Opening Fortress Europe?
Constructing a new approach to EU migration policy

By

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In terms of migration policy, 'Fortress Europe' finds itself at a crossroads: continue the efforts to close the borders in the name of security at all costs or open up and recognise a globalised and more mobile world? It is a decision between hoping to satisfy growing labour demands with irregular migration or entering global competition for a labour force. It means giving in to the rising xenophobic pressure which gains influence in a time of economic crisis or nurture the already suffering reputation as a Nobel Peace Prize winning defender of human rights. To open or close borders to the European Union (hereafter: EU) – this decision is ripe due to the mandate to "develop a common immigration policy" required by the Lisbon Treaty and accompanied by new governance and decision-making instruments. It also gains importance due to the aim to integrate migration policy into the EU's external policies, which requires the policy to be in accordance with key EU foreign policy interests concerning security, economy and human rights. Thus, there is a need to bring these interests together in a coherent strategy, which has lately been attempted with the European Commission's Global Approach to Migration and Mobility. The approach strategically reconsiders opening legal opportunities for migration to a limited, however, struggles to decide on a clear departure from border closing policies.

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1. Introduction

In terms of migration policy, 'Fortress Europe' finds itself at a crossroads: continue the efforts to close the borders in the name of security with all costs involved or open up and recognise a globalised and more mobile world? Moreover, it is a decision between hoping to satisfy growing labour demands with irregular migration or entering the global competition for labour force – an on-going competition that has started without Europe. Further, it means give in to the rising pressure of xenophobic movements, which have gained influence in the time of economic crisis, or nurture the already suffering reputation as a Nobel Peace Prize winning defender of human rights.

To open or close borders to the European Union (hereafter: EU) – this decision is not only ripe due to the mandate to "develop a common immigration policy" (Article 79(1), Lisbon Treaty) given with the Lisbon Treaty and accompanied by new governance and decision-making instruments. It also gains importance due to the aim to integrate migration policy into the EU's external policies, which requires the policy to be in accordance with key EU foreign policy interests concerning security, economy and human rights. Thus, there is a need to bring these interests together in a coherent strategy, which has lately been attempted with the European Commission's (hereafter: Commission) *Global Approach to Migration and Mobility* (European Commission 2011a). The approach strategically reconsiders opening legal opportunities for migration to a limited extent, however, struggles to decide on a clear departure from border closing policies.

"[T]rafficking is labour[1] migration gone horribly wrong in our globalized economy" (Chuang 2006: 138). Growing numbers of victims in the EU therefore provide a useful example for displaying the problems of current migration policy, as it frames it into context with the demand for low- and unskilled labour[2]. While preventing human trafficking for labour migration is currently understood in terms of securing the borders and convicting

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[1] The author is using British English but abstains from highlighting different spelling in American English when directly quoted.

[2] There is no common definition for low- and unskilled workers, but it can be understood referring to "a person who has received less training than a semi-skilled worker or, having not received any training, has still acquired his or her competence in the job" and everything below, while a "semi-skilled worker is considered to be a person who requires a degree of training or familiarization with the job before being able to operate at maximum/optimal efficiency" (IOM 2008).

traffickers, no connection is made between the increasing and unsatisfied demand for labour force in the EU and closed borders for legal migration.

Establishing the nexus, this study follows the questions:

Considering the conflict of interests involved in EU migration policy, how can it be addressed with a common approach? What lessons can be drawn from the relationship of the demand for low- and unskilled labour force and the increase of human trafficking for labour exploitation? Can all interests be met with opening up legal opportunities to cross EU external borders?

Security-, economic- and human rights-based approaches to migration, although articulated and framed differently, do share core interests that can be drawn together underneath a more open migration approach. The current 'managed migration' approach articulated by the Commission fails to address low- and unskilled migration, to establish a connection between missing legal migration opportunities and irregular migration and to consider the increasing vulnerability of migrants due to stricter border controls. Opening up legal migration opportunities can therefore be a way to address the concerns raised in the security-, economy- as well as human rights-based discourse influencing migration policy.

The central argument speaks to continuing debates in International Relations concerning how to address migration at a global level. In this debate, the EU is a useful example attempting a regional approach to migration with very diverse and seemingly conflicting interests involved. Showing a way to unite this diversity of interests in finding a zone of possible agreement for a mutual strategy, the paper offers insight into mediation in state cooperation on a complex policy issue.

Establishing a nexus between low- and unskilled migration and irregular migration in the form of human trafficking for labour exploitation, a bridge between two issues of migration studies, often addressed separately, is built. Thus, dealing with both issues in one context, the separation of irregular and regular migration is given up, highlighting new perspectives on both issues. Furthermore, with referring to labour market policy in connection with migration, a multidisciplinary approach to migration that can be increasingly be observed at the policy level is taken.

In order to reduce the complexity of the issue for the purpose of this paper, no distinction is made between migration and labour migration. Further, the term 'migration policy' is used referring to all policies concerning various forms of regular and irregular migration and in the EU context to migration policy concerning third-country nationals if not explicitly stated differently. Finally, asylum policy is mentioned but cannot be addressed in detail due to the limited capacity of this study.

Migration policy-making is not based on rational decision-making in a given structure but is an issue area of constant re-creation shaped by changing environments and dominant interests and agents. Therefore, social constructivism as a theory of international relations provides the opportunity to examine the process and underlying social dimension of the establishment of EU migration policy. Furthermore, within social constructivist theory, the concept of securitisation helps identifying economisation, securitisation and human rights-based framing of EU migration policy and the underlying interests. The social construction of a conflict between these interests in the area of migration, creating difficulties for the incorporation into a common EU approach on migration policy, is de- and reconstructed with the support of tools of conflict mediation in order to find a zone of possible agreement.

To begin with, the following chapter summarises key features of social constructivist theory as well as the concept of securitisation and the application to migration policy in order to create a framework for analysis. Within the chapter, the conflict between three main

discourses, their positions and underlying interests in EU migration policy are identified. Following this, chapter 3 explains the attempt of current EU policy to unite the different positions in the Commission's most current 'managed migration' approach to migration. Within the chapter, employing discourse and policy analysis, problems with the approach, which recreates the conflict, are identified. These problems are the missing (i) acknowledgement that low- and unskilled labour migration from third countries is required in the EU as well, (ii) link between irregular migration and opportunities for legal migration, and (iii) consideration of the intensification of (potential) migrants' vulnerability with intensified border control. In the following three chapters, these problem statements are individually examined in order to find options to reconstruct a common approach to migration avoiding them.

Chapter 4 deals with the examination of the demand for labour force, using literature in the area of labour market and labour migration studies as well as data on demographics and labour demand from Eurostat and the European Centre for the Development of Vocational Training (Cedefop) in order to support arguments made, supporting a lack of consideration of the demand for low- and unskilled labour in the EU. The option identified here is the provision of legal migration opportunity for all skill levels instead of only highly skilled[3] labour in order to meet the labour demand of the EU economy, the key interest in economy-based discourse.

Chapter 5 analyses the missing connection between regular and irregular migration, specifically dealing with human trafficking for labour exploitation in order to establish a direct connection to the claims made in the previous chapter. The policy and literature analysis is supported with data from the ILO and the Commission, coming to the conclusion that the option for meeting interests is the opening of legal migration opportunities in order to prevent irregular migration which is the key interest in security-based discourse.

Chapter 6 uses the concept of open borders in order to examine the effect on the vulnerability of migrants, a key concern in the human rights-based discourse. Different approaches to the concept are introduced in order to test the compatibility of its arguments with the security- and economy-based interests as well.

