

## Chapter VI. European Immigration Policies

Livi-Bacci suggests that the Europeans do not have a positive ideology over migration, however it has been seen in a favourable light, when considered a temporary necessity in periods of labour shortage and expanding economy, as an easy way to fill gaps, provide labour, sustain development, and reinforce structures crumbling from lack of demographic cement. It is important to point out that in Europe, immigration is not seen as a long running contribution to the development of society but only as a temporary relief, a necessity, like a loan that needs to be paid back.<sup>1</sup>

Prior to the basis of the EC (European Community) was established “[t]he balance between an enormous supply of foreign labor and European demand initially was negotiated via bilateral government agreements”<sup>2</sup> As Page points out, Germany has made agreements with Turkey, Morocco, Tunisia, Italy, Greece and Yugoslavia. Netherlands also previously had agreements with those countries and with others including Spain and Portugal. Almost all the European countries made similar agreements as Belgium and the Scandinavian nations.<sup>3</sup> During the 1950s and 1960s, this rebuilding and economic expansion motivated people to migrate from less developed countries to boom areas. As Stalker has said “[e]conomic development has always been associated with emigration”<sup>4</sup>

In Europe, restrictive policies have been gradually enacted and reinforced since the early 1970s, due to factors such as the oil shocks, general economic crisis and restructuring of the industrial system, together with the large supply of people born in the '50s and '60s. These factors have suggested to policy makers that market forces would cease to attract immigrants for a long period. As a result, governments, in effort to decrease the foreign population, have developed policies aimed at encouraging migrants to return to their countries of origin.<sup>5</sup> Nevertheless,

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<sup>1</sup> Massimo Livi-Bacci, “South-North Migration: A comparative Approach to North American and European Experiences” in OECD, *The Changing Course of International Migration*. (Paris: OECD, 1993), 40.

<sup>2</sup> Leslie Page Moch, *Moving Europeans. Migration in Western Europe since 1650*. (Indiana: Indiana University Press, 2003), 180.

<sup>3</sup> Ibid, 180-184.

<sup>4</sup> Peter Stalker, *Workers Without Frontier. The Impact of Globalization on International Migration*, (Colorado, Lynne Rienner Publishers, ILO, 2000), 95.

<sup>5</sup> Massimo Livi-Bacci, “South-North Migration: A comparative Approach to North American and European Experiences” in OECD, *The Changing Course of International Migration*. (Paris: OECD, 1993), 40.

[i]f the legal inflows of the workers were considerably diminished, however, other forms of immigration increased, such as family reunification and refugees; illegal immigration was never stopped and in many instances expanded. Return policies have been only modestly successful. One could even argue that the incentives provided by these policies have not been sufficient to overcome the incentives to remain.<sup>6</sup>

Following this pattern, the new immigrant countries such as Italy and Spain adopted similar policies. In 1993 there was greater number of illegal immigrants than legal foreigners.<sup>7</sup> For example, when Spain joined the EU in 1986, it was pressured to adopt these policies. In 1993 the political pressure for coordination of national policies was mounting as a result of the single EC market was approaching.<sup>8</sup>

Today, there is a notion that Occidental Europe will imminently require more immigrants, to restore the supply of labour in an active economic age. This means the structure of ages of their population is constituted by the continued drop of fertility ratios and the constant increase in the ageing population.<sup>9</sup> Annex 2 demonstrates, that the European receiving countries will experience a decrease in their total population while the ratio of older persons increases. Annex 3 concedes that in the EU, there is a decline in fertility, while the population enjoys a greater longevity, of seventy four years for men, and eighty years for women. These high survival rates in the older age groups combined with a low fertility level represent an accelerated version of demographic aging. As the generation of baby boomers enter retirement, which full entry is expected in the year 2030, government finances will come under excessive pressure. Even now, European governments are forced to make decisions between higher contribution levels to the social security system or curbing the size of benefits.<sup>10</sup> In this context, as Schmid points out...

to secure the high quality of a human capital which proves out to be the main resource of productivity and innovation particularly when the age structure reveals dwindling youth cohorts caused by below replacement fertility for nearly three decades; a shortage of labour will be cleared by global migration.<sup>11</sup>

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<sup>6</sup> Ibid, 40.

<sup>7</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 41.

<sup>8</sup> Massimo Livi-Bacci, "South-North Migration: A comparative Approach to North American and European Experiences" in OECD, *The Changing Course of International Migration*. (Paris: OECD, 1993), 40.

<sup>9</sup> Graciela Malgesini, *Cruzando Fronteras. Migraciones en el Sistema Mundial*. (Barcelona: Fundación Hogar del Empleado, 1998), 19.

<sup>10</sup> Josef Schmid, "Political Responses to Immigration Pressures in the European Union" XXIV IUSSP General Population Conference, Salvador Brazil 2001, 22-25.

<sup>11</sup> Ibid, 19.

There is the recognition of this problem by the EU as demonstrated by the Communication that the Commission made to the Council and the Parliament in the 2000:

The projected decline in population in the EU over the next few decades has caught the attention of public opinion. At the same time labour shortages in some sectors are creating difficulties in a number of countries. There is a growing recognition that, in this new economic and demographic context, the existing “zero” immigration policies which have dominated thinking over the past 30 years are no longer appropriate. Programmes to regularise the position of illegal migrants, which often give rise to difficult internal political debates, are developing in a number of Member States. Tragic incidents, such as the one in Dover in July 2000 in which 58 Chinese nationals trying to enter illegally into the United Kingdom lost their lives, which are taking place in almost all Member States, point not only to the importance of the fight against the trafficking of human beings, but also to the existence of a demand for clandestine manpower and of the exploitation of such undocumented migrants.<sup>12</sup>

This recognition of the labour demand is a large step toward the resolution of the first paradox, which is the contradiction between the restrictive measures and the liberal model. This will be difficult because it is this same ageing population that grow up with anti-immigration feelings, that will attend the ballot. Consequently, a large scale problem has been the discrepancies in the perception of the immigration problem between the government and some population segments. These discrepancies promote right wing parties that use xenophobic sentiments as a platform, as Meissner suggest:

European officials and organs seem to have adopted the notion of Europe as an immigration region and have moved aggressively to design workable immigration systems. Their vision, however, diverges sharply from public perception about immigrants, which are too often shaped by anti-foreign voices that go unchallenged. This is a dangerous abyss that could lead to highly restrictive practices, forced by xenophobia. Such an outcome would be corrosive to Europe’s economic well-being, inter-state relations, and global influence, as well as to its self-image of centuries-long openness to the broader world.<sup>13</sup>

Also according to the Europeanbarometer survey (an opinion poll conducted twice a year in all member states) the attitude from natives toward immigrants can be summarised as follows: immigrants cause unemployment; they abuse the welfare state; and the presence of foreign nationals has reached or even exceeded its saturation.<sup>14</sup> It is important to point out that an OECD study has carry out from a selection of European countries comparing the periods 1984-1989 and 1990-1995 that there are not direct relation between the growth in

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<sup>12</sup> Commission of the European Communities, “Communication From the Commission to the Council and the European Parliament on a Community Immigration Policy”, (Brussels, 22.11.2000), 3.

<sup>13</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 66.

<sup>14</sup> UN, *Economic Survey of Europe, Economic Commission for Europe, No. 2*, (Geneva: United Nations, 2002), 109.

entries of foreigners and the change in the unemployment rate.<sup>15</sup> As a result, there is a conflict between labour demand and the public interest as Page exposes...

[a]t the end of the twentieth century, both shifted as European states became wary of outsiders and increasingly tightened entry and citizenship restrictions [...] At the same time, economic restructuring demanded highly skilled newcomers, as well as masses of young people willing and able to work the fields, sweep the streets, care for the elderly, and clean the kitchens of Europe [demand of low skill labour]. The politics of immigration control and the economic and demographic needs of the labor force operate in tandem, but also somewhat at odds, because pressure for increasing border control works against a considerable demand for labour.<sup>16</sup>

Both economic and demographic needs can form the paradox between the migration restriction and the liberal economic model at the European level, this paradox has emerged through the pressure that anti-immigration groups have put on the European Community to tighten their policy. However, the large demand for foreign labour is important to satisfy and they have generated mechanisms to fill. In some measures they become less restrictive about their immigration policies. Throughout its integration the European Union has faced the challenge of changing the perception of their senior population toward immigrants, while continuing to be coherent to their own democratic and liberal principles, filling the labour shortage, and maintaining their production and their welfare state.

