymakers, trafficked individuals, or providers of foreign services). The narrow perspective highlights the participation of migrant workers in programmes for temporary labour migration provided by the state (such as those for “skilled temporary labour” and “seasonal workers”, etc.). The broad viewpoint

63. M. Livi-Bacci, *A Short History of Migration*, Cambridge, Polity Press, 2012, p. 114.

64. J. Howe and R. Owens, *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, cit., p. 4.

65. T. Novitz, *The Application of Human Rights Discourse to Labour Relations: Translation of Theory into Practice*, in *Human Rights At Work*, ed. T. Novitz and C. Fenwick, Oxford, Hart, 2010, pp. 1-38; S. Deakin, *Social Rights in a Globalized Economy*, in *Labour Rights as Human Rights*, ed. P. Alston, Oxford, Oxford University Press, 2005, pp. 25-60; B. Hepple, *Labour Laws and Global Trade*, Oxford, Hart, 2005.

66. J. Howe and R. Owens, *Temporary Labour Migration in the Global Era : The Regulatory Challenges*, cit., p. 5.

67. A. Boucher, *Measuring Migrant Worker Rights Violations in Practice: The Example of Temporary Skilled Visas in Australia*, in *Journal Ind. Rel.*, LXI, No. 2.2019, pp. 277-301; A. Reilly, *The Membership of Migrant Workers and the Ethical Limits of Exclusion*, in *Temporary Labour Migration in the Global Era. The Regulatory Challenges*, ed. J. Howe and R. Owens, Oxford, Hart, 2016, pp. 277-79; I. Campbell and J.-C. Tham, *Labour Market Deregulation and Temporary Migrant Labour Schemes: An Analysis of the 457 Visa Program*, in *Austr. Journal Lab. Law*, XXVI, No. 3.2013, pp. 239-40.

68. J. Howe and R. Owens, *Temporary Labour Migration in the Global Era: The Regulatory Challenges*, cit., p. 7.

draws attention to substantive aspects, arguing that all forms of temporary migration are relevant for the definition due to the potential for exploitation of all migrants<sup>69</sup>.

The definitional profile is additionally intricate due to the similarities between circular and temporary migration. Both share commonalities that are characterised by temporariness, bilateral cooperation, and engagement between countries marked by substantial economic and social differentials<sup>70</sup>. Notably, the prospect of return, whether voluntary or forced, stands as a shared aspect, with both patterns encompassing benefits such as remittances and the repatriation of skills to mitigate brain drain<sup>71</sup>.

However, the differences between circular and temporary migration become more pronounced when one delves into their structural frameworks<sup>72</sup>. Circular migration programmes, for instance, allow for frequent temporary stays abroad, facilitating repetitive movements either through spontaneous or regulated schemes. In contrast, temporary migration programmes are based on a one-time-only temporary stay and return, typically concluding the migration cycle within a single migratory episode<sup>73</sup>.

These differences extend to resource intensity, with circular migration programmes often demanding more substantial financial and logistical resources for their implementation compared to temporary migration schemes. Circular migration tends to involve the return of the same groups of individuals, often migrants who are invited back, while temporary migration programmes frequently engage different groups<sup>74</sup>.

Crucially, circular migration schemes are underpinned by sophisticated mechanisms that selectively organise the mobility of foreign workers. One pivotal feature is the outward circular migration to home countries for varying durations by the diaspora settled in destination countries. This dynamic not only involves diaspora contributions, but also plays a role in shaping the distinct characteristics of circular migration programmes<sup>75</sup>.

Moreover, the dissimilarities between these migration patterns highlight the complex nature of each, underscoring the multifaceted considerations that policymakers must grapple with when designing and implementing migration programmes. Circular migration programmes, with their recurrent temporary stays, necessitate more intricate planning and resource allocation, making them more resource-intensive compared to the often straightforward, one-time stays associated with temporary migration.

### **Table 1. Differences and similarities between circular and temporary migration<sup>76</sup>**

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69. J.-C. Tham, I. Campbell, and M. Boese, *Why Is Labour Protection for Temporary Migrant Workers so Fraught? An Australian Perspective*, in *Temporary Labour Migration in the Global Era. The Regulatory Challenges*, ed. J. Howe and R. Owens, Oxford, Hart, 2016, pp. 173-202; J. López López, *The Regulation of Temporary Immigration as Part of New Forms of the Supply Chain: Segmenting Labour Rights for Workers*, in *Temporary Labour Migration in the Global Era. The Regulatory Challenges*, ed. J. Howe and R. Owens, Oxford, Hart, 2016, pp. 241-58; V. Papa, *Regulating Temporariness in Italian Migration Law*, in *Temporary Labour Migration in the Global Era. The Regulatory Challenges*, ed. J. Howe and R. Owens, Oxford, Hart, 2016, pp. 259-76.

70. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., pp. 7-13.

71. *Ibid.*

72. J.-P. Cassarino, *Patterns of Circular Migration in the Euro-Mediterranean Area: Implications for Policy Making*, in *CARIM Analytic and Synthetic Notes 2008/29*, 2008, pp. 1-13.

73. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., pp. 27-31.

74. M. Abella, *Policies and Best Practices for Managing Temporary Migration*, cit., pp. 4-5.

75. P. Wickramasekara, *Circular Migration: A Triple Win or a Dead End?*, cit., pp. 7-13.

76. Italics added by the author. The table is based on: *Ivi*, pp. 10-11; J.-P. Cassarino, "Patterns of Circular Migration in the Euro-Mediterranean Area: Implications for Policy Making", cit., pp. 1-13.

Differences	Similarities
Temporary migration schemes are designed for <i>one-time temporary stays</i> and returns, which often end the migration cycle. In contrast, circular migration programmes permit <i>many temporary stays abroad</i> .	<i>Temporariness</i> : Circular and temporary migration both involve temporary stays with no prospect of permanent residence.
<i>Movement repetition</i> is feasible in both regulated and unregulated circular migration programmes.	<i>Patterns of cooperation</i> : Circular and temporary migration can both be parts of larger patterns of informal or formal bilateral cooperation.
Compared to temporary migration schemes, the operation of circular migration programmes requires a greater <i>investment</i> of financial and logistical resources.	<i>Economic and social development differentials</i> : Circular and temporary migration frequently involve countries with stark differences in their levels of social and economic development
Temporary migration programmes frequently involve various <i>groups of people</i> , whereas circular migration programmes typically involve the <i>same groups of people</i> (migrants who are invited back).	
Circular migration schemes are based on <i>complex processes</i> that organise the mobility of foreign workers selectively.	<i>Returns</i> : Returns resulting from temporary and circular migration may be forced or voluntary.
One pillar of circular migration programmes is the <i>outward</i> circular migration to home countries for varying durations by diaspora settled in destination countries.	
Circular migration involves the contribution of the <i>diaspora</i> , specifically.	<i>Similar benefits claimed</i> : Both circular and temporary migration can generate remittances, bringing back skills and reducing brain drain.

Essentially, this comprehensive overview aligns with Wickramasekara’s analysis, drawing insights from Cassarino’s work. As such, the definition of temporary migration involves individuals relocating to a destination country for a one-time, temporary stay, followed by a subsequent return. This type of migration is characterised by a limited duration, often concluding within a single migratory episode. Temporary migration schemes may be designed to address specific labour or skill needs in the receiving country. They can be part of bilateral cooperation agreements, aiming to alleviate economic and social development disparities between countries. Temporary migration often encompasses diverse groups of people, and the return may be either forced or voluntary. While generating benefits such as remittances and skill repatriation, temporary migration programmes typically do not involve repetitive stays abroad.