Finally, chapter 7 summarises the different interests, problem statements and options are brought together in order to reconstruct an EU approach to migration policy inside the zone of agreement identified in the previous chapters. The reconstruction of a concept of 'facilitated migration' is based on the deconstruction of arguments in the precious analysis and follows the mediation approach to "reconcile interests, not positions" (Fisher et al. 1991: 41).

In the conclusion, the limits of the approach taken and the dependence of the construction of migration policy on the changing environment, dominant agents and their interests are pointed out in order to draw the attention on challenges emerging in the future.

2. Theoretical framework – constructing migration policy

The perception of migration has changed considerably over the past decades undergoing an increasing politicisation (Buonfino 2004) and becoming an issue of international relations with states defending not only their sovereignty in controlling who is entering the state territory, but also increasingly discovering the advantage of cooperating in

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[3] Highly skilled labour is referred to in the EU directive 2009/50/EC as International Standard Classification of Education (ISCED) 1997 levels 5a and 6.

the area. A global migration governance system, however, has not been established so far. Rather, regional approaches, like the common European asylum and migration policy, or bilateral cooperation have been established (Betts 2011b).

In the framework of the EU, migration policy has been introduced with the Amsterdam Treaty in 1999 and further developed with the Tampere, Hague and Stockholm Programmes. The Lisbon Treaty finally introduced new possibilities for the governance of migration at the level of the European Union. It remains one of the most sensitive policy issues, with many competences shared between member states and the EU, involving interests not only of interest groups in the member states, the national governments and the societies but also the EU institutions.

In order to explain migration policies in the context of international relations, the argumentation of this paper follows a social constructivist approach (based on Katzenstein 1996a; Wendt 1992; Wæver 1995), analysing social interaction and interests influencing the discourse and the process of constructing current migration policies in the EU. Migration policy is what is made of it (Wendt 1992), requiring an analysis of the process from a logic of consequences point of view with recognising dominant agents and the changing political environment influencing the discourse and with that creating and continuously re-creating migration policy (cf. Katzenstein 1996b; Wendt 1992: 424). However, the application of logic of consequences has become more common in connection with a more economic approach to migration and is the basis of the reconstruction of an EU migration approach in chapter 7.

Describing change rather than status quo (Fierke 2007: 179), social constructivist theory assists understanding current changes in the migration discourse as well as agents and interests involved. It is used as such to identify the major discourses in EU migration policy in the following paragraph and the de- and reconstruction of EU migration policy in the cause of this study.

2.1 Conflicting discourse on EU migration policy

Within the field of social constructivism, Huysmans' (1995) "securitization" approach on migration policy, based on the Copenhagen School's securitisation concept (Wæver 1995), is applied and extended to identify different framing of EU migration policy and the underlying interests. The author is therefore diversifying the concept into securitisation, economisation[4] and human rights-based framing (cf. figure 1). Using the securitisation concept's core ideas, this captures the diversity of interests currently influencing EU migration policy into three main interest areas. Furthermore, the social construction of a conflict between these interests in the area of migration, which creates difficulties for the incorporation into one EU approach on migration policy (cf. chapter 3), is exposed.

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[4] The application of the securitisation approach for identifying an economy-based framing of migration – economisation – has already been used by other authors, e.g. Buonfino 2004.

Figure 1: Framing of migration policy
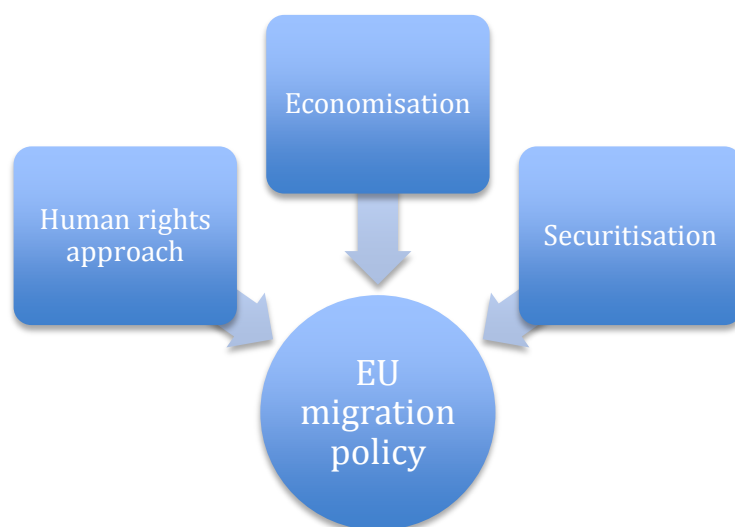
As stated above, migration policy-making is not simply a demand and supply calculation based on rational decisions, but rather strongly influenced by social interaction and discourse. At the EU level, not only the discourse inside the member states' societies and among interest groups is concerned, but also diverging interests coming together in EU institutions in terms of governments from different member states with different needs and perceptions towards migration.

In this complex system of interests, in a continuous social learning process with changing environments and adaption to interests of shifting dominant agents (Betts 2011b), EU migration policy-making is led by policy framing. The "speech act" (Wæver 1995: 55) by key policy-makers is therefore determinant for the direction policies are taking. In the case of securitisation this means the "social construction of migration as a security question" resulting in the implementation of "restrictive migration policy" (Huysmans 2000: 251).

With the construction of an "existential threat" (Huysmanns 1995: 757), restricting migration policy for the purpose of increased security has been made publicly and politically acceptable. This has been possible with the agents communicating the threat being dominant in the discourse, which is dependent on changing environments and often triggered by major political events. In case of securitisation, the public fear after the terrorist attacks in the early 21st century has been key for the influence of advocates of stricter border controls and closed legal migration paths (which had been very restricted already) (Bermejo 2009: 213, 216; Buonfino 2004: 29).

The closing of the external EU border in the name of security has been a dominant trend of the past decades reflected in the policy of the early years of Europeanisation of migration and asylum policy. The occurrence of irregular migration in this course has put emphasis on "combating" (e.g. European Parliament and Council of the European Union 2011) irregular migration and the "persecution" (e.g. European Parliament and Council of the European Union 2011) of connected crimes. Reducing irregular migration in order to establish security at the border has been identified as the key interest, with intensified border controls being presented as the main measure to do so (Huysmans 2000). The European border agency FRONTEX has become a symbol of this policy, which is still strongly advocated for today (cf. chapter 3).

Securitisation weakened, although not eliminated, arguments based on human rights from advocates for an open migration policy drawing from the ideas behind the establishment of an international asylum system in the aftermath of World War II. The "protection" (e.g. UN 1990) of "vulnerable" (e.g. IOM 2008) migrants is articulated as the main interest behind (Kuptsch/ Martin 2011: 51; Kofman 2005: 458-459). With appealing upon the values the EU claims to represent, embedded in its foreign policy strategy[5], restricted migration policy is framed as the existential threat establishing a connection between migration and human rights (Wilcox 2009; Betts 2011b: 27-28). Events, which recently brought the human rights problems coming with securitised migration to the public attention, and with that strengthened this approach, have been the revolutions during the 'Arab spring' causing high influx of refugees on the Southern EU borders and resulting in human rights-violating push-backs to the countries of origins (e.g. Hirsi Jamaa and Others v. Italy 2012).