Before beginning to explain the different steps that the EU immigration policy follows, is important to point out that author, Andrew Geddes suggest as main point

[t]hat far from weakening EU members states or symbolizing some “loss of control”, EU cooperation and integration have thus far helped members states consolidate and reassert their ability to regulate international migration through the use of new EU -level institutional venues.<sup>17</sup>

Now let us examine a review of the migration policies that the EU has following throughout its own integration. As Castles points out migration has been an important factor in the construction of the European integration. For instance since the Treaty of Paris of 1951 created a barred restriction on employment based on nationality for the six founding member states, and excluded the third country nationals. The Treaty of Rome of 1957 proposed the formation of a common market and under Article 48, workers from the

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<sup>15</sup> Peter Stalker, *Workers Without Frontier. The Impact of Globalization on International Migration*, (Colorado, Lynne Rienner Publishers, ILO, 2000), 86.

<sup>16</sup> Leslie Page Moch, *Moving Europeans. Migration in Western Europe since 1650*. (Indiana: Indiana University Press, 2003), 197.

<sup>17</sup> Andrew Geddes, “International Migration and State Sovereignty in an Integrating Europe”, *International Migration*, Vol. 39(6) 2001, 21.

signature countries enjoyed freedom of movement.<sup>18</sup> This treaty permitted to the national member the right to seek employment in other member state; this right became real ten years later. Of course,

[i]t was firmly established that the freedom of labour movement provision applied only to citizens of EC members states, not to third country national from outside the EC. [As this economic agreement evolves] The 1997 Amsterdam Treaty gave the Council of ministers five years to adopt measures to ensure absence of controls for third country nationals crossing internal borders<sup>19</sup>

In this treaty, the principal idea was a common EU territory in which ‘Freedom, Security and Justice’ were included as bases for inter-governmental cooperation on migration, asylum and border control policies. Throughout these bases, there was also a reinforcement of the external borders.<sup>20</sup> However, each country maintained its own requirements to accept foreign workers and to obtain national citizenship. After this treaty, the TCNs (third country nationals) enjoy freedom of movement inside the EC. Authors such as Kostakopoulou, however, suggest that

[t]his patchwork of differentiated rights for long-term resident TCNs contradicts democratic norms, hinders the development of the internal market and results in unequal access to Union citizenship. Indeed, whereas barriers to free movement and residence are increasingly removed for Union citizens, possession of member state nationality remains a qualifying criterion for eligibility to the benefits afforded by Community rules in post-Amsterdam Europe. Union citizenship remains conditioned on possession or acquisition of state nationality (Article 17(1) EC). This has resulted in the relegation of long-term resident nationals of third countries to the periphery of the emerging European civil society, despite the fact that they are an integral part of the European Community and contribute to the development and flourishing of European societies.<sup>21</sup>

It is true that unequal treatment remains between nationals and TCNs, however there has been a significant change between Treaty of Rome and the Amsterdam Treaty, but both include a series of changes that we need to analyse.

The Shengen Agreement started to be negotiated in 1985. This agreement sought to abolish passport controls at internal boundaries between signatory states (Belgium, France, Germany, the Netherlands and Luxembourg) and creates a common external frontier, all

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<sup>18</sup> Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 110.

<sup>19</sup> Ibid, 110.

<sup>20</sup> Joanne van Selm and Eleni Tsolakis, “The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members”, *Policy Brief*, No.4 (May 2004). Available from: Migration Policy Institute: [http://www.migrationpolicy.org/pubs/eu\\_enlargement.pdf](http://www.migrationpolicy.org/pubs/eu_enlargement.pdf)

<sup>21</sup> Theodora Kostakopoulou, “Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings”, *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 444.

this on the gradual abolition of checks at their mutual borders. This was the first time in the European history in having an intergovernmental agreement to abolish internal borders and create an external one, with common checks and procedures. When in 1990 the Schengen Convention was signed, the implementation of the Agreement was put into practice. For example, the convention imposed “uniform” visa requirements upon citizens from third countries.<sup>22</sup> This was possible through a sophisticated information exchange system between the countries that allow the exclusion of unqualified or undesirable persons from the ‘Schengen territory’. In the beginning, the proposal of this agreement was to create an authentic free market area, without frontiers where the free movement of goods, capital, service and persons were ensured by this treaty. It is interesting to see that the Schengen agreement has grown over the constructed route of free trade as Doris M. Meissner points out:

In addition, EC states have signed an agreement with most European Free Trade Association (EFTA) countries [Norway, Sweden, Finland, Iceland, Liechtenstein, and Austria] that includes them in freedom of movement measures. Thus, nationals of what is known as the European Economic Area (EEA) are to be able to move freely throughout 18 countries.<sup>23</sup>

Today there are 15 member countries and their plans of enlargement are to add 10 more countries and existing six countries will include 31 countries, where individuals may enjoy freedom of movement. However, countries such as Britain have never joined this treaty based on the justification of protecting their population from a massive immigration. In a study comparing the EU membership of Greece in 1981 and Spain and Portugal in 1986 with the planned entry of Cyprus, Czech Republic, Estonia, Latvia, Lithuania, Malta, Poland, Slovak Republic and Slovenia in 2004, Joanne van Selm says that:

The effect the upcoming enlargement will have on migratory trends, many analysts conclude, is likely to be similar to that of two previous EU enlargements (Greece in 1981 and Spain and Portugal in 1986). Those enlargements prompted only small-scale emigration from the new Member States, despite differences in per-capita income that were roughly similar to those that exist today between the EU-15 and the acceding countries. In the cases of Greece, Spain, and Portugal, migration continued to be negligible even after the end of transition periods that restricted freedom of employment for their citizens.

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<sup>22</sup> Stephen Castles and Mark J. Miller, *The Age of Migration. International Population Movements in the Modern World*, (Great Britain: Palgrave Macmillan, 2003), 86. And Joanne van Selm and Eleni Tsolakis, “The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members”, *Policy Brief*, No.4 (May 2004). Available from: [Migration Policy Institute: http://www.migrationpolicy.org/pubs/eu\\_enlargement.pdf](http://www.migrationpolicy.org/pubs/eu_enlargement.pdf)

<sup>23</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 57.

Many of those who did emigrate returned to their country of origin after a few years, when economic opportunities back home became competitive with those available elsewhere in the EU.<sup>24</sup>

Subsequently, the free intra-migration with free intra-trade have worked as effective components, eliminating the causes of migration and helping to equalize the income and the economic opportunities. This example has demonstrated that when free trade and migration works jointly the expected migration is much less in volume, because both work as equilibrating wages, incomes, and opportunities in all countries.

The objective of the Single European Act, which became effective in 1987, was to promote economic growth through eliminating internal frontiers among the single market. This single act needed to have the full implementation of the four freedoms outlined by the Rome Treaty, which are free movement of capital, goods, services and persons.<sup>25</sup> The Single Act inserted the famous Article 7a (now Article 14) into the EC Treaty, which stated, “the internal market shall comprise an area without internal frontiers in which the free movement of goods, persons, services and capital is ensured.”<sup>26</sup> As we can see these treaties and agreements are an advance in the resolution of the paradox because there are no restrictions in internal movements, consequently an economic liberal model can work correctly without restrictions and without protectionism of any kind in the region. The member states have successfully managed the question of sovereignty creating and adopting transnational norms that regulate their internal and external borders.