#### 4. High-skilled and Low-Skilled Migrant Workers: European Migration Policy Between Circularity and Temporariness

The founding principles of migration law in European states find their origins in the European Convention for the Protection of Fundamental Freedoms and Human Rights (ECHR), the Charter of Fundamental Rights of the European Union (CFR), the Treaty on European Union (TEU) and the Treaty on the Functioning of the EU (TFEU) and other international obligations undertaken by European states<sup>77</sup>. Thus, migrant workers are subject to a multitude of national, European, and international provisions that determine their status (i.e. regular, or irregular)<sup>78</sup> and rights<sup>79</sup>.

Although the ECHR operates outside the EU context, its universal influence is evident through the unanimous adherence of EU Member States<sup>80</sup>. Moreover, the ECHR plays a decisive role in the protection of human rights also under EU law, as provided for in Article 6 of the TEU<sup>81</sup>. The ECHR, safeguarding fundamental rights irrespective of nationality or origin, imposes robust anti-discrimination measures. Protocol No. 4 of 16 September 1963 states in Article 2 that «Everyone shall be free to leave any country, including his own», while Protocol No. 7 of 22 November 1984 imposes procedural constraints against unlawful expulsions of non-nationals<sup>82</sup>. In parallel, the CFR (which has become primary law in the EU since 2009) strengthens the protection of civil, political, and social rights. It explicitly enforces a comprehensive prohibition of discrimination and upholds the right to asylum<sup>83</sup>, proscribing collective expulsions and extraditions involving risks of capital punishment, torture, or degrading treatment<sup>84</sup>.

Specifically concerning the EU, the 1957 Treaty of Rome had no specific provisions on third-country migrants and focused on the internal mobility of Member States' citizens. An EU competence on immigration from third countries emerged in particular with the

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77. B. Ryan and R. Zahn, eds., *Migrant Labour and the Reshaping of Employment Law*, Oxford, Hart, 2023; C. Costello and M. Freedland, eds., *Migrants at Work: Immigration and Vulnerability in Labour Law*, Oxford, Oxford University Press, 2014.

78. Legal literature and legislation define the migrant without a legal status in many ways: “illegal migrant”, “clandestine migrant”, “undocumented migrant”, and “irregular migrant”. In order to avoid negative connotations and, at the same time, to adopt a term capable of including all the facets of the concrete case, the author has chosen to use the term “irregular migrant” according to the definition by R. Perruchoud and J. Redpath-Cross, eds., *Glossary on Migration*, Geneva, International Organization for Migration, 2011. The glossary defines “irregular migrant” as: “A person who, owing to unauthorized entry, breach of a condition of entry, or the expiry of his or her visa, lacks legal status in a transit or host country. The definition covers inter alia those persons who have entered a transit or host country lawfully but have stayed for a longer period than authorized or subsequently taken up unauthorized employment (also called clandestine/undocumented migrant or migrant in an irregular situation). The term “irregular” is preferable to “illegal” because the latter carries a criminal connotation and is seen as denying migrants’ humanity.”

79. E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, in *Quest. Giust.*, 2019, [https://www.questionegiustizia.it/articolo/l-europa-dei-diritti-e-le-migrazioni-le-norme-e-la-realta\\_20-05-2019.php](https://www.questionegiustizia.it/articolo/l-europa-dei-diritti-e-le-migrazioni-le-norme-e-la-realta_20-05-2019.php).

80. Article 2, Protocol No. 4 of 16 September 1963 available at: Council of Europe, *Our Member States*, 2021, <https://www.coe.int/en/web/about-us/our-member-states>.

81. Article 6(1) of TUE: «The Union recognises the rights, freedoms and principles set out in the Charter of Fundamental Rights of the European Union of 7 December 2000, as adapted at Strasbourg, on 12 December 2007, which shall have the same legal value as the Treaties. [...]».

82. S. Centonze and S. Anastasio, *Protezione Dei Migranti: Corte Edu e Corte Di Giustizia a Confronto*, in *Quest. Giust.*, 2019, pp. 398-398, [https://www.questionegiustizia.it/data/speciale/pdf/32/qg-speciale\\_2019-1.pdf](https://www.questionegiustizia.it/data/speciale/pdf/32/qg-speciale_2019-1.pdf); E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, cit.

83. Articles 20 and 21 of the CFR.

84. Articles 18 and 19 of the CFR. See also: E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, cit.

Schengen Agreement of 1985. The decisions of the 1999 Tampere European Council marked a significant change in addressing immigration issues, emphasising an open, secure and humanitarian European Union. This led to guidelines for a common migration policy, covering issues such as management of migration flows, fair treatment, integration and partnerships with countries of origin. The subsequent Laeken European Council in 2001 promoted common standards for family reunification and addressed the need for common rules against discrimination and racism. The Lisbon Treaty of 2009 unified migration policies, emphasising solidarity and fair sharing of responsibilities between EU Member States. However, national sovereignty still plays a crucial role in determining the number of admissions allowed<sup>85</sup>.

The TEU designates immigration as a shared competence between the EU and its Member States, placing it within the Area of Freedom, Security, and Justice. This framework encompasses unrestricted movement across internal borders for European citizens, coupled with stringent checks on persons at external borders<sup>86</sup>. The TFEU mandates a common migration policy premised on solidarity, equitable distribution of responsibilities<sup>87</sup>, effective management of migration flows, fair treatment of third-country nationals, and the prevention of migrant smuggling and trafficking in human beings<sup>88</sup>. This policy extends to a unified legislation on asylum and humanitarian protection<sup>89</sup>.

Despite impediments from divergent Member State perspectives hindering the realisation of a consolidated European migration and asylum policy, discernible political trends and principles persist. Regulatory instruments addressing permanent migrants (Directive 2003/109/EC), family reunification (Directive 2003/83/EC), the free movement of EU citizens (Directive 2004/38/EC), return policies (Directive 2008/115/EC), high-skilled foreign workers (Directive 2009/50/EC or the Blue Card Directive), sanctions against employers of irregular foreigners (Directive 2009/52/EC), and the single procedure for residence and work permits (Directive 2011/98/EU) constitute substantive pillars<sup>90</sup>.

The existing Directives and Treaties distinguish between two types of migration: internal migration or intra-EU migration, which involves the movement of European citizens within Member States, and international migration, which concerns individuals from third countries. Internal migration is governed by the principle of freedom of movement for citizens and takes the form of “circular migration”. European citizens have the right to migrate repeatedly and freely between Member States. Conversely, international migration includes individuals compelled to leave their country due to humanitarian crises (asylum seekers and refugees) and those migrating for economic reasons (migrant workers). Both asylum seekers and refugees, and intra-EU migration are not considered in this research<sup>91</sup>.

Turning to legislative trends governing economic migrants reveals a discernible shift toward a more restrictive paradigm<sup>92</sup>. The prolonged effort to forge a cohesive EU-wide policy on economic migration has encountered persistent challenges, with Member States

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85. R. Nunin, *Le Migrazioni Economiche Nel Diritto Dell'Unione Europea*, in *Immigrazione e Lavoro: Quali Regole?*, ed. P. Bonetti, M. D'Onghia, P. Morozzo della Rocca, M. Savino, Napoli, Editoriale Scientifica, 2022, pp. 467-77.