Similar to migration being portrayed as a security threat or a human right issue, it has been framed as an economic "opportunity" (e.g. European Commission 2011a: 2). This positive framing of migration has been driven by employers aiming for access to more flexible and cheaper labour force and therefore advocating for liberalised immigration policies (Buonfino 2004: 25). Existing in the shadow of securitisation trends for the past decades, the economisation debate gained attention during recent years following a general trend of "economization or even ecologization of foreign policy" (Beck 2000: 82) as well as the increasing political attention given to demographic developments and the acknowledgement of Europe's "demographic deficit" (ILO 2004; further examined in chapter 4).

As a trigger event for the economic agents becoming more dominant, the economic crisis served as a reminder of the EU's origin as an economic union as well as it increased fears of losing competitiveness for the EU's economy. While Buonfino (2004) had claimed securitisation to be "the discourse [...] better able to respond to public fears" (Buonfino 2004: 29), with changing public fears, the agents for economisation of migration policy gain influence again. Employers already influence EU policy-making more effectively with first policies on the recruitment of third-country nationals having been implemented in recent years (more in paragraph 3.2.3). The threat economic advocates construct is based on the expected labour shortage with severe economic consequences for the EU member states' economies. In this context, the insecurity emerging in the course of the financial crisis is emphasising the receptivity of EU citizens and policy-makers for these economic concerns despite the general prevailing resistance towards immigration from third-country nationals (Buonfino 2004; Harris 2004:6). The "existential threat" (Huysmans 2000:757) is posed by an insufficient supply of labour force for sustaining the European economy (cf. Sommer 2013a: 8-11).

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[5] "The Union's action on the international scene shall be guided by [...]: democracy, the rule of law, the universality and indivisibility of human rights and fundamental freedoms, respect for human dignity, the principles of equality and solidarity, and respect for the principles of the United Nations Charter and international law." (Article 21(1), Treaty of the European Union).

Figure 2: Three different types of framing, positions and interests of EU migration policy

	Framing	**Position**	**Interest**
Economisation	Migration as an economic opportunity	Legal migration opportunities for economically beneficial migrants	Satisfy labour demands
Securitisation	Migration as a security threat	Stricter migration and asylum policies	Reduce irregular migration
Human rights approach	Migration/ asylum as a human right	Upholding (human) rights in migration and asylum policy	Reduce migrants' vulnerability

While academic literature has been concentrating on pointing out the differences and competition of these different interests (cf. Horvath 2011; Buonfino 2004; Huysmans 1995), the constructed conflict and the attempted solution by the Commission in its 'managed migration' strategy are further deconstructed in this study using the results of this discourse analysis. Instead of searching for differences, the similarities are pointed out.

3. Migration policy-making in the EU: managing migration?

With migration being scarcely regulated at the global level (Betts 2011b: 2) compared to issue areas like trade, the EU attempts to establish a common set of rules and guidelines for migration from third countries to the EU after opening up its internal borders with the Schengen Agreement. Being "increasingly politicized" (Betts 2011b: 1) in the member states, this is however a controversial and complex challenge with on-going conflict.

With the discourse on migration recently opening up towards policies creating legal entry possibilities for certain groups of migrants, a reaction to the enduring economisation of migration, relying on pressure due to labour shortages in the EU economy and the growing influence of economic actors in the course of the economic crisis, can be observed. With that, the departure from restriction-only policy gives room for the construction of new approaches to migration.

In its *Policy Plan on Legal Migration* in 2005, and more recently the *Global Approach to Migration and Mobility* in 2011, the Commission has developed an approach to migration that intends to capture the positions of the discourses identified in the previous chapter – securitisation, economisation and human rights-based framing. Drawing them together in a 'managed migration' approach has however revealed the limits of uniting the positions involved (cf. figure 2). In order to point them out, the 'managed migration' concept and its application to EU migration policy are closely examined in the following paragraphs, referring to discourse analysis on the basis of the previous chapter.

### 3.1 Managing migration – an economic migration concept

> Migration is an inevitable reality of the modern world and it brings substantial benefits. But to ensure that we sustain the positive benefits of migration to our social well-bring and economic prosperity, we need to manage it properly. (David Blunkett, UK Home Secretary, 2001, cited in Kofman 2005: 357)

Although active recruitment of foreign labour force is not a new phenomenon (Menz 2009; Bach 2010), the idea to be able to 'manage' migration has only recently developed and established as a popular concept in EU migration policy. Put simply, the concept provides a pick-and-choose admission system, which allows access only to "desirable" (Menz 2009: 2) migrants, who economically benefit the country of destination. Meanwhile, "undesirable" (Menz 2009: 2) migrants are prevented from crossing borders with restricted immigration rules and increasing border surveillance (Menz 2009; Bach 2010; McDowell 2009).

Considerably influenced by Ghosh's (2000; 2005) idea of an international managed migration regime, the economy-centred concept is based on the acknowledgement of the fact that immigration occurs, if restricted or not, and can be economically profitable for the receiving country (Menz 2009: 2). It is the attempt to move migration away from a rather subjective, emotional, human rights-based discourse to a "pragmatic" (Menz 2009: 2), "strategic" (Bach 2010: 251), "managerial, economistic, and restrictive" (Menz 2009: 2) approach which concentrates on the "construction of more permissive channels for desirable and actively recruited labour migrants with ever more restrictive approaches towards asylum seekers" (Menz 2009:2). The approach is distinct from former concept in attempting to provide "more carefully regulated and restricted access channels" (Menz 2009: 2) and with that a precise management of who does and who does not enter the territory.

Legal entry opportunities for migrants adapt to migration pressure from both inside and outside with the economy of the receiving country being the manager (Ghosh 2005: 10). Thus, employers decide on who is 'desirable' on the basis of skill-based selection according to maximal possible economic benefit and with that gain a stronger role (McDowell 2009: 32; Balch 2009: 617). This means a partial loss of control for the receiving state, which generally holds the sovereign right to decide on entrance on its territory (Kofman 2005: 459).

Sovereignty is therefore upheld elsewhere: in asylum policy. Restricting the inflow of asylum seekers and with that possible refugees gives back control to the state level, although also in this area, as well as for family reunification, the idea of rational calculation of the potential economic and social contribution of those who are allowed to enter gains popularity (Kofman 2005: 455-459; Menz 2009: 2).

Figure 3: Managed migration model
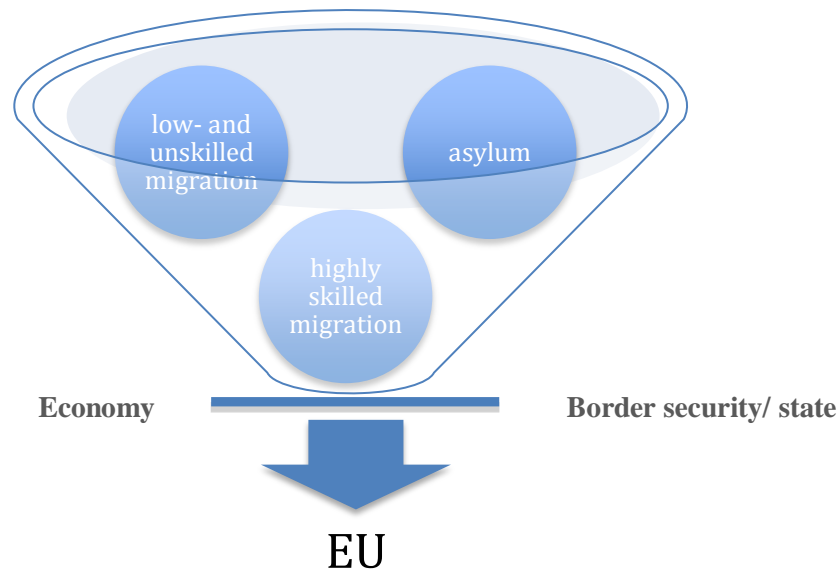
Separating between the 'desirables' and the 'undesirables', this approach creates categories of migrants being granted different sets of rights and entrance opportunities based on the contribution to the economy that is expected. With that, it does meet the positions of the economisation as well as the securitisation discourses, however with a strong emphasis on the economic side and a very narrow consideration of the human rights dimension of migration (cf. Kofman 2005: 455).