Also in the post-Maastricht Europe there was an advance in the protection of some of the rights of the TCNs as Kostakopoulou points out

TCNs could, nevertheless, enjoy the protection of Community law either by virtue of their family relationship with a Community national or as employees of a Community-based company providing cross-border services or by being beneficiaries of three generations of ‘third-country agreements’, i.e. agreements signed between the European Community and third countries, such as the EEC-Turkey Association Agreement, the Maghreb Agreements of 1976 and the ‘Europe agreements’ signed with ten central European applicant states.<sup>27</sup>

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<sup>24</sup> Joanne van Selm and Eleni Tsolakis, “The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members”, *Policy Brief*, No.4 (May 2004). Available from: Migration Policy Institute: [http://www.migrationpolicy.org/pubs/eu\\_enlargement.pdf](http://www.migrationpolicy.org/pubs/eu_enlargement.pdf)

<sup>25</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 56.

<sup>26</sup> Jan Niessen, “Overlapping Interests and Conflicting Agendas: The Knocking into Shape of EU Immigration Policies”, *European Journal of Migration & Law*, Vol. 3 Issue 3/4 (Jul2001), 420.

<sup>27</sup> Theodora Kostakopoulou, “Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings”, *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 444.

The paradox between the human rights and the market in Europe is resolving itself in the measure in which the Community is aware and responsiveness in its protection of the TCNs, creating progress. Making this kind of agreement between the EU and third countries means the acceptance of legal inflows of immigrants into their territory, the necessity of them to cover some labour demand and the alertness to regulate them.

One of the next steps was the Dublin Convention adopted in 1990, which focuses on asylum and refugee issues. This convention stipulates that the country into which the asylum seeker enters, the receiving country is responsible for providing an answer to the asylum claim and that the all the European community will accept the resolution. Each country determines its own conditions for granting refugees, and is its own responsibility. It is important to note that Dublin established the objective that once that an asylum seeker has been expelled from one country, through information sharing between the states is refused in the others.<sup>28</sup> However, authors Favell and Hansen point out:

[a]sylum-seeking has thus become a dirty word, replacing 'economic migration' as the least desirable form of migration experienced by European nations. [...] In this way the use of asylum channels for economic migration in fact distorts the ability of the market to select the best and most appropriate migrant workers for the low-skill labour opportunities.<sup>29</sup>

In this period, there was a favourable aptitude toward the TCNs from different organisms of the EU as Kostakopoulou points out

[t]he European Parliament recommended (1989, 1990) that freedom of movement should apply to all resident workers irrespective of nationality, and that non-EC migrants should have the same rights of family unification as EC national workers. It also suggested that non-EC migrants should enjoy protection from discrimination on the same footing as EC nationals, and that they should be granted local electoral rights [...] The European Economic and Social Committee (1991), too, stressed the need to give legally resident immigrants a stake in the 'People's Europe'. It proceeded to furnish the foundations for a 'Community statute for migrant workers from third countries' which would: a) harmonise legislative provisions, regulations, instruments and measures for the social integration of migrants in the member states; and b) define the conditions for implementing freedom of movement for migrants from third countries under equal conditions to those of Community citizens.<sup>30</sup>

The European Parliament is the most direct representative organ of the people, thus this opinion is important in giving response to the xenophobic appeals. The Treaty of

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<sup>28</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 58.

<sup>29</sup> Adrian Favell and Randall Hansen, "Markets against politics: migration, EU Enlargement and the Idea of Europe", *Journal of Ethnic and Migration Studies*, Vol. 28, No. 4, (October 2002), 588.

<sup>30</sup> Theodora Kostakopoulou, "Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings", *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 446-447.

Amsterdam (1997) was based on the 1992 Maastricht Treaty or Treaty on EU, which established the citizenship of EU and the basis for common immigration policy. A common citizenship had three key rights: the right to move, to reside, and to take employment in all the member states. This treaty established the basis of coordination in migration policy, as Doris Meissner stated “the Maastricht Treaty represents the most significant broadening of European integration goals since the Single Act. Adopted in December 1991, Maastricht brings an aspect of immigration into the ambit of Community competence for the first time.”<sup>31</sup> This treaty is also significant because the Community had adopted a list of third countries (EC Regulation 574/99 which contains 101 countries or territories)<sup>32</sup> whose nationals require a visa when crossing an external frontier of member states. This is the uniformization of visa requirements and the working conditions of legally residents of third country nationals.

As we said Amsterdam added a new article to the Treaty preamble to declare that the EU would henceforth be an era of “freedom, security and justice”, besides they added the Schengen agreement into the EU to be included in Title IV and to be supported by judicial and police cooperation. For that purpose, they created a joint computer database, the Schengen Information System, to restrict entry of unauthorized persons and in this manner reinforce the external border. However this did not create full supranationalization, rather it was a ‘comunitization’ because the basis for decision making would remain intergovernmental. Amsterdam also included an element of asymmetry in the sense Denmark, Ireland, and the UK all opted out of Title IV.<sup>33</sup>

We need to emphasise that the Amsterdam Treaty of 1997 opened possibilities for the development of a less restrictive framework in regards to long-term residents of TCNs. After the Amsterdam Treaty the idea to create a common policy on immigration, asylum, border policy and ensure the integration of long-term resident TCNs were reinforced by the summit of Tampere in 1999. In addition, in this reunion, the heads of states and governments reaffirmed the offer in the Treaty of Amsterdam and “stressed the need for a

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<sup>31</sup> Doris M. Meissner and Robert D. Hormats, *International Migration Challenges in a New Era*, (New York: The Trilateral Commission, 1993), 59.

<sup>32</sup> See Council Regulation (EC) No 574/1999, OJ No. L 72/2 of 18.3.1999. Available from <http://www.europa.eu.int/>

<sup>33</sup> Andrew Geddes, “International Migration and State Sovereignty in an Integrating Europe”, *International Migration*, Vol. 39(6) 2001, 26.

common approach to ensure the integration of long-term resident TCNs in the member states ”.<sup>34</sup> As the European Commission points out

[a] key element of the development of the European Union as an area of freedom, security and justice agreed in Tampere is ensuring fair treatment of third country nationals residing legally on the territories of the Member States through an integration policy aimed at granting them rights and obligations comparable to those of EU citizens.<sup>35</sup>

In Tampere it was decided to modernise their immigration policy along three lines, (a) containing asylum migration, (b) fighting irregular migration, and (c) opening up new migration channels to migrant workers. We emphasize that this policy, although it represents a tightening in the entry of asylum seekers its expansiveness respects the migrant workers, and is more coherent with labour market demands. Since this summit, countries such as Germany, Italy, Spain and the UK began modernising their immigration policy by introducing Green Cards, increasing quotas for foreign workers, signing contracts over guest workers or allowing the number of work permits to rise.<sup>36</sup> The Tampere summit started to recognise the necessity for labour migrant workers and coherently promotes integration of the legal immigrants under the basis of equality treatment.

By these dates a Charter of Fundamental Rights was created that is also consistent in its rights and duties offered to TCNs, all the states members ratified this Charter on 18 of December of 2000. The main articles related to TCNs are:

Article 1

Human dignity Human dignity is inviolable. It must be respected and protected. [...]

Article 5

Prohibition of slavery and forced labour

1. No one shall be held in slavery or servitude.

2. No one shall be required to perform forced or compulsory labour.

3. Trafficking in human beings is prohibited. [...]

Article 6

Right to liberty and security

Everyone has the right to liberty and security of person.

Article 7

Respect for private and family life

Everyone has the right to respect for his or her private and family life, home and communications. [...]

Article 31

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<sup>34</sup> Theodora Kostakopoulou, “Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings”, *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 445.

<sup>35</sup> Commission of the European Communities, “Communication From the Commission to the Council and the European Parliament on a Community Immigration Policy”, (Brussels, 22.11.2000), 9.

<sup>36</sup> Franck Düvell, “The globalisation of migration control” available from [http://www.noborder.org/item\\_archive.php?id=244#4](http://www.noborder.org/item_archive.php?id=244#4)

#### Fair and just working conditions

1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.[...]