86. Article 77 of the Treaty on the Functioning of the European Union.

87. Article 80 of the TFEU.

88. Article 79 of the TFEU.

89. Article 78 of the TFEU.

90. E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, cit.

91. V. Federico and S. Baglioni, eds., *Migrants, Refugees and Asylum Seekers' Integration in European Labour Markets. A Comparative Approach on Legal Barriers and Enablers*, Cham, Springer, 2021.

92. R. Nunin, *Le Migrazioni Economiche Nel Diritto Dell'Unione Europea*, cit., pp. 467-77.

staunchly asserting their sovereign prerogatives. Since 2005, the European Commission has advocated the policy of “circular migration” with the aim of creating programmes to manage migration flows by «allowing some degree of legal mobility back and forth between two countries.»<sup>93</sup> In spite of its name, this policy has resulted in “temporary migration” programmes that combine security and migration control needs with the economic needs of labour supply. The principles governing the EU’s and its Member States’ migration legislation are: «1) the prevention of permanent labour migration, with the exception of certain highly skilled migrants, and 2) the stimulation of temporary labour migration for less and medium-skilled migrants in specific sectors.»<sup>94</sup>

As at the EU level, domestic migration legislations have shifted to a restrictive approach that has nothing to do with the “circular migration” model but is rather a “temporary migration” model. The EU Member States consider migration as a security issue rather than a resource<sup>95</sup>, meaning that migrants «are often unwanted as a permanent component of the population for non-economic reasons.»<sup>96</sup> Genuine circular or permanent migration programmes are only envisaged for highly skilled workers. The latter are held in high regard, whereas medium and low-skilled migrants are considered “disposable,” although they are indispensable for important economic sectors (e.g., agriculture, logistics, transport, care, food).

An example of migration schemes for high-skilled workers is the Blue Card Directive<sup>97</sup>. This legislation was introduced by Directive 2009/50/EC on the “Conditions of entry and residence of non-EU nationals for highly qualified employment.” As of 19 November 2023, Directive 2021/1883/EU came into force, repelling the previous act. The directive sets forth the entry and residence conditions, as well as the rights, applicable to highly qualified third-country nationals and their families within the EU. These conditions encompass stays exceeding three months in an EU Member State and employment in a Member State different from the one initially conferring the EU blue card<sup>98</sup>. Notable features include its applicability to third-country nationals seeking highly qualified employment, specific eligibility criteria for EU blue card applicants, and Member States’ discretion in determining entry limits.

The application process for the EU blue card necessitates the submission of a valid work contract or job offer, professional qualification documents, travel and visa documents, and evidence of health insurance application if not covered in the contract. Member States are tasked with setting salary thresholds, managing applications, and ensuring the accessibility of requisite documentation<sup>99</sup>.

Stringent rejection rules are stipulated for instances where admission criteria are unmet, false documents are presented, the applicant poses a threat to public policy, security, or health, or if the employer’s principal objective is to bring in third-country nationals.

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93. European Commission, *Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions on Circular Migration and Mobility Partnerships between the European Union and Third Countries*, cit., p. 8.

94. V. Gomes and J. Doomernik, *State-of-the-Art on Temporary Labour Migration Schemes in Europe*, cit., p. 9.

95. See section 5 on the national migration legislation of Italy and Germany.

96. V. Gomes and J. Doomernik, *State-of-the-Art on Temporary Labour Migration Schemes in Europe*, cit., p. 12.

97. R. Blanpain, F. Hendrickx, and P. Herzfeld Olsson, eds., *National Effects of the Implementation of EU Directives on Labour Migration from Third Countries*, Alphen aan den Rijn, Kluwer Law International, 2016, chap. 1 and 2; E. Guild, *The EU’s Internal Market and the Fragmentary Nature of EU Labour Migration*, in *Migrants at Work: Immigration and Vulnerability in Labour Law*, ed. C. Costello and M. Freedland, Oxford, Oxford University Press, 2014, pp. 108-9.

98. Articles 1 and 3 of the Directive 2021/1883/EU.

99. Article 5 of the Directive 2021/1883/EU.

Withdrawal or non-renewal may transpire if the blue card holder no longer satisfies contractual or qualification prerequisites or if public policy, security, or health is compromised<sup>100</sup>.

Blue cards remain valid for a minimum of 24 months, conferring holders rights in line with the directive<sup>101</sup>. Employers stand to benefit from a streamlined procedure if accorded recognised status but may face sanctions for non-compliance<sup>102</sup>. Blue card holders enjoy parity with EU nationals, may be accompanied by family members with the right to work, and have the prospect of acquiring long-term EU resident status<sup>103</sup>.

Although the legislation was adopted by the EU, the Blue Card scheme is fundamentally national. Under the previous directive, the European Commission recognised the fragmentation produced by the Blue Card. This fragmentation has not been resolved since this instrument has not led to the repeal of parallel work and stay permit systems for high-skilled third-country citizens. This has created *de facto* competition between the Blue Card and national permits, which are often less protective but have less strict access conditions<sup>104</sup>.

The Blue Card emblematically illustrates the fragmented nature of European migration policies. Despite its inherent complexity and stringency, the Blue Card serves as a distinctive migration model offering skilled migrants the opportunity for circular movement. Conversely, policies governing medium- and low-skilled migrants predominantly fall within the purview of national prerogatives. Efforts towards coordination remain constrained and entangled in conflicting national interests.

## 5. The EU Member States Migration Legislation: Italy and Germany

Examining briefly the EU Member States, two nations stand out as emblematic: Italy and Germany. These two countries were selected as representative of the north and south EU Member States. Despite their distinct characteristics and varied migration patterns, both countries have implemented legislation influenced by the concept of “temporary migration” and maintain a restrictive legal framework, particularly for medium- and low-skilled labour migration.

### 5.1. Italy

Italy has been a country of emigration for much of its history, and only recently has become a country of immigration<sup>105</sup>. As a result, Italian migration law has long been governed by a fragmented body of legislation.

In Italy, a significant immigration phenomenon began in the late 1970s, primarily irregular and spontaneous<sup>106</sup>. Unlike the guided migration of the 1950s and 1960s towards

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100. Articles 5, 7, and 8 of the Directive 2021/1883/EU.

101. Article 9 of the Directive 2021/1883/EU.

102. Articles 13 and 14 of the Directive 2021/1883/EU.

103. Chapter IV of the Directive 2021/1883/EU.

104. Article 4 of the Directive 2021/1883/EU.

105. M. Patti, *Emigrazione Ed Immigrazione in Italia. Un Quadro Delle Politiche Migratorie Dall'età Liberale Alla Bossi-Fini*, in *Migrazioni. Diritto e Società*, ed. D. Ciaffi, M. Patti, and F. Parisi, Padua, Cedam, 2018, pp. 23-37; M. Colucci, *Storia Dell'immigrazione Straniera in Italia. Dal 1945 Ai Nostri Giorni*, Roma, Carocci Editore, 2018.

106. M. Colucci, *Storia Dell'immigrazione Straniera in Italia. Dal 1945 Ai Nostri Giorni*, cit., pp. 28 ff.

central and northern Europe<sup>107</sup>, Italy became an alternative for migrants, with irregular entries leading to precarious and undeclared employment. The lack of a dedicated policy led to administrative complexities, creating a system full of discretion and contradictions, which pushed many towards irregularity<sup>108</sup>.