At the EU policy level, particularly in the Commission and here in Directorate-General for Home Affairs, the managed migration model has been identified as a possibility to compromise between differing interests and positions on migration. The following paragraph therefore examines its application to the EU context, identifying benefits and shortcomings.

3.2 Managing migration in the EU context – a security-based implementation

Migration policy-making at the EU level requires bringing together a diversity of interests with the three main interest areas having been elaborated above. The Commission as a mediator in this constructed conflict of interests is making the attempt to unite them in formulating common strategies and proposal for directives. Discussing EU migration policy, the *Global approach on mobility and migration* provides an overview of the most current Commission strategy on migration, making use of the 'managed migration' approach.

3.2.1 Framing

The Commission's idea of "managing migration flows" (European Commission 2011a: 2) is based on strong border controls as a precondition, which do allow a selection process. With that, the focus is put on security rather than economic issues, compared to the initial approach with demanding "well-functioning border controls, lower levels of irregular

migration and an effective return policy" (European Commission 2011a: 5). The access to the EU for migration is, hence, still a security issue (see figure 4).

However, also the "opportunities" (European Commission 2011a: 1) and "benefits" (European Commission 2011a: 3) of migration are pointed out with regard to the EU economy, which is admittedly lacking highly skilled labour force. Further acknowledging that "it is about people" that should be "empowered" (European Commission 2011a: 6), the Commission is capturing human rights-based framing as well.

Figure 4: EU managed migration strategy
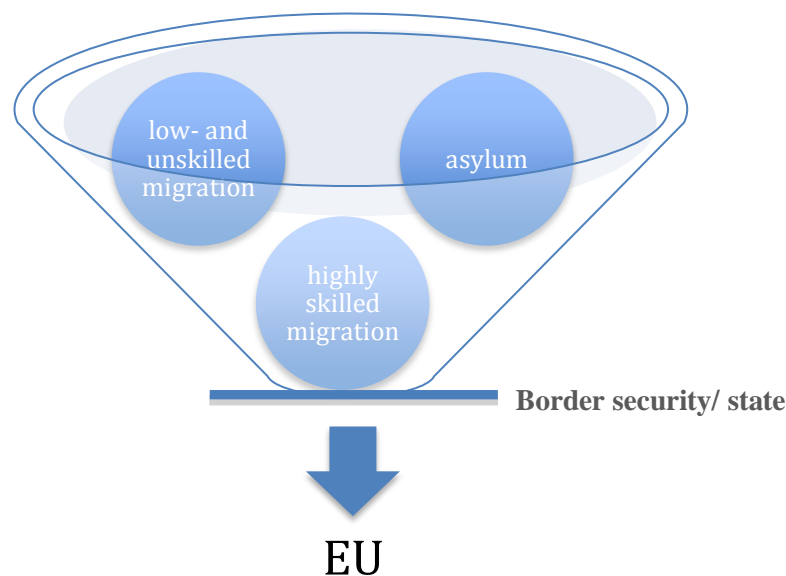
3.2.2 Categorisation

The framing is then however split up again when categorising migration into four pillars: (I) "legal migration and mobility", (II) "irregular migration and trafficking in human beings", (III) "international protection and asylum policy", and (IV) "maximising the development impact of migration and mobility" (European Commission 2011a: 6). Here, the separation into 'desirable' and 'undesirable' becomes visible when a strong economic emphasis is put on pillar (I) and (IV), while strong securitisation is apparent in pillar (II), (III) and (IV). Human rights-specific wording meanwhile only plays a side-role in pillar (III) and (IV) (see figure 5).

Figure 5: EU categories of migration (European Commission 2011a)

	Framing	How?	Targets
Pillar I	Economisation	Positive framing of migration by naming it together with mobility; using the argument of economic benefits of migrants for an aging EU society; addressing highly skilled migrants only	Highly skilled employees; researchers, students, tourists
Pillar II	Securitisation; (Human rights)	Emphasis on illegality/ criminalisation (connection with organised crime; "rule of law and justice"(15)); highlighting the importance of "border management" (15); directives on return and employer sanctions highlighted	Irregular migrants; victims of human trafficking
Pillar III	Securitisation; Human rights	Externalisation of "solving" (17) asylum/refugee "situations" (17); "enhanced resettlement" (18); acknowledgement of commitment to international human rights in terms of asylum	Asylum seekers; refugees
Pillar IV	Economisation; Securitisation; Human rights	"beneficial development outcomes" (18); links to organised crimes; "protect the rights of migrants" (18); remittances; "empower migrants" (20)	(Temporary) labour migrants

3.2.3 Translation into policy

The categorisation of migration is not only done by framing but has also been implemented in EU policy-making. The priorities with regards to security have been very striking in the first years of European migration policy-making where mainly asylum, border control and irregular migration have been addressed and set in force with directions like the directives on the facilitation of unauthorised entry[6], the directive on the obligation of carriers to communicate passenger data[7] and more recently the employers' sanctions directive[8]. The

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[6] 28/11/2002 - Council Framework Decision 2002/946/JHA of 28 November 2002 on the strengthening of the penal framework to prevent the facilitation of unauthorised entry, transit and residence; 28/11/2002 - Council Directive 2002/90/EC of 28 November 2002 defining the facilitation of unauthorised entry, transit and residence.

[7] 29/04/2004 - Council Directive 2004/82/EC of 29 April 2004 on the obligation of carriers to communicate passenger data.

[8] 18/06/2009 - Directive 2009/52/EC of the European Parliament and of the Council of 18 June 2009 providing for minimum standards on sanctions and measures against employers of illegally staying third-country nationals

Commission's proposal for a directive on a common admission regulation for labour migrants[9] in 2001 has been objected.

A disruption in this trend can be seen with the *Policy Plan on Legal Migration* (European Commission 2005), introducing ideas to open legal access opportunities for certain categories of migrants, which have until today been implemented with the directives on researchers and students[10], the blue card directive[11] and the single permit directive[12]. However, while the framing of highly skilled migrants as 'desirable' has been proven successful, the skilled, low- and unskilled migration initiatives so far launched by the Commission with the directive on seasonal workers[13] and on intra-corporate transfer[14] have been controversial and are still in a working progress that will be emphasised this year[15]. Furthermore, the directive on seasonal workers being the only one addressing low- and unskilled migration, only foresees temporary stay. Meanwhile, the Common European Asylum System (CEAS) has been completed this year.

3.3 Managing migration in EU policy – uniting conflicting positions?

Less a 'fortress' but rather a "gated community" (Van Houtum/ Pijpers 2007: 292), the EU opens legal migration opportunities for a very limited group of migrants and takes over a more positive perception of migration (Bach 2010: 252). While ten years ago, in most of the EU member states the only way to legally access for third-country nationals has been family reunification (De Haas 2007: 824), today the EU wide directives have opened the member states' immigration policies for highly skilled third-country nationals and other specific groups of migrants. This selective opening of the borders not only represents a change after a time of continuous closing but also raises criticism as it recreates the conflict of interests with its categorisation and the remaining emphasis on securitisation (Castles 2006a: 741-742; Kofman 2005: 459).