#### Article 34

##### Social security and social assistance

1. The Union recognises and respects the entitlement to social security benefits and social services providing protection in cases such as maternity, illness, industrial accidents, dependency or old age, and in the case of loss of employment, in accordance with the rules laid down by Community law and national laws and practices.
2. Everyone residing and moving legally within the European Union is entitled to social security benefits and social advantages in accordance with Community law and national laws and practices.
3. In order to combat social exclusion and poverty, the Union recognises and respects the right to social and housing assistance so as to ensure a decent existence for all those who lack sufficient resources, in accordance with the rules laid down by Community law and national laws and practices.

#### Article 35

##### Health care

Everyone has the right of access to preventive health care and the right to benefit from medical treatment under the conditions established by national laws and practices. A high level of human health protection shall be ensured in the definition and implementation of all Union policies and activities.[...]

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The Charter of Fundamental Rights also protects the free practice of religion and reunion. This charter has broadly amplified the rights protection the EU offers to the TCNs. It is important to underline that in many articles there is not distinction between legal or illegal status of the immigrant, but uses the word ‘everyone’. This Charter was included in the Nice Treaty of 2000 that states “that non-EU nationals with residence or work permits should eventually have the same freedom of movement as EU nationals.”<sup>38</sup>

In the same year, the European Commission emitted a proposal, the Directive 2000/43, prohibiting to *anybody* discrimination on the grounds of racial or ethnic origin;

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<sup>37</sup> Official Journal of the European Communities, Charter Of Fundamental Rights Of The European Union, available from [http://www.europarl.eu.int/charter/pdf/text\\_en.pdf](http://www.europarl.eu.int/charter/pdf/text_en.pdf)

<sup>38</sup> Peter Stalker, “Migration Trends and Migration Policy in Europe”, *International Migration*, Vol. 40 (5) 2002,167.

this one included an Action Plan to combat discrimination in the period between 2001 and 2006. The objectives of this proposal were to ensure respect for fundamental rights and for the democratic principles founding the Union and to guarantee the realisation of what Treaty of Amsterdam wants to build: a territory of “Freedom, Security and Justice”. The directive prohibits direct discrimination, indirect discrimination and harassment, and its material scope extends well beyond access to employed and self-employed activities.<sup>39</sup>

More specifically, its wide scope covers areas such as education, social protection including social security and healthcare, social advantages and access to and supply of goods and services, but does not specify the limitation to citizens. In order to ensure equality of treatment, the Directive established multi-faceted machinery, which combines legal remedies and judicial enforcement with dissemination of information (Art. 10). For an illustration of the amplitude of this Directive, Article 5 summarizes the multiculturalist vision of the directive by stating that the prohibition of discrimination should be without prejudice to the maintenance or adoption of measures of positive action by the member states.<sup>40</sup> The Charter and the Directive show a consciousness over the equal implementation of the rights that everybody needs to enjoy in their territory to be coherent with their principles of ‘freedom, security and justice.’ Moreover, they implement a progression in the resolution over the contradiction between the market and the rights, because they cover in great amplitude this paradox, at least in theory.

Another Council Directive proposed by the European Commission has discussed the status of long-term resident TCNs that implement:

equality of treatment of long-term resident TCNs with nationals of the host state in the socio-economic sphere and enhanced protection against expulsion as well as rights of mobility within the Union. After five years of legal residence, a member state is obliged to grant long-term resident status to TCNs who have stable and adequate resources to meet their subsistence needs and those of their family members and are covered by sickness insurance (Articles 5 and 6). This status can only be withdrawn on certain grounds set out in the directive: absence from the territory of the host member state for more than two years; fraudulent acquisition of the status; on public security and public policy grounds; and due to acquisition of long-term resident status in a second member state. Long-term resident status entails enhanced protection against expulsion and access to a wide range of socio-economic rights (political rights are excluded from the material scope of the directive). In particular, long-term residents are entitled to equal treatment as regards access to employment and self-employed activity, conditions of employment and working conditions, education and vocational training, recognition of qualifications,

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<sup>39</sup> European Council. Nice European Council Meeting Presidency Conclusions. Directive 2000/43 available from <http://europa.eu.int/>.

<sup>40</sup> European Council. Nice European Council Meeting Presidency Conclusions. Directive 2000/43 available from <http://europa.eu.int/>.

social security and health care, social assistance, social and tax advantages, access to goods and services including housing, freedom of association and trade union membership. More importantly, they have the right to reside in another member state for long stays in order to pursue an economic activity as employed or self-employed persons, for study or vocational training purposes or for all other purposes provided that they are self-sufficient and have sickness insurance.<sup>41</sup>

We have to underline that this Directive together with the other directives, constitute not only a relief of pressure over immigration issues, but also an improved cover of the rights. Kostakopoulou states that:

[a] rights-based approach centred on the principle of equal treatment with nationals of the host member state and EU nationals and the granting of free movement rights has begun to emerge. The Communitarisation of migration-related areas has given impetus for the articulation of a common migration policy and for policy developments aimed at improving the legal status of long-term resident TCNs with a view to promoting their integration. The changing economic context of the Union and the existence of labour shortages coupled with demographic concerns about low fertility rates and the ageing European population have also contributed to the emergence of a more positive approach to the position of long-term resident TCNs.<sup>42</sup>

In this context the theory and practices of the paradoxes has begun to be resolved. The acceptance of the necessity of immigrants, and in consequence a more open immigration policy, resolves in part the paradox between restrictions and the economic liberal model. The extension of the rights to the TCNs is also an improvement in the solution of the second paradox. However, there are scholars that believe that these advances are the minimum. For example, the north-Americans Terri Givens and Adam Luedlket suggest in their study that the correlation between salience and harmonization between the member states toward an immigration policy is relatively weak and only significant at the 0.05 level. In order to obtain this result they assign the following binary valour: Salience: High =1, Low =0 and Restrictiveness: Restrictive =1, Expansive =0 to the following table that shows 34 pieces of EU legislation that have been proposed.

Table 7. European Immigration Policies.

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<sup>41</sup> European Commission, *Proposal for a Council Directive Concerning the Status of Third-Country Nationals who are Long-term Residents*. Official Journal of the European Communities Quoted by Theodora Kostakopoulou, "Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings", *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 455.

<sup>42</sup> Theodora Kostakopoulou, "Long-term Resident Third-Country Nationals in the European Union: Normative Expectations and Institutional Openings", *Journal of Ethnic and Migration Studies*, Vol.28, No. 3 (July 2002), 455.

Policy Area	EU Proposal	Saliency	Adopted by Council?	If adopted, restrictive or expansive?
	Residence permit for victims of illegal immigration who cooperate with authorities (COM(2002)71)	High	No	
	Penalties for Carriers of Illegal Immigrants (2000/C 269)	High	Yes	Restrictive
	Obligation of Carriers to Communicate Passenger Data (2003/C 82)	High	No	
	Combating Human Trafficking (COM(2000)854)	High	Yes	Restrictive
	Strengthening of Penal Framework (2000/C 253)	High	Yes	Restrictive
Anti-discrimination	Treaty of Amsterdam—EU can fight any discrimination, including on the basis of nationality (Article 12, TEC)	Low	Yes	Expansive
	EU can fight discrimination based on sex, , race, religion, disability, age or sexual orientation (Art. 13, TEC)	Low	Yes	Expansive
	Charter of Fundamental Rights of the European Union (2000/C 364/01)	Low	Yes	Expansive
	Racial Equality Directive (COM(1999)566)	Low	Yes	Expansive
	Community Action Program to combat discrimination (COM(1999)649)	Low	Yes	Expansive
	Police and Judicial Cooperation (COM(2001)664)	Low	No	