Until the mid-1980s, Italy lacked specific legislation regulating the entry, stay and work of foreign citizens. The 1986 Foschi Law marked the first attempt to address this issue, governing the placement and status of third-country workers. This legislation initiated a series of regularisation processes, marking the beginning of the management of migration flows in Italy<sup>109</sup>.

The subsequent Martelli Law of 1990 aimed at general flow planning rather than case-by-case assessments<sup>110</sup>. However, challenges persisted, and administrative practices continued to be convoluted, emphasising the discretionary nature of the system. The legislative landscape evolved, leading to the 1998 Consolidated Immigration Act (Law No. 40 of 1998 and Legislative Decree No. 286 of 1998) also known as Turco-Napolitano law, which emphasises the general planning of immigration policies. The Consolidated Immigration Act introduced a quota system and defined the rights of non-nationals<sup>111</sup>. This law disciplines the types of immigration (asylum and international economic migration) in different and not always efficient ways.

The introduction of the Flow Decrees in the early 2000s aimed to manage migration waves and prevent irregularities. However, these Decrees have become instruments of regularisation rather than effective planning. The economic recession and increasing migration challenges have further restricted legal entries, leading to stagnation of the system<sup>112</sup>.

The practice of reserving quotas for specific countries has led to unintended consequences, limiting opportunities for legal work. The rigid structure and lack of a unified strategy highlighted the need for a more flexible and strategic approach to respond to different labour market needs. The legislative evolution aimed at establishing effective planning policies faced challenges. The Turco-Napolitano Law of 1998 sought to move beyond labour availability, emphasising overall immigration policy planning. However, the coordination between laws remained unclear, and the criteria for defining entry quotas lacked effective implementation.

The 1998 legislation underwent structural changes in 2002 with the Bossi-Fini law (Law No. 189/2002), which restricted entry into the country and accentuated the vulnerability and precariousness of the legal status of third-country nationals. Additionally, the Bossi-Fini law strengthened planning, requiring regional demand to be taken into account and introducing the concept of a “stay contract” for work permits. After this reform, numerous others, sharing a similar objective, followed suit. These include the Security Package (Law No. 94/2009, Law No. 125/2009, and Law No. 217/2010), the Minniti Decrees (Law No. 46/2017 and Law No. 48/2017), the Salvini Decrees (Law No. 132/2018 and Law No.

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107. L. Einaudi, *Le Politiche Dell'immigrazione in Italia Dall'Unità a Oggi*, Bari, Laterza, 2007, pp. 65 ff.

108. M. Colucci, *Storia Dell'immigrazione Straniera in Italia. Dal 1945 Ai Nostri Giorni*, cit., pp. 68.

109. C. Corsi and S. Dall'Oglio, *Il Quadro Normativo*, in *Immigrazione e Lavoro: Quali Regole?*, ed. P. Bonetti, M. D'Onghia, P. Morozzo della Rocca, M. Savino, Napoli, Editoriale Scientifica, 2022, p. 396.

110. *Ivi*, p. 397; M. Colucci, *Storia Dell'immigrazione Straniera in Italia. Dal 1945 Ai Nostri Giorni*, 87.

111. S. Paoli, *La Legge Turco-Napolitano: Un Lasciapassare per l'Europa*, in *Meridiana*, XCI, 2018, pp. 121-49.

112. C. Corsi and S. Dall'Oglio, *Il Quadro Normativo*, cit., pp. 397-98.

77/2019, as amended by Law No. 173/2020), and finally the Cutro Decree (Decree-Law No. 20/2023 converted into Law No. 50/2023)<sup>113</sup>.

These successive interventions have solidified the paradigm of “temporary migration,” introducing, from an exclusively security perspective, various restrictions on access to Italian territory with the aim of dissuading migration<sup>114</sup>. Especially for international economic migration, the model of reference is that of the “temporary migrant” whose condition can be consolidated over time. For migrant workers, legislation provides for periodically renewed temporary residence permits closely linked to a job and a rigid and highly intricate quota system based on labour shortages<sup>115</sup>. Long-term residence permits can be issued to long-term residents with an income of more than approximately €8,000 per year, 5 years of regular residence and a good level of Italian. Such restrictive legislation paradoxically facilitates the transition from regular to irregular migrant status. In fact, as Morozzo della Rocca recalls in Italy «[t]he boundary between the regularity and irregularity of the stay has never been impassable, therefore the representation of regular immigration as opposed to illegal immigration would deserve some reasonable relativisation [...]»<sup>116</sup>

Parallel to the restrictive migration policy in Italy (but also in many other European states, including Spain, Portugal, Greece, France, Belgium, Luxembourg, the United Kingdom and Germany), temporary collective regularisation programmes have been used frequently, even though such measures are disfavoured by European institutions and viewed with increasing concern by national governments for reasons of public security<sup>117</sup>. According to Ambrosini, from 1985 to 2015, there were 34 temporary collective regularisation programs

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113. W. Chiaromonte, *Una Lettura Giuslavoristica Del d.l. 20/2023: Le Inadeguate Politiche Migratorie Del Governo Meloni*, in *Gior. Dir. Lav. Rel. Ind.*, No. 3.2023, pp. 431–61; W. Chiaromonte and V. Federico, *The Labour Market Needs Them, But We Don't Want Them to Stay for Good: The Conundrum of Migrants, Refugees and Asylum Seekers' Integration in Italy*, in *Migrants, Refugees and Asylum Seekers' Integration in European Labour Market*, ed. V. Federico and S. Baglioni, Cham, Springer, 2021, p. 199, [https://doi.org/10.1007/978-3-030-67284-3\\_10](https://doi.org/10.1007/978-3-030-67284-3_10); W. Chiaromonte, *L'ingresso per Lavoro: L'irrazionalità Del Sistema e Le Sue Conseguenze Al Tempo Delle Fake News e Della Retorica Nazionalista*, in *Ius Migrandi: Trent'anni Di Politiche e Legislazione Sull'immigrazione in Italia*, ed. M. Giovannetti and N. Zorzella, Milan, FrancoAngeli, 2020, pp. 229-50; J.-M. Lafleur and D. Vintila, eds., *Migration and Social Protection in Europe and Beyond (Volume 1). Comparing Access to Welfare Entitlements*, Cham, Springer, 2020, <https://doi.org/10.1007/978-3-030-51241-5>; W. Chiaromonte, *The Italian Regulation on Labour Migration and the Impact and Possible Impact of Three EU Directives on Labour Migration: Towards a Human Rights-Based Approach?*, in *National Effects of the Implementation of EU Directives on Labour Migration from Third Countries*, ed. R. Blanpain, F. Hendrickx, and P. Herzfeld Olsson, Alphen an den Rijn: Kluwer Law International, 2016; S. Sciarra and W. Chiaromonte, *Migration Status in Labour Law and Social Security Law*, in *Migrants at Work. Immigration and Vulnerability in Labour Law*, ed. C. Costello and M. Freedland, Oxford, Oxford University Press, 2014; W. Chiaromonte, *Lavoro e Diritti Sociali Degli Stranieri. Il Governo Delle Migrazioni Economiche in Italia e in Europa*, Torino, Gaiappichelli, 2013.