The position of security advocates, demanding an increase in border controls, has been emphasised with the Commission's managed migration approach. While economically, the restriction can limit the extent to which the desirable and migrants can be attracted in a

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[9] 17/07/2001 - Proposal for a Council Directive on the conditions of entry and residence for the purpose of paid employment and self-employment activities, COM(2001) 386 final.

[10] 12/10/2005 - Council Directive 2005/71/EC OF 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research; 12/10/2005 - Council Recommendation 2005/762/EC of 12 October 2005 to facilitate the admission of third-country nationals to carry out scientific research in the European Community; 28/09/2005 - Recommendation 2005/761/EC of the European Parliament and of the Council of 28 September 2005 to facilitate the issue by the Member States of uniform short-stay visas for researchers from third countries travelling within the Community for the purpose of carrying out scientific research; 13/12/2004 - Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service.

[11] 25/05/2009 - Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment.

[12] 13/12/2011 - Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member State.

[13] 13/07/2010 - Proposal for a Directive of the European Parliament and of the Council on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment (COM(2010) 379 final).

[14] 13/07/2010 - Proposal for a Directive of the European Parliament and of the Council on conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer (accompanying summary of the impact assessment) (COM(2010) 378 final).

[15] A first plenary reading for the directive on seasonal employment in the European Parliament is scheduled for 9 December 2013 (European Parliament Legislative Observatory 2013).

global competition for (highly skilled) migrants (Menz 2009: 6), from a human rights perspective the discrimination of certain types of migrants and the emphasis of border controls endangers the situation of groups of already vulnerable migrants (Ghosh 2005: 2).

Attracting (highly skilled) migrants is a recently discovered issue after making the experience that due to a "global battle for brains" (Menz 2009: 6) and a negative image of the EU as a recipient of migrants, even the more open immigration regulations do not lead to the effects expected and required from the European employers and policy makers. Therefore, the overall welcoming culture in migration policy has been identified to have an impact on the satisfaction of labour demands. Further, by denying asylum seekers access to the territory and later to employment permits, economic potential is wasted (Harris 2004: 13-14).

The imagination to be able to "maintain orderly movement" (European Commission 2011a: 5) additionally seems to be idealistic due to the failed attempts to close the external borders so far (De Haas 2007: 826). However, the latest strategy to externalise border controls through "inter-state cooperation" (Ghosh 2005: 2) in form of "mobility partnerships" (European Commission 2011: 2) has released the EU from certain obligations – to the expense of the compliance with human rights (cf. paragraph 3.1).

Even for 'desirable' migrants, thus for pillar (I), liberalised access is exclusively granted to highly skilled migrants (Kofman 2005: 463). Despite the directive on seasonal employment considering low- and unskilled workers, the temporary nature of the work and residence permits are suitable only for few job requirements. As Castles (2006a: 756) already criticised concerning the *Policy Plan on Legal Migration*, the Commission's strategy neglects the demand for all other skills levels than high skills as well as the urgency of the need, admitting only "some of the specific skills needed in the future" (European Commission 2011a: 3). With the upcoming of the economic crisis and with that high unemployment in many member states, the neglect of a need for all lower skill levels has even intensified due to its controversy (Lum 2013).

Menz (2009) draws a connection between the denial of the demand for certain skills and the existence of irregular migration and undocumented workers in the "low-skill and low-wage sectors of the economy", which, he claims, "is being tolerated" (Menz 2009: 11). This connection between irregularity and lacking legal entry opportunities is however not considered in the Commission's strategy where the clear separation, especially between pillar (I) and (II) excludes the option of common solutions. The fact that the liberalisation of migration rules for certain categories of migrants is introduced on the expense of others increases the problem that has been growing with the introduction of strict border controls over time: irregular migration and crimes connected with it (Kofman 2005). However, human trafficking is dealt with in the same pillar as smuggling and irregular migration, treated not only completely separately from regular migration but also with a strong focus on securitisation and criminalisation (European Commission 2011a).

In conclusion, the Commission's adoption of the idea of managed migration experiences difficulties with the "contradictions and tensions" (Kofman 2005: 457) in EU migration policy introduced in chapter 2. The classification and selection of 'desirable' and 'undesirable' migrants increases problems and prevents the satisfaction of all the interests meeting at the EU level. In summary, key points the Commission's approach is missing are (i) the acknowledgement that low- and unskilled labour migration from third countries is required in the EU as well, important in terms of economic interests, (ii) the link between irregular migration and opportunities for legal migration, important concerning security interests, and (iii) the intensification of (potential) migrants' vulnerability with intensified border control, a problem considered by human rights advocates.

In the following three chapters, these three identified shortcomings of the Commission's strategy are individually examined in the format of case studies in order to find options on how to change the EU approach to migration policy while meeting all interests – security-, economic- and human rights-based. Therefore, the arguments made in this paragraph are analysed more closely and in a broader context, building up on each other and drawing links, supported by data and literature review on the specific issue.

4. The demographic challenge in the EU: meeting labour demands with immigration?

Western Europe looks back on a long history in terms of labour migration, especially with regard to the post war period that has been characterised by efforts to fill labour market shortages with migration from mainly Southern and Eastern Europe (Menz 2009: 9). However, migration policy was conducted individually by nation states, competing for labour migrants, without a common European strategy. This has changed with the introduction of a common European asylum and migration policy, however, received with resistance from member states worried about their competences during its first years of existence (Baldaccini/ Toner 2007: 5; Menz 2009: 6-7).

In recent years, despite the economic and fiscal crisis in the EU and, with that, high unemployment in many member states, the willingness to agree on common immigration policies in the area of labour migration is increasing. The changing attitude towards Europeanisation of migration policy as well as towards opening legal routes for migration can be explained with economic pressure on policy-makers to satisfy labour demands in European countries, which has become an issue due to continuously low birth rates in EU countries (Lynch/ Pfohman 2013: 27). As counter-measures like extending the retirement age or improving the job placement are limited and family policies for increasing birth rates are long-term projects and so far unsuccessful, finding other ways of satisfying the current and future demand for labour force has become a major concern for policy-makers in the EU (Harris 2004: 4).

While hopes to fill labour gaps with intra-EU mobility, especially from new Eastern member states have been disappointed (Dhéret et al. 2013; Castles 2006a: 758), third-country labour migration has been reintroduced into the political debates of member states as well as at the EU level. Framing labour migration as an opportunity for the EU instead of a security threat only, the European Commission introduced the *Policy Plan on Legal Migration* in 2005 (European Commission 2005).

> Today, employers, politicians, and European Commission (EC) officials are considering a return to policies of systematic admission of migrant workers. (Castles 2006a: 741).

As a consequence of new priorities in migration policy, the nexus between labour market and migration policy increases. In its *Europe 2020* strategy the Commission therefore emphasises the need for more coherent policies in terms of migration in order to "respond in a flexible way to the priorities and needs of labour markets" (European Commission 2010: 18).

However, despite the emphasis on the economic benefit, the perception of migration as a security threat has not disappeared. It is rather kept for those not profitable for the economy. After identifying the focus on highly skilled labour migration in current EU strategies in the previous chapters, this chapter serves to clarify, which types of labour

migrants are in demand for the European labour markets and which future demands can be expected. In the end of the chapter, the mismatch between actual needs and policies is highlighted in a discussion on the options for solving it.

4.1 Demand for labour: the question of skills

European countries face one of their main challenges of today in the demographic development of their societies. One of the solutions for economic problems resulting from this is immigration of third-country nationals (ILO 2008), lately re-addressed by policy-makers after years of resistance.