Policy Area	EU Proposal	Saliene	Adopted by Council?	If adopted, restrictive or expansive?	
Asylum	Common asylum procedure (COM(2000)755)	High	No		
	Minimum standards for conditions for the reception of asylum-seekers (COM(2001)181)	High	Yes	Restrictive	
	Determining the Member State responsible for examining an asylum application (COM(2001)447)	High	Yes	Restrictive	
	Granting refugee status (COM(2002)326)	High	No		
	Status of third country nationals and stateless persons as refugees (COM(2001)510)	High	No		
	Granting temporary protection in case of mass influx (COM(2000)303)	High	Yes	Restrictive	
	Council Regulation No 2725/2000, the establishment of "Eurodac" for the comparison of fingerprints	High	Yes	Restrictive	
	European Refugee Fund (COM(1999)686)	High	Yes	Expansive	
	Legal migration	Family Reunification (COM(2002)225)	High	No	
		Status of third country nationals who are long term residents (COM(2001)127)	High	No	
Coordination of Social Security Benefits (COM(2002)59)		High	No		
Conditions of entry and residence of TCNs for paid employment (COM(2001)386)		High	No		
Residence permit for victims of illegal immigration who cooperate with authorities (COM(2002)71)		High	No		
Council Regulation (EC) No 2424/2001, development of Schengen Information System II (fingerprint database)		High	Yes	Restrictive	
Admission for study/training (COM(2002)548)		High	No		
Visas and border control	Council Regulation amending Regulation 1683/95 uniform format for visas (2002/C 51 E/03) (COM(2001)577)	Low	Yes	Neither	
	Listing third countries whose nationals must possess visas (COM(2002)679)	High	Yes	Restrictive	
	Common Consular Instruction for examining visa applications (2000/C 164)	Low	Yes	Neither	
	Common Border Guard Manual (2001/C 73)	High	Yes	Restrictive	
	Travel by nationals exempt from the visa requirement (2000/C 164)	High	No		
	Illegal immigration	Transit Assistance for Removal by Air (2003/C 4)	High	No	
Mutual recognition of expulsion orders (2000/C 243)		High	Yes	Restrictive	
Compensating financial imbalances resulting from mutual recognition (COM(2003)49)		High	No		

Source: Terri Givens and Adam Luedtke, "The Politics of European Union Immigration Policy: Institutions, Saliene, and Harmonization", *The Policy Studies Journal*, Vol.32, No.1, 2004, 156-157.

We can say that the direction is positive, because restrictive was coded as 1 and expansive as 0, and if the result is 0.05 it represents a closer effect to expansive policies. This analysis has not found support in concrete evidence nor in organisms that verify where the judgement of 'high' of 'low' harmonization developed, creating doubt. However, the

distinction between restrictive and expansive policy demonstrated that the EU has not necessarily conducted their immigration policy, more liberally, despite its professed goal of free movement towards labour. The problem can result in many treaties, agreements, and legislations that until now, as previously discussed, could have adopted a rhetoric character, affirming the normative commitment to be coherent to their liberal principles, to the European Charter of and Human Rights, but commitment is not exactly matched by political practice. This series of legislation demonstrates a theory advance, as the structure, the plans or the framework. The problem arises in the difficulty of trying to eliminate the gap between the political rhetoric of commitment to human rights and the unwillingness to provide the Union with the means to make that rhetoric a reality. To provide human rights to all, especially to the more vulnerable, is not enough to stipulate requirements on paper, necessary economical, judicial and administrative mechanisms also need to be implemented. In this way we can point out that:

The analysis of the 59th session of the UN Commission on Human Rights demonstrates that the EU does not always realise its human rights goals, even where it has made substantial efforts. In this respect, experience has shown that the EU is more likely to achieve favourable results where its goals are articulated clearly (for example in the form of a common position or in dedicated thematic guidelines such as those for torture and the death penalty), where concerted efforts are made to address particular human rights issues in relations with third countries.<sup>43</sup>

However, the advances that the EU has made are unprecedented as they established a free movement regional territory for all the people. No other region in the world has instituted such a large framework of human rights that covers the TCNs. Compared to other world regions, in the EU the level of human rights is respectable, but the EU confronts irregularities in the respect of human rights. They have created the European Human Rights Monitoring Agency and the Monitoring Centre on Racism and Xenophobia in 1997. The creation of these organisations shows the awareness that the EU has in terms of the protection of human rights. In the *European Union Annual Report on Human Rights*, the Council points out that there has been an advance in the fight against racism, racial discrimination and xenophobia as well as implementations to the fair treatment of third-

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<sup>43</sup> *EU Annual Report on Human Rights*, 2003, 106, available from [http://europa.eu.int/comm/external\\_relations/human\\_rights/doc/report03\\_en.pdf](http://europa.eu.int/comm/external_relations/human_rights/doc/report03_en.pdf)

country nationals, although they recognise that during the period of this report trafficking in human beings remains high.<sup>44</sup>

The Commission points out that immigration in the EU falls into three broad categories, namely that based on humanitarian considerations, family reunion and thirdly immigration which can generally be described as driven by economic and market forces. The political goal has been to be close the third type of migration to zero since the 1970's. However, given the current economic panorama in the EU, this goal seems no longer appropriate due to the demographic conditions that we already mentioned. The Commission points out that:

Many economic migrants have been driven either to seek entry through asylum procedures or to enter illegally. This allows for no adequate response to labour market needs and plays into the hands of well organised traffickers and unscrupulous employers. In addition, there is substantial illegal immigration into the EU which Europol estimates at 500.000 people per annum, many of these being employed as undeclared workers. Given such numbers and the practical difficulties of returning people to the countries from which they came, several Member States have resorted to regularisation or amnesty measures and the total number of those permitted to stay legally as a result is estimated at approximately 1,8 million since the 1970's.<sup>45</sup>

In this way, the Commission suggests as well that the policies for admission of economic migrants must allow the EU to respond quickly and efficiently to labour market requirements at national, regional and local levels, recognising the complex and rapidly changing nature of these requirements and consequently the necessity for greater mobility between member states for incoming migrants. For that reason the admission of economic migrants should recognise the needs of the market place particularly for the highly skilled, as well as for lesser or unskilled workers or for seasonal labour. Such policies must also respect relevant provisions of existing Community law and bilateral and multilateral agreements already in force between the Community, or the Community and its Member States, and third countries.<sup>46</sup> Niessen proposes that this suggestion may be difficult to apply...

declared closed-door or zero-immigration policies, economic factors have led governments to leave the back door open, throughout the nineties, for almost all categories of (documented or undocumented) immigrants, including the self-employed and service providers. This has resulted in a non-declared and

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<sup>44</sup> Council of the EU, *European Union Annual Report on Human Rights*, 2002, available from: [http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/eu-annual-report-2002\\_en.pdf](http://europa.eu.int/comm/europeaid/projects/eidhr/pdf/eu-annual-report-2002_en.pdf)

<sup>45</sup> Commission of the European Communities, "Communication From the Commission to the Council and the European Parliament on a Community Immigration Policy", (Brussels, 22.11.2000), 13.

<sup>46</sup> *Ibid*, 15.

inconsistent immigration policy with complicated and non-transparent immigration rules and procedures. In an effort to manage the growing number of undocumented migrants, some governments have launched successive legalisation programmes.<sup>47</sup>

This represents a recent period of expansion in immigration policy, which accepts the demand of the market labour for foreign skilled and unskilled labour. The acceptance of this problem is the first step to resolve the paradox between the restriction of migration and the liberal economic model, and after this acceptance, the pre-established framework of human rights will more easily resolve the second paradox. This aperture is taking place. A survey conducted among 271 leading European companies showed that of the European Union's total population 19 million people are immigrants, and that these companies require an increasingly mobile workforce, already employing 65000 expatriate executives around the globe. Adrian Favell and Randall Hansen, also agree this idea as we can see

European governments returned to immigration as a means of addressing economic and demographic problems. This move was led by Germany and then Britain, the two most notorious examples of self-proclaimed 'zero-immigration countries' in Europe. Second, the wider process of EU enlargement has itself generated unpredicted and often unnoticed patterns of migration - some temporary, some permanent, and much of it circular or return in nature - that have little to do with the mass, one-way East-West migration feared at the beginning of the 1990s. Third, and more tentatively, circulatory migration around Europe - a feature of an earlier, pre-nation-state era of intra-European mobility - may be reappearing as a feature of the new European migration tapestry. As we will argue, the key to understanding these emergent processes is the way in which a new international market for labour has responded to demand by actively recruiting available non-European, and intra-European migrants - at both the high- and low-skill ends of the market - despite state-centred forms of restriction centred on preserving citizenship and welfare rights for recognised members only; and, further, by transforming the channels by which these migrants can legitimately move into, around and through Europe.<sup>48</sup>

In another article, Niessen points out two moves by European foreign policy in this same direction. One was the Lomé Conventions. Since 1975, an ambitious policy of co-operation with Africa, Caribbean and Pacific (ACP) countries only included trade and investment policies, financial and technical co-operation and the protection of human rights until 1990 when immigration conditions started to be discussed in addition to the previous economic conditions. In this manner, in October, 1999 the ACP-EU Joint Assembly adopted a Resolution on immigration, which called for a series of measures to protect the rights of ACP nationals legally residing in the European Union and to combat clandestine migration.