114. E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, cit.

115. M. Paggi, *L'ingresso per Lavoro: La Decretazione Annuale Dei Flussi. Criteri Ed Evoluzione Normativa*, in *Ius Migrandi: Trent'anni Di Politiche e Legislazione Sull'immigrazione in Italia*, ed. M. Giovannetti and N. Zorzella, Milan, FrancoAngeli, 2020, pp. 251-74; W. Chiaromonte, *L'ingresso per Lavoro: L'irrazionalità Del Sistema e Le Sue Conseguenze Al Tempo Delle Fake News e Della Retorica Nazionalista*, cit. pp. 229–50; M. Colucci, *Storia Dell'immigrazione Straniera in Italia. Dal 1945 Ai Nostri Giorni*, cit.

116. Translation by the author, Italian version: “Il confine tra regolarità e irregolarità del soggiorno non è mai stato invalicabile, pertanto la rappresentazione di un'immigrazione regolare da contrapporre all'immigrazione illegale meriterebbe qualche ragionevole relativizzazione [...]” in P. Morozzo della Rocca, *Le Vie Dell'immigrazione e Quelle Della Regolarizzazione*, in *Immigrazione e Lavoro: Quali Regole?*, ed. P. Bonetti, M. D'Onghia, P. Morozzo della Rocca, M. Savino, Napoli, Editoriale Scientifica, 2022, p. 559.

117. *Ivi*, p. 561.

in Europe and the US<sup>118</sup>. Additionally, more recent measures, such as the Italian regularisation program provided for in Article 103, Decree-Law No. 34/2020, or the Portuguese program in response to the pandemic emergency, should be recalled<sup>119</sup>. The frequency of temporary collective regularisation programmes highlights the inability of Italian migration policy, driven by security concerns, to coherently manage migration routes and to deviate from the circular migration model promoted at European level. Legislative interventions have further accentuated the model's failure.

The varied Italian immigration legislation includes different types of residence permits. With the exception of the long-term EU residence permit, all Italian permits are temporary, classified according to the purpose of stay (e.g., health, education, family, work, search for employment, social protection). The procedures for requesting and issuing a permit are outlined in Articles 5-9<sup>ter</sup> of the Consolidated Law on Immigration, with a focus on work-related permits.

The work permit is granted upon the signing of an employment contract between an Italian or foreign employer residing in Italy and a third-country national worker. The employer must obtain a work authorisation from the Immigration Office, granted on the basis of annual entry quotas. Subsequently, the foreign worker can apply for a work entry visa at the Italian Consulate in his country of residence. The work permit is strictly linked to the existence of an employment relationship formally recognised and reported to the National Institute for Social Security by the employer.

The permit for search for employment is issued when the worker is without a work contract but is registered with employment centres while renewing the permit for subordinate work. The loss of employment does not lead to the revocation of the residency permit for third-country workers and their legally residing family members. The unemployed foreigner may be registered with the employment centre for the residual period of validity of his residency permit, excluding seasonal workers, for a total period of no less than one year or for the entire duration of income support benefits, during which he may seek new employment<sup>120</sup>.

Highly qualified third-country workers authorised to work are issued with a Blue Card<sup>121</sup>. The residence permit is valid for two years in the case of a permanent employment contract or for the duration of the employment relationship in other cases. During the first two years of legal residency, the Blue Card holder may only carry out work that meets the conditions for admission and those specified in the Blue Card permit. However, a change of employer is permitted within the first two years, provided that the job remains the same. Changes of employer require the authorisation of the competent Territorial Labour Inspectorate. Once 15 days have elapsed since the receipt of the documentation relating to the new work contract or the binding offer, the opinion of the competent Territorial Labour Inspectorate is considered to have been acquired.

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118. M.m Ambrosini, *From 'Illegality' to Tolerance and Beyond: Irregular Immigration as a Selective and Dynamic Process*, in *International Migration*, LIV, No. 2.2016, p. 149.

119. P. Rinaldi, *Impatto Della Pandemia Sulle Comunità Di Immigrati e Sulla Protezione Delle Famiglie e Dei Minori Vulnerabili: I Casi Di Spagna e Portogallo*, in *#UnaSolaCasa. L'umanità Alla Prova Del Covid-19*, ed. L. Prencipe and M. Sanfilippo, Roma, Centro Studi Emigrazione Roma, 2021, p. 62; W. Chiaromonte and M. D'Onghia, *Cronaca Di Una Sanatoria in Tempo Di Emergenza Sanitaria: Genesi, Finalità e Limiti*, questa Rivista, No. 3. 2020, pp. 1-32.

120. C. Corsi and S. Dall'Oglio, *Il Quadro Normativo*, cit., pp. 414-15.

121. The Blue Card Directive has been transposed in Italy by Legislative Decree No. 152/2023.

The residency permit for social protection concerns foreign nationals who are victims of violence or crimes such as prostitution, exploitation at work or begging, for which imminent arrest is envisaged (slavery, human trafficking, sexual violence, etc.).

To sum up, Italy's transition from a historical country of emigrants to a centre of immigration has shaped a migration policy characterised by temporariness. The first irregular flows in the late 1970s highlighted the administrative complexities due to the absence of specific legislation. While legislative attempts, such as the Foschi Law of 1986 and the Turco-Napolitano Law of 1998, aimed to address these problems, subsequent reforms, notably the Bossi-Fini Law of 2002, adopted a security-driven model of "temporary migration." This approach, characterised by intricate quota systems and frequent regularisation programmes, paradoxically facilitates the transition from regular to irregular migrant status. Although Italian legislation has conformed to European Directives on migration, the integration between the two systems has not always been coherent. The logic governing the whole Italian model is extremely restrictive, to the point that before the adoption of the Blue Card Directive, Italy did not have its own scheme for high-skilled migrants<sup>122</sup>.

## 5.2. Germany

The German discipline regarding access to the labour market for non-nationals is experiencing rapid evolution, primarily driven by legal and the socio-economic needs. The complexity of regulating this phenomenon arises from its intrinsic variability. Germany has been subject to migratory flows for centuries, and the characteristics of these flows have changed periodically, requiring the system to adapt to the contingent needs of different periods.

Starting from the 1880s, the demand for labour in Germany experienced significant growth due to the expansion of the industry, surpassing the natural population growth and rural-urban migration<sup>123</sup>. Before World War I, over 1.2 million "foreign migrant workers" (mainly Poles) were employed in Germany under strict controls, with the understanding that they would be repatriated once the need for foreign labour diminished<sup>124</sup>. During the war, Germany increasingly employed forced foreign workers, including prisoners of war and civilians from Belgium, Poland, and Lithuania<sup>125</sup>.

The post-World War I era, during the Weimar Republic (1919-1933), witnessed a significant decrease in foreign immigrants for work due to the severe economic crisis<sup>126</sup>.

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122. For a comprehensive analysis see: E. Paciotti, *L'Europa Dei Diritti e Le Migrazioni. Le Norme e La Realtà*, cit.; M. Patti, *Emigrazione Ed Immigrazione in Italia. Un Quadro Delle Politiche Migratorie Dall'età Liberale Alla Bossi-Fini*, cit., pp. 37-43; M. Giovannetti and N. Zorzella, eds., *Ius Migrandi. Trent'anni Di Politiche e Legislazione Sull'immigrazione in Italia*, Milan, FrancoAngeli, 2020; G. C. Romagnoli, *La Politica Dell'immigrazione in Italia e in Europa*, Milano, Franco Angeli, 2020, pp. 138-73.

123. K. J. Bade, *Vom Auswanderungsland Zum Einwanderungsland? Deutschland 1880-1980*, Berlin, Colloquium Verlag, 1983, pp. 29 ff.