Although the affectedness of this development varies among member states, the common total fertility rate[16] for the EU 27[17] indicates a general European problem: the current fertility rate of 1.57 (2011) lies far below the replacement level, which would be 2.1. Although the graph in figure 6 indicates a slight increase, this is neither a steady trend nor sufficient for reducing the challenges faced in European societies (Eurostat 2013a; European Commission 2010: 32).

**Figure 6: Fertility rate in the EU 27 (Eurostat 2013a)**
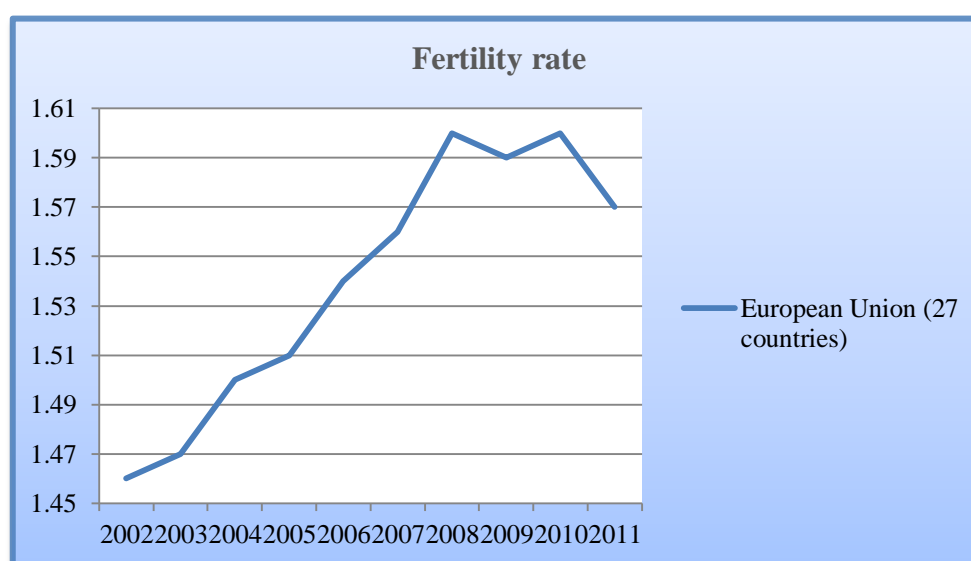
Major challenges are expected for the labour markets and the social insurance systems of European countries where a shrinking working age population has to support a growing number of elderly people. As displayed in figure 7, the old dependency ratio[18] has increased decisively in recent years, with a 17.8% (2012, EU 27) share of the population being aged 65 or above, the median age amounting to 41.5 in 2012 compared to 35.2 in 1990 and the life expectancy increasing to 79.7 (2011) from 77.2 (2002) in only one decade (Eurostat 2013a).

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[16] The total fertility rate is defined by Eurostat (2013b) as the "mean number of children who would be born to a woman during her lifetime, if she were to spend her childbearing years conforming to the age-specific fertility rates, that have been measured in a given year".

[17] Due to the accessibility of data, this paper will use data for the EU 27 excluding Croatia, which has joined the European Union in July 2013 as the 28th member state.

[18] Eurostat (2013) calculates the old dependency ratio from the ratio of the population aged 65 and over in comparison to the population aged 15-64 years, widely referred to as the working age population.

Figure 7: Old dependency ration in the EU 27 (Eurostat 2013a)
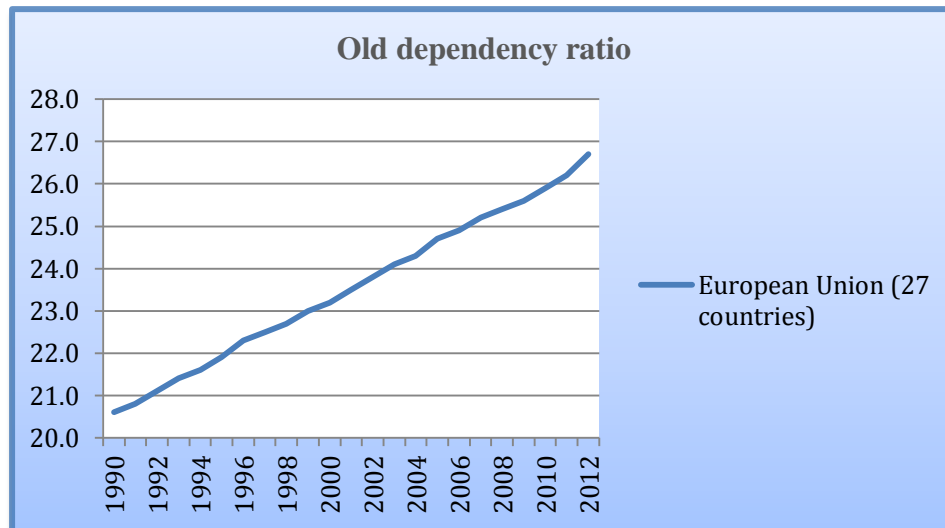
The demographic developments are accompanied by mismatches between skills available and those needed in the labour market. Thus, labour shortages occur in some sectors of the member states' economies and cannot be evened out only with increasing the retirement age, fostering training or other measures. As the Commission's 'Demography report 2010' states: "A large inflow of immigrants would still be required to prevent the size of the population from shrinking in the long run" (European Commission 2010: 32).

While the shortage of labour force in jobs requiring highly skilled labour force has become visible already, with shortages of health professionals, IT staff, engineers, sales representatives, and accounting and finance staff (Barbone et al. 2013: 13; Cedefop 2012) and is publicly admitted by policy-makers at national and EU level, a lack of low- and unskilled workers has been and still is widely denied (De Haas 2007). It is a particular sensitive issue due to high unemployment rates in times of crisis. Furthermore, the lack is not as visible yet but will become much more pressing in the future (Kuptsch/ Martin 2011: 34-36; cf. also 4.1.2). However, a study by Bertozzi (2010) on EU member states' low- and unskilled migration policy, commissioned by the Commission with the aim in mind to streamline the policy with an EU programme, points out the urgency to provide policy measures that allow employer to access labour force from third countries in a less bureaucratic and expensive way.

> Many EU countries need an unskilled and low-skilled foreign labour force.
> (Bertozzi 2010: 109).

Though first attempts have been made for satisfying these needs with temporary migration, Castles (2006a: 759) warns that much of the demand is not short-term or temporary but employers need a stable workforce worth training as well. The high turnover due to temporary programmes is often claimed to be inefficient and too expensive for employers. While no EU member state has policy specifically addressing low-and unskilled labour migration, their admission for work permits is instead made more difficult with labour market tests or quota systems (Bertozzi 2010: 8-9).

The Commission is aware of the need for "the full range of qualifications – from unskilled workers to top academic professionals" (European Commission 2005), expressed in the Policy Plan on Legal Migration. However, the possibilities for legal migration for the different 'categories' of migrants are still very uneven and only partly addressed at the EU policy level. While the demand for highly-skilled workers has been addressed with several directives (cf. paragraph 3.2.3), estimating that about 16 million jobs for this skill level will open until 2020 (Lynch/ Pfohan 2013:27), the introduction of the directives on seasonal employment and on intra-corporate transfer introduced in 2010 caused controversy among member states but also interest groups, with trade union opposing the proposals due to the fear of undermining labour law and wage levels (Kuptsch/ Martin 2011: 45-50; Menz 2009: 10).