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<sup>47</sup> Jan Niessen, "Overlapping Interests and Conflicting Agendas: The Knocking into Shape of EU Immigration Policies", *European Journal of Migration & Law*, Vol. 3 Issue 3/4 (Jul2001), 421-422.

<sup>48</sup> Adrian Favell and Randall Hansen, "Markets against politics: migration, EU Enlargement and the Idea of Europe", *Journal of Ethnic and Migration Studies*, Vol. 28, No. 4, (October 2002), 582.

The other policy was the 1997 Barcelona Conference that started the co-operation agreements that became the base of a vast Euro-Mediterranean free-trade area. Under these objectives, the parties discussed political issues as well, trying to promote peace and stability in the region, conversations out of which migration was a forced issue. In fact, the EU only has bilateral agreements with immigrational provisions with Turkey, Tunisia, Algeria and Morocco.<sup>49</sup> The European's awareness of immigration regulations and the need to fill the demand of the labour market is clear.

On the other hand, Niessen also points out that numerous governments open their immigration quota in selected areas. For instance, the government of Ireland has eased entry requirements for non-EU workers to fill jobs in technology, nursing and construction. Italy has introduced measures to admit 63,000 migrants as industrial workers. Spain has allowed for the entry of migrant workers to work in agriculture and food processing. Germany wants to admit 20,000 foreign computer experts over the next three years.<sup>50</sup> In 2001 the German Minister of the Interior said that "Germany is an immigration country," which presents a stark contrast with the previous 'zero immigrant' official position. The German government is currently contemplating a new immigration bill that would give highly skilled workers permanent residence as soon as they arrive, a bill that also introduced measures to integrate foreigners and tighten the asylum system. However, as Stalker points out, the bill has met with some opposition from right wing parties opposed to immigration and may not be accepted by the upper house of parliament. France has signed a bilateral agreement with Algeria, one of its formal colonial holdings, which accepts Algerians on the status of 'Algerians in France'. Another French policy, launched in 1997, is a regularization programme that has granted residence to 75,600 foreigners.<sup>51</sup> All of these policies are national answers to labour market demands which stand in opposition to restrictive immigration policies, and that in the end also promote a more favourable panorama, economic and political, to common European immigration policies. Consequently, we find support in the ideas of Patrick Weil, who considers the restrictive policies after 1973 a failure, writing that

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<sup>49</sup> Ibid, 488-491.

<sup>50</sup> Ibid, 423-424.

<sup>51</sup> Peter Stalker, "Migration Trends and Migration Policy in Europe", *International Migration*, Vol. 40 (5) 2002, 168-169.

[the] highly restrictive immigration policies are extremely inefficient. [...] Finally, highly restrictive immigration laws are poor public policy because they render it more difficult for host countries to reap the important benefits of immigration in terms of contributing to the labour force and improving the problematic demographic situations many of them face. Rather than attempting to exclude immigration as much as possible, it is clearly in the best interest of immigrants and of host countries themselves to develop policies that allow a reasonable number of individuals to immigrate through the three main traditional avenues: 1) family reunification, 2) refugee status, and a more recent one which must be reopened in the light of new market needs, 3) meeting labour force demands.<sup>52</sup>

Logically, the resolution of the paradoxes will come “[w]hen its value is fully recognised, it becomes common sense to treat immigrants equally, which, in turn, makes the European Union more attractive to immigrants.”<sup>53</sup>

We can see after the nineties that governments have relaxed their restrictive immigrations policies, directly resulting in a rising immigration rate. In the following table we observe that in almost every country listed, the rate of acceptance of the foreign labour force in the last five years of the selected period is rising. In the case of Germany however, we need to point out that if the number of legal immigrants decreases, a proportional number of illegal immigrants increase, as Favell and Hansen suggest when they claim “an unknown number – but probably hundreds of thousands – of illegal migrants were employed in Germany, especially in the construction sector.”<sup>54</sup> We can confirm that those workers have served as supply to the work force demand because in the last decade the percentage of foreign workers as workforce has growth in all the European countries. France’s figures, which are almost constant, may perhaps be due to the pressure of the amounting that right wing party Front National and a decreasing demand.

Table 8. Stocks of foreign and foreign-born labour force in selected OECD countries

Thousands and percentages												
		1991	1992	1993	1994	1995	1996	1997	1998	1999	2000	
Stocks of foreign labour force												
Austria		277.2	295.9	304.6	316.5	325.2	328.0	326.3	327.1	333.6	345.6	

<sup>52</sup> Patrick Weil, “Towards a Coherent Policy of Co-Development”, *International Migration* Vol. 40 (2002), 44.

<sup>53</sup> Peter Stalker, “Migration Trends and Migration Policy in Europe”, *International Migration*, Vol. 40 (5) 2002, 224.

<sup>54</sup> The author points out that after the reunification the reconstruction of Germany could not be impossible without the cheap labour force of the illegal workers. Adrian Favell and Randall Hansen, “Markets against politics: migration, EU Enlargement and the Idea of Europe”, *Journal of Ethnic and Migration Studies*, Vol. 28, No. 4, (October 2002), 590.

	% of total labour force	8.7	9.1	9.3	9.7	9.9	10.0	9.9	9.9	10.0	10.5
Belgium		303.0	325.6	342.1	354.9	362.1	368.0	377.4	390.7	386.2	..
	% of total labour force	7.4	7.8	8.1	8.4	8.5	8.6	8.8	8.8	8.9	..
Denmark		71.2	74.0	77.7	80.3	83.8	88.0	93.9	98.3	96.3	96.8
	% of total labour force	2.4	2.6	2.7	2.9	3.0	3.1	3.3	3.4	3.4	3.4
Finland		..	..	..	24.4	26.9	29.7	33.0	36.0	37.2	..
	% of total labour force	..	..	..	1.0	1.1	1.2	1.3	1.4	1.5	..
France		1 506.0	1 517.8	1 541.5	1 593.9	1 573.3	1 604.7	1 569.8	1 586.7	1 593.8	1 577.6
	% of total labour force	6.0	6.0	6.1	6.3	6.2	6.3	6.1	6.1	5.8	6.0
Germany		..	..	..	..	..	..	3 575	..	3 545	3 546
	% of total labour force	..	..	..	..	..	..	8.9	..	8.8	8.8
Ireland		39.3	40.4	37.3	34.5	42.1	52.4	51.7	53.3	57.7	63.9
	% of total labour force	2.9	3.0	2.7	2.5	2.9	3.5	3.4	3.3	3.4	3.7
Italy		285.3	296.8	304.8	307.1	332.2	580.6	539.6	614.6	747.6	850.7
	% of total employment	1.3	1.4	1.5	1.5	1.7	2.6	2.4	2.7	3.6	3.6
Luxembourg		92.6	98.2	101.0	106.3	111.8	117.8	124.8	134.6	145.7	152.7
	% of total employment	47.5	49.2	49.7	51.0	52.4	53.8	55.1	57.7	57.3	57.3
Netherlands		214	229	219	216	221	218	208	235	..	..
	% of total employment	3.3	3.5	3.3	3.3	3.2	3.1	2.9	3.4	..	..
Norway		46.3	46.6	47.9	50.3	52.6	54.8	59.9	66.9	104.6	111.2
	% of total employment	2.3	2.3	2.4	2.5	2.5	2.6	2.8	3.0	4.7	4.9
Portugal		54.9	59.2	63.1	77.6	84.3	86.8	87.9	88.6	91.6	99.8
	% of total labour force	1.1	1.3	1.4	1.6	1.8	1.8	1.8	1.8	1.8	2.0
Spain		171.0	139.4	117.4	121.8	139.0	166.5	178.7	197.1	199.8	..
	% of total labour force	1.1	0.9	0.8	0.8	0.9	1.0	1.1	1.2	1.2	..
Sweden		241	233	221	213	220	218	220	219	222	222
	% of total labour force	5.3	5.3	5.1	5.0	5.1	5.1	5.2	5.1	5.1	5.0
United Kingdom		828	902	862	864	862	865	949	1 039	1 005	1 229
	% of total employment	3.0	3.6	3.4	3.4	3.4	3.3	3.6	3.9	3.7	4.4