124. J. Oltmer, *Europäische Und Deutsche Migrationsverhältnisse Im 19. Und 20. Jahrhundert*, in *Einwanderungsgesellschaft Deutschland*, ed. H. U. Brinkmann and M. Sauer, Wiesbaden, Springer Fachmedien Wiesbaden, 2016, pp. 51-97.

125. A. De Petris, *Germania*, in *Immigrazione e Lavoro: Quali Regole?*, ed. P. Bonetti, M. D'Onghia, P. Morozzo della Rocca, M. Savino, Napoli, Editoriale Scientifica, 2022, pp.18-19; F. Passelecq, *Déportation Et Travail Forcé Des Ouvriers Et De La Population Civile De La Belgique Occupée (1916-1918)*, Paris, Les Presses Universitaires de France, 1928.

126. A. De Petris, *Germania*, cit., p. 19.

Forced migrations gained prominence after 1918, with over ten million people forced to cross European borders, especially those fleeing the Russian Revolution<sup>127</sup>. However, the major forced migrations involving exploitation and extermination occurred between 1933 and 1945, with hundreds of thousands of Jews and political dissidents migrating or being forcibly moved<sup>128</sup>.

In the late 1940s, the flow of refugees and displaced persons to Germany due to World War II diminished. In the Federal Republic of Germany (West Germany), the first migratory flows began after World War II and mainly involved Germans from the German Democratic Republic (East Germany) and German minorities in the neighbouring countries<sup>129</sup>. By the mid-1950s, West Germany faced a labour shortage, leading to the recruitment of foreign workers known as *Gastarbeiter* (guest workers)<sup>130</sup>. The first employment agreement was with Italy in 1955, followed by agreements with Spain, Greece, Turkey, Morocco, Portugal, and Tunisia<sup>131</sup>. The 1960s marked a significant influx of guest workers, reaching its peak in 1973 when a hiring freeze was imposed due to the oil crisis<sup>132</sup>.

The case of Turkey requires special analysis. Initially hesitant due to cultural and religious differences, West Germany eventually agreed to a labour recruitment agreement with Turkey in 1961. The agreement initially included the “rotation principle,” requiring workers to return after two years, but this was later abolished due to industry opposition. The oil crisis of 1973 led to a hiring freeze, with around 605,000 Turkish workers present in Germany at that time. Many chose to stay longer or permanently, leading to a sustained Turkish immigration to Germany<sup>133</sup>.

The 1980s brought a significant decrease of migrant workers in West Germany. Guest Workers Programmes (*Gastarbeiterprogramm*) came to an end in this period<sup>134</sup>. These programmes were conceived as temporary, assuming that migrants would return to their countries of origin when employment declined. However, the phenomenon turned into permanent migration. Therefore, in the years following the end of the programmes, to encourage the return of unemployed temporary guest workers, Germany started to provide generous incentives (i.e., *Rückkehrhilfegesetz*). Out of the 14 million guest workers who arrived in West Germany between 1955 and 1973, 11 million returned to their home countries, while three million, no longer temporary *Gastarbeiter*, became permanent immigrants<sup>135</sup>.

The situation changed after German reunification in the 1990s. In the early 1990s the number of migrants was larger than the number of guest workers in 1970. The causes of this

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127. M. Raeff, *Emigration - Welche, Wann, Wo? Kontexte Der Russischen Emigration in Deutschland 1920-1941*, in *Russische Emigration in Deutschland 1918 Bis 1941. Leben Im Europäischen Bürgerkrieg*, ed. K. Schlögel, Berlin, Akademie Verlag, 1995, pp. 17-32.

128. A. De Petris, *Germania*, cit., p. 19.

129. T. Liebig, *Recruitment of Foreign Labour in Germany and Switzerland*, in *Migration for Employment - Bilateral Agreements at a Crossroads*, Paris, OECD Publishing, 2004, pp. 158 ff.

130. *Ibid.*

131. J. Oltmer, *Einführung: Migrationsverhältnisse Und Migrationsregime Nach Dem Zweiten Weltkrieg*, in *Das „Gastarbeiter“-System Arbeitsmigration Und Ihre Folgen in Der Bundesrepublik Deutschland Und Westeuropa*, ed. J. Oltmer, A. Kreienbrink, and C. Sanz Diaz, Munich, Oldenbourg Verlag, 2012, pp. 9-24.

132. A. De Petris, *Germania*, cit., p. 23.

133. *Ivi*, p. 24.

134. *Ivi*, p. 26.

135. *Ivi*, p. 24; F. Nuscheler, *Internationale Migration. Flucht Und Asyl*, Wiesbaden, VS Verlag für Sozialwissenschaften, 2004, p. 115.

peak were the fall of the Iron Curtain, wars, ethnic cleansing in the former Yugoslavia and deteriorating conditions in Kurdish-populated areas of Turkey<sup>136</sup>. As De Petris recalls, the flow included large numbers of ethnic Germans (*Aussiedler*, *Spätaussiedler*) and asylum seekers from third countries<sup>137</sup>.

Since the mid-1990s, the number of immigrants in Germany has dropped significantly, coinciding with a decrease in xenophobic episodes. Between 1996 and 2008, the number of foreign residents in Germany stabilised substantially, partly due to the implementation of the 2000 Citizenship Act. This law grants German citizenship to descendants of foreigners residing in the country, in addition to the citizenship of their parents, provided certain preconditions are met<sup>138</sup>.

However, it is important to note that the data on the foreign population only partially reflect the actual number of immigrants and their descendants present on German territory. According to information released by the German government in 2008, 19% of the German population, or 15.6 million individuals, had a migration background. Of these, 8.3 million were German citizens, while a quarter of the foreign population present in Germany in 2008 came from Turkey, 7.8% from Italy and 5.9% from Poland<sup>139</sup>.

Since the 1990s, German migration policies have become increasingly restrictive to discourage international migration, to the point where asylum has become the main way to enter the country. In the early 2000s, the Immigration Act was adopted with a markedly security-oriented approach<sup>140</sup>. The legislation provided preferential access for highly skilled immigrants and discouraged medium- and low-skilled immigrants.

The German government's vision of immigration was clearly expressed by Interior Minister Wolfgang Schäuble in 2006 at a joint conference with his French counterpart. The basic idea was to promote "circular migration" and "temporary migration" models both as a means of supporting the development of countries of origin and as a means of controlling migration flows by granting temporary access for work and study to selected migrants<sup>141</sup>. These principles are the backbone of German migration policy and are also reflected in the recent approval of the Skilled Immigration Act of 2020 (*Fachkräfteeinwanderungsgesetz*), which has simplified access through temporary programmes for highly skilled migrants<sup>142</sup>.

The German legal framework governing the stay of third-country nationals is primarily outlined in the Residence Act (*Aufenthaltsgesetz*), and it encompasses a range of residence titles. Of these, the residence permit, the settlement permit, the EU long-term resident permit, the EU Blue Card, the ICT Card and the visa are the most important, each of which provides for specific circumstances and purposes. Specifically, the residence permit, issued for a limited period, serves various purposes specified in the Residence Act, such as education, work, international law reasons, humanitarian or political reasons and family reunification<sup>143</sup>.

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136. R. Münz, W. Seifert, and R. Ulrich, *Zuwanderung Nach Deutschland. Strukturen, Wirkungen, Perspektiven*, Frankfurt am Main, New York, Campus Verlag, 1999, p. 51.

137. A. De Petris, *Germania*, cit., p. 27.

138. *Ivi*, p. 27-28.