However, whether the "failure of migration regimes to address the issue of needed low-skilled third-country nationals" (Bertozzi 2010: 8; see also Castles 2006a: 758) will be reversed or not is not dependent only on the actual need, scientifically backed up (e.g. Castles 2006a: 756, Mahmoud and Trebesch 2010), but also on the willingness of member states' policy-makers who have to decide in the Council of the European Union (hereafter: Council) (Article 79, Lisbon Treaty). Currently, the crisis seems to give them new arguments against third-country immigration promoting alternatives such as intra-EU mobility, which can however be exposed as insufficient in the following paragraph.

4.1.1 Intra-EU mobility: the economic crisis as a solution?

Intra-EU mobility regained attention with the economic crisis in which some member states managed to keep their labour markets stable while others experienced a significant increase of unemployment. For countries like Germany, the crisis situation in Spain, with many highly qualified young people being unemployed, has been an opportunity to fill gaps with employing them in sectors like engineering and care, where German employers face serious labour shortages (Wilson 2013).

'Mobility' has become a new key word in this context, in EU migration as well as employment policies. The Commission's Directorate General for Employment, Social Affairs and Inclusion reinforces the goal to promote intra-EU mobility stated in the Europe 2020 strategy (European Commission 2010c: 18), acknowledging that it "can simultaneously increase economic activity and employment levels by helping overcome mismatches and imbalances on the labour market and making them function dynamically and more efficiently" (European Commission 2012).

However, the supply of labour force from EU countries is limited, particularly with economic recovery, and does not match with all required skill levels (Bertozzi 2010: 7; McDowell 2009). Also, the exercise of freedom of movement by EU nationals has been low with only 2.8% (2011) of EU working age citizens (15-64) living in another member state than the one they are born in (European Commission 2012). Room for expanding intra-EU mobility is given concerning third-country nationals residing in the EU already. Most of them currently face restrictions concerning their freedom of movement as intra-EU mobility is, again, granted only to selected groups like researchers and students (Dhéret et al. 2013).

Labour market tests[19] in many EU member states (Bertozzi 2010: 9) increase the obstacles for third-country nationals to fill labour market shortages even when residing in a

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[19] Bertozzi (2010:9) refers to labour market tests meaning "test designed to assess whether there are persons in the domestic labour market available for the work in question".

EU member state. With that, a common single EU labour market is far from being achieved and does not offer a sustainable reduction of the problems with labour shortages in many member states (Dhéret et al. 2013). It can therefore be one of several ways to address current labour shortages but cannot replace migration from third countries.

4.1.2 After-crisis scenario: meeting future demands

With the economic crisis in Europe, the arguments concerning labour shortages seemed misplaced due to growing unemployment rates, especially in countries like Spain and Greece. However, not all countries have been affected to the same extent with, for example, Germany keeping its labour market stable (cf. Eurofound 2012). With progress being made for a recovery of the economy and still emerging labour shortages in certain sectors due to a mismatch of skills available, the arguments are still valid, and will even increase the more the economy is stabilising.

"Once the economic recovery gets underway, structural labour and skill shortages will reappear. The phenomenon will be amplified by the declining de mographic trend", promises Pascouau (2013: 1). This appraisal is confirmed by data of the European Centre for the Development of Vocational Training (Cedefop 2012), which carries out forecasts on open vacancies and required skills on the request of the Commission. The Centre's data confirms that "despite current high levels of unemployment, there are still some signs of skill shortages" in sectors "such as life science and health-associate professionals and teaching-associate professionals" (Cedefop 2012: 12-13).

Although forecasting labour market development has to be treated with caution, increasing job opportunities due to job growth but also replacement demand, mainly because of retirement, are foreseen already until 2020. The job growth is expected to mainly affect occupations, which require either high or low skills, thus creating a "job polarisation" (Cedefop 2012: 13). Sectors identified for the most significant job growth and replacement demand are services, manufacturing, crafts and agriculture (Cedefop 2012).

In summary, the data is confirming the importance of the economic discourse of migration and disproves the notion that the crisis resolves the problem of labour shortages in the EU.

4.2 Option 1: meeting labour demands at all skill levels

Considering the continuing high demand of high- as well as low- and unskilled labour in Europe, what does this mean for the managed migration approach and the policy launched by the Commission?

Considering the points of criticisms raised in paragraph 3.3, the lack of consideration of low- and unskilled in current EU strategies has been confirmed to be problematic due to a growing demand in several sectors despite the economic crisis and especially with the economy's recovery. Even in times of growing unemployment, some sectors have experienced labour shortages (Cedefop 2012).

> If nothing happens now, the EU has to beg for migrants in the future. (Pascouau 2013: 2).

In terms of managed migration, the Commission's approach is therefore incomplete, not considering the full demand by employers but interpreting it politically due to the

unpopularity of liberal migration regulations for low- and unskilled migrants (Kuptsch/ Martin 2011: 52).

Figure 8: Migration effects of not meeting labour demands
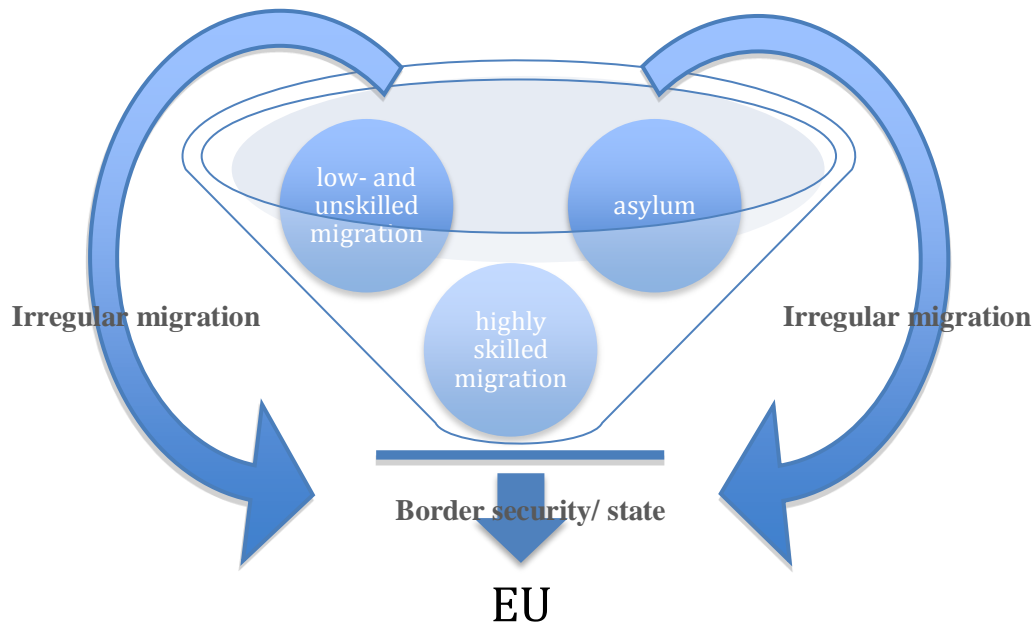
The lack of attraction of sufficient regular migration for satisfying labour demands is however not the only consequence of the neglect in policy, as the demand is strong enough to encourage irregular migration, occurring mainly in the low- and unskilled jobs (displayed in figure 8). This does not only damage the labour market and the economy but also puts the affected migrants at risk. Considering all skill levels for legal migration opportunities could therefore be an option addressing all of these concerns, which is therefore closer examined in the following chapter.