Source: OECD, available from: <http://www.oecd.org/dataoecd/24/2/2956530.xls>

Another source to verify this tendency

Table 9. Foreign Residents in the European Countries in thousands

	1986	1990	1993	1994	1995	1996	1997	1998
Germany	4512.7	5342.5	6878.1	6990.5	7173.9	7314	7365.8	7319.6
Austria	314.9	456.1	689.6	713.5	723.5	728.2	732.7	739.8
Belgium	853.2	904.5	920.6	922.3	909.8	911.9	903.2	
Denmark	128.3	160.6	189	196.7	222.7	237.7	249.6	265.2
Spain	293.2	278.7	430.4	461.4	499.8	539	609.8	719.6
Finland	17.3	26.3	55.6	62	68.6	73.8	80.6	85
France	3 714.0	3 596.6				3598		
Greece						305	309	
Netherlands	568	692.4	779.8	757.1	725.4	679.9	678.1	662.3
Ireland	77.0	80.0	89.9	91.1	96.1	118.0	114.4	112.9
Italy	450.2	781.1	987.4	922.7	991.4	1 095.6	1 240.7	
Luxemburg	97.3	113.1	127.6	132.5	138.1	142.8	147.7	152.9
Portugal		107.8	131.6	157.1	168.3	172.9	175.3	177.7
UK	1 820.0	1 723.0	2001	2032	1948	1934	2066	

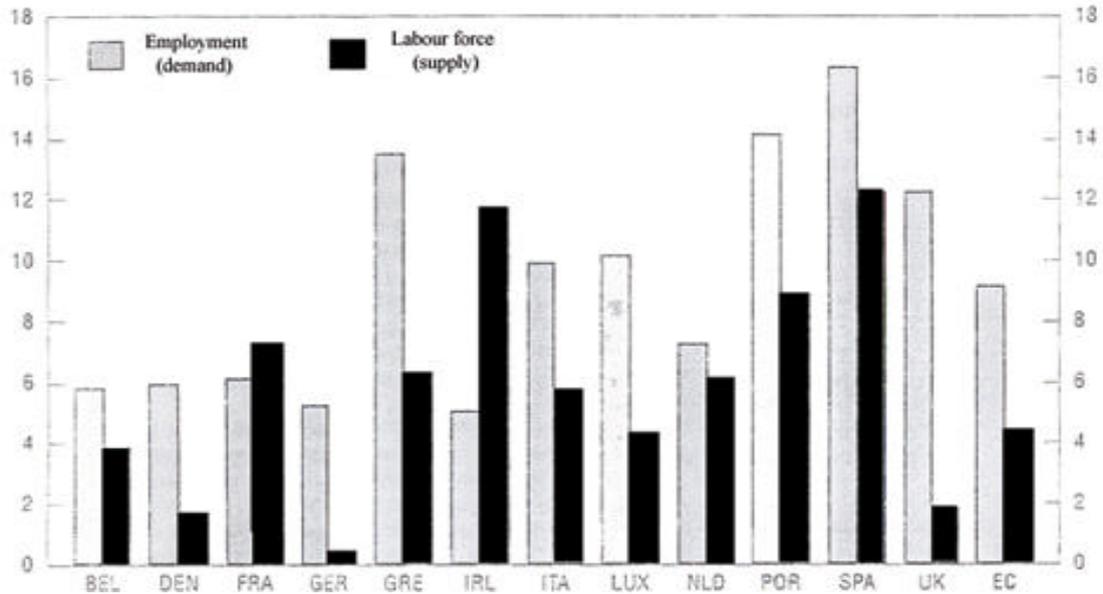
Sweden	390.8	483.7	507.5	537.4	531.8	526.6	522	499.9
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Source: Eurostat, quoted by Ignasi Riera, *Emigrantes y Refugiados*, (Barcelona: Debolsillo, 2002), 25.

The ciphers vary, they are higher because the second ones represent the all foreign legal population, and not only the labour force. However, they do demonstrate what we want to prove: an increase in the number of immigrants. That also can help in the demographic concerns. The Shengen Agreement has worked to tighten the external border of the EU; in this way, it has not reduced immigration but has made it more selective. In this way, the paradox between the restrictive measures and the liberal economic model make a great advance in the acceptance of the necessity of a foreign workforce. The demographic projections and the actual status of the labour market in Europe gradually demand more unskilled and skilled labour that causes the number of immigrants to rise. We can support this with the following table that suggests that if for the EC, as a whole, employment growth (as indicator of labour demand) will considerably exceed labour force growth (as indicator of labour supply), consequently immigrants will be required. This trend is happening in all of the EU except for France and Ireland.

Table 10.

Supply of and demand for labour in the EC countries  
Projected percentage change 1987/2000



Source: Heinz Werner, "Migration Movements in the Perspective of the Single European Market" in OECD, *The Changing Course of International Migration*. (Paris: OECD, 1993), 83.

These variables act as important factors of immigration pull. As result, what Favell and Hansen point out is logical

[t]he EU has thus in effect sanctioned that certain forms of European mobility can no longer be restrained or contained by national conceptions of citizenship and welfare-state closure; it has given power to the market to decide over who moves across borders and how they do it, where they live and work, and whether they bear any responsibility to the nation-state they happen to be resident in. As long as there is a demand for workers, the market-based reasoning for integration allows that the European labour market can draw on labour from throughout the European Union and beyond, orienting its demands to geographically proximate countries found in the periphery of Europe and in the newly opened East. This new logic represents an important challenge to the nation-state-centred conceptions of immigration and citizenship on which the political control of migration had been premised during most of the twentieth century.<sup>55</sup>

Consequently, if the market is decides the liberal model works correctly, at least internally (but also externally, because the pull factors attract immigrants from the diverse parts of the world), one economic principle is that the markets organise with less intervention of the state, in this manner the resources are assigned in the most efficient way.

<sup>55</sup> Adrian Favell and Randall Hansen, "Markets against politics: migration, EU Enlargement and the Idea of Europe", *Journal of Ethnic and Migration Studies*, Vol. 28, No. 4, (October 2002), 586.

The European case with their commitment to free internal movement of capital, goods, persons and services is the one that most closely meets these objectives.

In an interesting study, Brucker poses the question “Can International Migration Solve the Problems of European Labour Market?” In an attempt to answer, he suggests five characteristics of the human capital that inflow into Europe. The first is that migrants are younger than natives are. Second, the proportion of males in the migrant population is above that in the native population. Third, migrants’ average skill levels are below those of natives in countries with a relatively high-skilled population. In this point, as Brucker points out “there appears to be a Heckscher-Ohlin pattern in immigration, i.e. countries with a relatively high-skilled population receive relatively low-skilled migrants, and vice versa.”<sup>56</sup> There is not significant competence for the same jobs, as we have explained the segmentation of the labour market into a second sector, which nationals reject in favour of better opportunities. Gross, Winkelmann and Zimmermann, using sound statistical evidence, argue that the migrants do not replace native workers, and in some cases, migrant workers complement native workers.<sup>57</sup>

The fourth suggestion confirms the previously stated observation that the occupational status of migrants is below that of natives with comparable skills. The fifth declares that unemployment and welfare dependency rates are for migrants are higher than those for natives (because they are more vulnerable to unemployment). The same study resolves this issue by pointing out that migrants tend to move to more prosperous regions, and than this has implications for the welfare gains.<sup>58</sup> This study concludes by saying that “migration will not resolve the labour market problems in Europe. The analysis of this paper, however, allows the conclusion that the aggregate gain from international migration can be substantial.”<sup>59</sup> It is obvious that migration alone will not resolve the European labour market problem, but it is a good valve of escape for the problem, as the past has proved. Demographic demand, which in the end is also a labour market demand, is a fundamental question to resolve as Patrick Buchanan points out:

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<sup>56</sup> Herbert, Brucker, “Can International Migration Solve the Problems of European Labour Market?” in UN, *Economic Survey of Europe, Economic Commission for Europe, No. 2*, (Geneva: United Nations, 2002), 115-.