139. Bundesamt für Migration und Flüchtlinge, *Migrationsbericht*, Berlin, 2009.

140. V. Gomes and J. Doomernik, *State-of-the-Art on Temporary Labour Migration Schemes in Europe*, cit., p. 12.

141. *Ibid.*

142. Bundesregierung, *Information on the Skilled Immigration Act, 2020*, <https://www.make-it-in-germany.com/en/visa/skilled-immigration-act>.

143. Sections 9, 16-36 of the Residence Act (*Aufenthaltsgesetz*), available in German and English at [https://www.gesetze-im-internet.de/aufenthg\\_2004/index.html](https://www.gesetze-im-internet.de/aufenthg_2004/index.html).

The settlement permit, granting indefinite residency, is attainable after five years of legal residence, subject to conditions like secure livelihood, pension contributions, and language proficiency. Originating from Directive 2003/109/EC, the EU long-term resident permit is the third residence permit model and allows mobility within the EU. It differs from the settlement permit and is granted to persons who have a stable and regular source of income, health insurance and, when required by the EU country, have complied with integration measures. The person must also not pose a threat to public safety or public order<sup>144</sup>.

Another EU origin permit is the EU Blue Card, which is issued to highly qualified third-country nationals and facilitates legal residence for employment purposes. The detailed conditions, including minimum wage requirements, are laid down in Article 18b of the Residence Act<sup>145</sup>. These conditions stipulate that the qualified migrant has to receive a minimum wage of two-thirds or at least 52% of the annual assessment ceiling for pension insurance contributions. German language knowledge is not required. EU Blue Card holders can apply for a residence permit after 33 months if they have a basic knowledge of German, after 21 months if they have a sufficient knowledge of German<sup>146</sup>.

The ICT Card is a temporary residence permit for intra-EU transferred workers, the ICT Card allows flexibility for employees working in Germany for a limited period, with varying durations based on job positions<sup>147</sup>.

Finally, visa functions as an independent stay permit, the Visa can be Schengen-harmonised or national. It enables short stays not exceeding 90 days within the Schengen area<sup>148</sup>.

This legal framework of residence permits is the result of the 2005 Immigration Act (*Zuwanderungsgesetz*). The Immigration Act marked a significant change in German immigration policy. The law restructured immigration law by introducing the Residence Act and amending several related laws. The main objective is stated in Section 1 of the Act, which provides that:

«This Act serves to manage and limit the influx of foreigners into the Federal Republic of Germany. It enables and organises immigration with due regard to the capacities for admission and integration and the interests of the Federal Republic of Germany in terms of its economy and labour market. At the same time, the Act also serves to fulfil Germany's humanitarian obligations. To this end, it regulates the entry, residence, economic activity and integration of foreigners. The provisions contained in other acts remain unaffected.»<sup>149</sup>

The issuance of work permits, formerly regulated by the Immigration Law, is now governed by the Residence Act. Work permits are granted by the Foreigners' Office (*Ausländerbehörde*), replacing the Federal Employment Agency (*Bundesagentur für Arbeit*). Although the law distinguishes between employee and self-employed, in most cases the Foreigners' Authority grants authorisation for employment of any kind<sup>150</sup>. The issuance of work permits has been facilitated through ordinances (*Beschäftigungsverordnung* and *Beschäftigungsverfahrenverordnung*). These ordinances replaced previous regulations and

144. A. De Petris, *Germania*, cit., p. 35.

145. *Ivi*, p. 36.

146. Section 18b of the Residence Act (*Aufenthaltsgesetz*).

147. Section 19 of the Residence Act (*Aufenthaltsgesetz*).

148. Sections 4(1)(1) and 6 of the Residence Act (*Aufenthaltsgesetz*).

149. Section 1(1) of the Residence Act (*Aufenthaltsgesetz*).

150. A. De Petris, *Germania*, cit., p. 42.

introduced changes, including the removal of the labour market test for international students seeking employment related to their qualifications<sup>151</sup>.

The legal framework of residence permits for foreigners in Germany is complex and multifaceted and responds to different needs and circumstances. The approach of residence permit legislation, with the exception of settlement permits, is markedly oriented towards temporariness. The reference policy model, as also reflected in Section 1 of the Residence Act, combines circular and temporary migration with security requirements. The evolution introduced by the Immigration Act (*Zuwanderungsgesetz*) reflects Germany's commitment to manage immigration efficiently, taking into account economic and integration aspects.

## 6. Failing the Model: The Regulatory Transposition of “Circular Migration”

The viability of “circular migration” as a theoretical construct necessitates the confluence of two pivotal attributes: repetitiveness and freedom of movement<sup>152</sup>. However, these foundational characteristics create profound challenges in the current migration legislation, particularly in the context of the EU, Italy and Germany. Repetitiveness confronts established legal frameworks, while freedom of movement introduces complexities in regulating international migration, indeed: «[t]he very fact that a migrant is moving through some form of institutional labour framework that regulates his or her movement essentially excludes that person from being a circular migrant in the strict sense of the term.»<sup>153</sup>

The majority of the existing migration legislation – including that of the EU, Italy and Germany – apparently embraces the theoretical principles of “circular migration”. Despite this theoretical orientation, practical policies frequently impose constraints on both repetitiveness and the freedom of movement for individuals and groups, dictating «who may migrate, restrictions on length of stay, denial of such labor rights as medical insurance or choice of employers and occupations and enforced return to the origin country after a certain period.»<sup>154</sup> According to Skeldon, the attempt to control “circular migration” by states contradicts theoretical model because it turns it into temporary migration programmes<sup>155</sup>. The latter, while sharing some traits with “circular migration”, differs from it because it does not entail freedom of movement, but rather aims to limit it by predetermining the timing and manner of migration.

As a matter of fact, temporary migration policies imply that migrants move from the country of origin to the country of destination for a limited period of time, the migration cycle is one-off and ends with an eventual return to the country of departure<sup>156</sup>. More specifically, migrants are admitted to the territory of the state of destination for a limited period of time and are allowed to consolidate this status by renewing their stay or work permit<sup>157</sup>. However, consolidation is not a right of the migrant, and it is not directly related to the length of time the migrant has resided in the country. Instead, consolidation depends on the decision of the

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151. Ivi, p. 43.

152. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., pp. 46-47.

153. Ivi, p. 47.

154. S. Castles and D. Ozkul, *Circular Migration: Triple Win, or a New Label for Temporary Migration?*, cit., p. 29.

155. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., pp. 53 ff.

156. A. Thormann and A. Koch, *Circular and Temporary Migration. Empirical Evidence, Current Policy Practice and Future Options in Luxembourg*, cit., p.18.

157. Ivi, pp. 18-19; M. Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, cit., pp. 2 ff.

national authority, which is determined by various economic, social, legal, and political criteria.

Conversely, “circular migration” as a «specific form of human mobility [...] is seen primarily as a spontaneous movement to achieve goals set within the household in areas of origin.»<sup>158</sup> Thus, “circular migration” results in a situation where individuals “settle within mobility”<sup>159</sup> and if «such a form of migration is managed this will, by definition, introduce a series of institutional constraints, and what has come to be known as “circular migration” then becomes, in fact, a programme of “temporary migration” by another name.»<sup>160</sup>

As Rhus points out, the prevailing migration legislation corresponds to a model of temporary migration where:

*«residence and employment on the basis of a temporary work permit alone does not create an entitlement to stay permanently in the host country. This definition obviously implies that migrants whose temporary work permits have expired, and who have not been accorded permanent immigrant status [...], lose their right to residence in the host country and are thus expected to return home or migrate elsewhere.»*<sup>161</sup>

This transformation is conspicuous in the directives of the EU, such as the Blue Card Directive, and various circular labour schemes implemented by EU Member States. Despite being presented as “circular migration”, these programmes, upon close examination, turn out to be essentially “temporary migration” schemes. Such a disjunction between theoretical models and practical legislative formulations is particularly salient within the EU’s migration landscape.