<sup>57</sup> Ibid, 130.

<sup>58</sup> Ibid, 115-118.

<sup>59</sup> Ibid, 136.

[a]t present birth rates, Europe must bring in 169 millions immigrants by 2050 if it wishes to keep its population aged fifteen to sixty-four at today's level. But if Europe wishes to keep its *ratio* of 4.8 workers (fifteen-sixty-four) for every senior, Europe must bring in 1.4 *billion* emigrants from Africa and Middle East. Put another way: Either Europe raises taxes and radically downsize pensions and health benefits for the elderly, or Europe becomes a Third World continent. There is no third way.<sup>60</sup>

The less restrictive policies and increase of immigrants has provoked the increase of right wing parties popularity in many European countries based in xenophobic sentiments. We can base this, as we already explained, in the pluralist, elitist theories or political party theories, where the state is forced to opt for a hypocritical attitude toward the immigrants. During the recent election period, the new relative salience of right wing, anti-immigrant rhetoric has been related to the 11 September 2001 terrorist attacks that clearly sparked unfounded hostility to immigrants in countries all around the world. The use of these attacks as propaganda can influence the political consequence or the political result, based on how the propaganda is managed, and who is managing it (elites, government, parties, etc). Today the EU faces the challenge of changing this mentality as the demographic pressure and the market labour require, as Cohen points out:

With birth rates low, Europe's already strained state pension system faces collapse unless the working population that supports these people is expanded through immigration. One European Union working paper puts the number needed at 75 million immigrants by 2050. So, for the first time in decades, Europe is debating whether to abandon an official policy of "zero immigration" (which has meant that increasing numbers of people resort to asylum-seeking or illegal entry) and shift to the selective encouragement of economic migration. "Europe must move to a proactive immigration policy," the European Commission said recently, but warned that this would require strong political leadership to combat "racism and xenophobia."<sup>61</sup>

Immigration not only prevents the collapse of the pension system, it also helps production to continue growing when the labour force is decreasing, which is fundamental for the continued existence of the capitalism. In one recently published book the EU has recognised that the restrictive policies in the admission of immigrants and asylum seekers had existed together with the labour demand for this people, creating illegal immigration. Certain sectors of production had suffered labour shortage that the native labour was not able to alleviate and that the fill and their production needed and developed grace for the foreign labour. The European society overestimates the migration phenomena, regarding it

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<sup>60</sup> Patrick Buchanan, *The Death of West*, (New York: St. Martin's Press, 2002), 22.

<sup>61</sup> Roger Cohen, "Europe's Love-Hate Affair With Foreigners" *The New York Times* (December 24, 2000) Available from, <http://www.nytimes.com/2000/12/24/weekinreview/24COHE.html?ex=1077253200&en=1ae5439f44c0c330&ei=5070>

with fear and prejudices due to the supposed negative effects of migration,<sup>62</sup> this can result in a paranoiac perception of the foreign population. The problem as the French demographer Alfred Sauvy says Europe is a continent of “old people in old houses with old ideas”<sup>63</sup>

The enlargement of the EU from 15 to 25 member countries in 2004 presents another problem that the Union will need to confront. Different scholars suggest different mechanisms through which this population can integrate into the actual Union with the less disequilibrating results, as Joanne van Selm says:

In the end, the question is: Do the EU -15 have any alternative to full inclusion of the ten new states? If they do not follow the path of inclusion, the end result is likely to be a Union divided into two classes of citizens and with porous borders. Surely, it would make more sense, and result in greater stability for all, if the EU would quickly learn to trust its new members,<sup>64</sup> and grasp this opportunity to put the goal of an area of freedom, security and justice truly into practice.

Making two kinds of citizenship would be incongruous with their own history, since the Amsterdam Treaty dictates that one of the objectives of the EU is that the citizens live in a society where equal freedom, security and justice is applied. In addition, the demographic projection of the EU will say that

[f]or the EU in the short and medium term many of these labour demands are likely to be met from the East, rather than from the South. As the EU expands eastward it will gain access to new sources of migrant labour, similar to those provided in the 1950s and 1960s by Italy, Portugal, and Spain. Yet, given the low birth rates in most of these countries too, the longer-term picture, even for an expanded EU, is likely to involve greater use of workers from developing countries.<sup>65</sup>

In conclusion, immigration to Europe has been driven primarily by market concerns, in the face of political hostility and a decline in state control policy. The history of industry’s need for low-skilled workers, shortages in high-skilled sectors, and economic migration to Europe has been shaped first and foremost by the market, not by politics or state intervention. We can confirm this with the main argument of Favell and Randall:

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<sup>62</sup> UE, *Inmigración, Asilo e Integración Social* (Luxemburg: Oficina de Publicaciones Oficiales de las Comunidades Europeas, 2002), 20,

<sup>63</sup> Ben Wattenberg, “Counting Change in Euroland”, *Washington Times*, January 28, 1999, p. A18 quoted by Patrick Buchanan, *The Death of West*, (New York: St. Martin’s Press, 2002), 23.

<sup>64</sup> Joanne van Selm and Eleni Tsolakis, “The Enlargement of an “Area of Freedom, Security and Justice”: Managing Migration in a European Union of 25 Members”, *Policy Brief*, No.4 (May 2004). Available from: Migration Policy Institute: [http://www.migrationpolicy.org/pubs/eu\\_enlargement.pdf](http://www.migrationpolicy.org/pubs/eu_enlargement.pdf)

<sup>65</sup> Peter Stalker, “Migration Trends and Migration Policy in Europe”, *International Migration*, Vol. 40 (5) 2002, 172.

that we are currently witnessing a transformation in migration processes in Europe: from an historical situation in which these were dominantly shaped and restrained by state-centred and territorially bound forms of governance, to one in which they are increasingly defined and governed by market forces and the inability of states to enforce their jurisdiction over labour mobility.<sup>66</sup>

In this manner we advance towards a resolution of the paradox between restrictive measures and the liberal model. It is important to say that the push and pull factors, as well as supply and the demand, play a central role in revoking the restrictive measures. As Morris points out “it is not so much the existence of international organizations and institutions which challenge the self-contained nature of the nation-state, but the continuing flow of people across their borders, even in the face of exclusionary policy.”<sup>67</sup> Respecting the second paradox concerning the contradiction between the market and human rights, the emergence of transnational mediums for protect the rights of immigrants has been a great advance, which hand down standards for the security of migrants. The European liberal governments have regulated the flow of people in a manner in which the human rights have been respected and that maintain relatively open borders. In this manner, there have been advances in the resolution of the second paradox, although such protections only apply to those legally present in the territory, and leave clandestine migrants vulnerable. Consequently, part of the second paradox has not been resolved. In short, we should not forget demographic and economical variables that this study case has shown to be important determinants in the immigration policy because “[w]here Europe is at today, America will almost surely arrive tomorrow”<sup>68</sup>

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<sup>66</sup> Adrian Favell and Randall Hansen, “Markets against politics: migration, EU Enlargement and the Idea of Europe”, *Journal of Ethnic and Migration Studies*, Vol. 28, No. 4, (October 2002), 597.

<sup>67</sup> Lydia Morris, “Globalization, Migration and the Nation-State: the Path to a Post-National Europe?” *British Journal of Sociology*, Vol. 48, Issue 2, (June 1997), 201.

<sup>68</sup> Patrick Buchanan, *The Death of West*, (New York: St. Martin’s Press, 2002), 112.