The disjunction between theory and practice, from the aspirational concept of “circular migration” to the tangible reality of “temporary migration,” is starkly evident in contemporary migration legislation. This incongruence is observable in policies that ostensibly promote “circular migration” while concurrently imposing restrictive regulations and security imperatives.

This phenomenon has been emphasised by scholars such as Castles, who argue that contemporary circular migration policies within the EU mainly target highly skilled people<sup>162</sup>. In contrast, low-skilled workers are mainly admitted through temporary and seasonal sectoral labour programmes. According to Zou<sup>163</sup>, recent years have witnessed an expansion of temporary labour migration programmes that are; however, narrated as circular and described multi-beneficial<sup>164</sup>. The idea is that, with proper design, these

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158. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., p. 53.

159. M. Morokvasic, *Transnational Mobility and Gender: A View from Post-Wall Europe*, in *Rossing Borders and Shifting Boundaries. Volume 1: Gender on the Move*, ed. M. Morokvasic, U. Erel, and K. Shinozaki, Wiesbaden, VS Verlag für Sozialwissenschaften, 2003, p. 102.

160. R. Skeldon, *Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality*, cit., p. 53.

161. Emphasis in original text. M. Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, cit., p. 2.

162. S. Castles, H. De Haas, and M. J. Miller, *The Age of Migration. International Population Movements in the Modern World*, New York, Palgrave Macmillan, 2014, p. 207.

163. M. Zou, *Revisiting the Ethics of Temporary Labour Migration Programmes: The Role of Exit in Migrant Work Relations*, in *Migrant Labour and the Reshaping of Employment Law*, ed. B. Ryan and R. Zahn, Oxford, Hart, 2023, p. 279.

164. Global Commission on International Migration (GCIM), *Migration in an Interconnected World: New Directions for Action. Report of the Global Commission on International Migration*, cit., p. 16.

programmes can lead to a more humane treatment of migrant workers<sup>165</sup>. However, these programmes contain exploitative elements, resulting in migrants being deprived of various social, economic, political and civil rights<sup>166</sup>. Accordingly, Dauvergne, Marsden and previously Castels emphasise the precariousness of the migration status of these workers, which creates favourable conditions for exploitative labour relations<sup>167</sup>.

The strategic alignment of “circular migration” programs with security-driven safeguards further underscores the inherent tension between theoretical constructs and applied policies. As Cassarino discerns: «circular migration programmes do not only build upon past practices designed to regulate the movement of international migrants; they also react against such inherited practices in a subtle manner by linking the adoption of temporary and circular migration programmes with new security-driven safeguards.»<sup>168</sup> Cassarino’s idea echoes that of Hepple<sup>169</sup>, according to whom market liberalisation has occurred in commodities and capitals, while labour has remained largely immobile due to the restrictive policies of developed countries. Therefore, a short-circuit between theoretical assumptions and applied policies occurs in the current migration legislation of the EU, Italy, and Germany. Indeed, “circular migration” programmes do not merely regulate international migration but reshape theoretical model by combining it with security aims<sup>170</sup>. In other words, the EU and its Member States deny the prerequisites and ultimately the “circular migration” itself. Therefore, it is to acknowledge that what the current migratory policies and legislation normally referred as “circular migration” it is in fact “temporary migration” combined with restrictive regulations and security aims.

## 7. Conclusions

Navigating the complexity of migration policies is a challenge. The study reveals fundamental issues that characterise this complexity. The main one is the disjunction between the theoretical model (“circular migration”) and the legal implementation (security-driven “temporary migration”).

Since the early 2000s the reference model for the migration policies and legislation of the EU, Italy, and Germany has been that of “circular migration”. This model, originally employed to define the rural-to-urban migration, is characterised by two key elements: a) repetitiveness of the migration cycle and b) freedom of movement of individuals and groups. These characteristics make “circular migration” a peculiar and fluid model that requires repetitive and continuous migratory cycles without limitations and barriers to the movement of individuals or groups. Therefore, “circular migration” differs from other types of migration: “permanent migration,” “return migration,” and “temporary migration”. With the latter model, “circular migration” shares the temporary nature of the stay, however “temporary migration” does not have any element of fluidity, rather it refers to the

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165. M. Ruhs, *The Potential of Temporary Migration Programmes in Future International Migration Policy. A Paper Prepared for the Policy Analysis and Research Programme of the Global Commission on International Migration*, cit., p. 7.

166. M. Ruhs, *The Price of Rights: Regulating International Labor Migration*, Princeton, Princeton University Press, 2013, p. 9.

167. C. Dauvergne and S. Marsden, *The Ideology of Temporary Labour Migration in the Post-Global Era*, in *Citizen. Stud.*, XVIII, No. 2.2014, pp. 224–42; S. Castles, *Guestworkers in Europe: A Resurrection?*, in *Int. Mig. Rev.*, XL, No. 4.2006, p. 741.

168. J.-P. Cassarino, *The Drive for Securitized Temporariness*, in *Circular Migration between Europe and Its Neighbourhood: Choice or Necessity?*, ed. A. Triandafyllidou, Oxford, Oxford University Press, 2013, p. 23.

169. B. Hepple, *Labour Laws and Global Trade*, Oxford, Hart Publishing, 2005, p. 5.

170. J.-P. Cassarino, *The Drive for Securitized Temporariness*, cit., p. 23.

emigration of individuals from their country of origin to a country of destination for a predetermined period to work, study or train with a (eventual) subsequent return to the country of origin<sup>171</sup>.

The majority of existing migration legislation, including that of the EU, Italy and Germany, appears to be based on the theoretical ideas of “circular migration”. However, practical policies frequently impose constraints on both repetitiveness and the freedom of movement for individuals and groups. The disjunction between the conceptual ideals of “circular migration” and the practical implementation within EU migration policies reveals a critical gap between rhetoric and reality.

“Circular migration” is not the paradigm of the EU’s and its Member States’ migration legislation, which rather correspond to the model of “temporary migration”. The difference is by no means negligible, “temporary migration” introduces a model of management and limits to the movement of individuals and is well combined with a security legislation. These elements contradict theoretical basis of “circular migration”.

Although the EU used the concept of “circular migration” to define its model, it is correct to consider “temporary migration” combined with security elements as the true paradigm. A similar line of reasoning can be made for the EU Member States analysed (Italy and Germany). The legislative tendencies of national migration laws are clearly of a temporary, restrictive and security-driven nature, particularly concerning medium- and low-skilled migrant workers. Indeed, migration is seen as a security problem and not a resource, except for highly skilled migrant workers.

Concluding, this study provides an exploration of the legal policy lines that determine European migration legislation, urging policymakers to take a more coherent, inclusive and adaptive approach to addressing the multifaceted realities of migration in the 21<sup>st</sup> century.

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171. A. Thormann and A. Koch, *Circular and Temporary Migration. Empirical Evidence, Current Policy Practice and Future Options in Luxembourg*, cit., pp. 14-15.