5. Self-made security issue: irregular migration to the EU

Addressed as one of the core issues connected with migration policy in pillar II of the Commission's managed migration approach, preventing and reducing irregular migration is considered the basis on which legal migration can be built up. In connection with labour migration this order seems however misleading considering that the demand for labour force in the EU is seen as the root cause for irregular migration and connected crimes like human trafficking for labour exploitation (cf. Mahmoud/ Trebesch 2010; cf. figure 8).

This chapter therefore examines the connection between regular and irregular migration, which is not established in the Commission's strategy, specifically dealing with human trafficking for labour exploitation in order to establish a direct connection to the claims made in the previous chapter on the demand for low- and unskilled labour.

5.1 Causing irregularity

> [I]rregular migration is a product of specific political-economic conditions and a legal, political and social construct of the late twentieth century. (Düvell 2011: 81).

Irregular migration, the entry of a territory without an official permission, also referred to as undocumented entry, emerged as an issue in Europe with the introduction of restrictive measures for migration in the course of the oil crisis in the late 1960a and 1970s (Düvell 2011: 80). The term undocumented refers to the lack of a valid visa, a work or a residence permit, documents that have been introduced in the 1980s and 1990s. An undocumented migrant in the EU does not necessarily need to have crossed the borders in an irregular or unauthorised manner but could have entered on the basis of e.g. a student or tourist visa that has expired without the affected person leaving the territory or applying for an extension or a permanent status.

As a consequence, the introduction and increase of documentation necessary to legally enter and reside in a country, as well as the restriction to the access of these documents is the trigger for irregular entrance to EU territory. While migrants entering or staying in an irregular manner have been received as "spontaneous migrants" (Düvell 2011: 80) before the restriction trends, due to the securitisation and criminalisation the negative perception of "illegal migrants" (Düvell 2011: 80) has gained influence.

Being an issue constructed by migration policies introduced over the past decades, this causality has long been invisible while irregular migration has been used as a political issue to create an image of the enemy and a security threat from outside the EU that has to be kept outside with the help of even stricter security measures. As an example, surveillance measures, which had been opposed for the sake of individual freedom in the European society before, could be introduced with fears arising in the aftermath of the terror attacks in the early 21st century (Levy 2005: 31-37).

With regards to labour migration, the lack of documentation can be used for exploitative employment. The vulnerability of undocumented migrants, who risk deportation to their country of origin when reporting exploitative working conditions to the authorities, is used to make profit and ensure low labour costs by some employers, especially in the sectors with low- and unskilled labour and in typical "3D" (Fawell 2008: 704) jobs: dirty, difficult and dangerous jobs that are mostly refused to be done by natives (Shelley 2010: 219-226). While this is still tolerated by some member states in the EU (Castles 2006a: 758), it generally contradicts European values.

Considering the neglect of the demand for low-skilled workers, elaborated on above, the satisfaction of the demand with irregular migration has become a profitable business while risks for migrants increase (Castles 2006a: 759-760; Bertozzi 2010: 7). The contradiction between labour market needs and migration policies therefore has to be resolved when preventing irregular migration (Kyrieri/ Roidou 2012).

Despite increasing restrictions with enforced external border controls – today managed through the European border agency FRONTEX – migration to the EU has increased in the past two decades (De Haas 2007: 820), leaving serious questions for the effectiveness. The demand of states for control over who is entering the territory has therefore increased security questions concerned with migration. One part of the increasing numbers of migrants concerns human trafficking for labour exploitation, a phenomenon

which can give further information on the link between restrictions in the legal admission of migrants and irregularity and which will be closer looked at in the following paragraph.

5.2 Human trafficking for labour exploitation – modern slavery in the 21st century

With the introduction of the directive on preventing and combating trafficking in human beings and protecting its victims in 2011, attention has been drawn on a very specific case of irregular migration and the criminalisation of its assistance. The directive is replacing the Council Framework Decision on combating trafficking in human beings (Council of the European Union 2002a), a reaction to the UN *Protocol To Prevent, Suppress And Punish Trafficking In Persons, Especially Women And Children* (UN 2011b) agreed on in 2000. The Protocol, supplementing the UN *Convention against Transnational Organized Crime* (UN 2011a), was the first international move to address and define human trafficking as an organised crime.

From the beginning, human trafficking was set in the security context being established in the framework of organised crime. As such, it is addresses as a security issue, with less consideration of the (labour) exploitation aspect but more on the border crossing and illegal assistance (Shelley 2010: 10). Consequently, the current prevention mechanisms focus on security-led ideas on further closing the border or, when considering the exploitation, punishing the employers but also the victims (Van der Leun 2010: 425). Instead, this paragraph concentrates on the labour exploitation aspect, setting it in context with the labour shortages in the EU and the opportunities for regular migration, thus addressing prevention from a legalising instead of punishing approach.

5.2.1 Definition

The protocol on trafficking, together with the *Protocol against the Smuggling of Migrants by Land, Sea and Air* (UN 2011c) had also been an attempt to separate the issue of smuggling of human beings from human trafficking, which is still not always definite (Loff/ Sanghera 2004; Shelley 2010: 11).

> "'Trafficking in persons' shall mean the recruitment, transportation, transfer, harbouring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person having control over another person, for the purpose of exploitation. [...]" (Article 3 (a), UN Protocol to Prevent, Suppress and Punish Trafficking In Persons, Especially Women and Children)

The most distinct factor separating smuggling from trafficking of persons is the consent on the transferral to another country by the person affected (Shelley 2010:8). In the case of smuggling, the migrant makes the decision to move to another country and therefore charges smugglers for assistance, while for human trafficking, the decision is made by the trafficker who moves the victim to another place (not necessarily crossing borders) without consent (Jac-Kucharski 2012: 154). In reality, it is however not always evident who gave the consent at what time, as a migrant could start border crossing being voluntarily smuggled but then end up being exploited by smugglers who can use the vulnerability of the victim being

in another country without documentation (Buckland 2009: 146). Thus, the exploitation at the destination of the smuggling process is the main feature of trafficking. Further, smugglers benefit from the payment for the movement itself, with prices increasing with stricter border controls, while traffickers do not necessarily profit from the transition but from the exploitation for sexual, labour or other purposes that follows at the destination (Gallagher 2002).

Labour exploitation is only one form of exploitation as a consequence of trafficking. The ILO, referring to "forced or compulsory labour", defines it as "all work or service which is exacted from any person under the menace of any penalty and for which the said person has not offered himself voluntarily" (ILO Forced Labour Convention, 1930 (No. 29), Article 2.1). The penalty can be physical, psychological but also financial or by other means and is often threatened with in a rather subtle than visible way, e.g. by confiscation of personal documentation or threat towards the family at home, which makes the detection and conviction of the crime even more difficult (ILO 2012).

5.2.2 Occurrence in Europe

Data concerning human trafficking is suffering poor reliability due to the nature of trafficking being irregular and, with that, not monitored. Available data therefore relies on estimates and identified cases, thus rather indicates trends (European Commission 2013). After human trafficking for sexual exploitation has been the focus of attention for the first years after the Protocol, the International Labour Office (ILO) published its first global estimate on forced labour in 2005, which brought the issue of human trafficking for labour exploitation, the second most frequent cause of human trafficking, to public and political attention (Andrees/ Van der Linden 2005: 55, De Haas 2007: 820; ILO 2005; ILO 2012: 11). The ILO as well as the Commission have since released data collections on the issue, with the ILO staying at the global level without going into country-specific data and the Commission's results on single EU countries struggling with comparability due to the diverse methods of collection and provision of data in the member states (ILO 2012; European Commission 2013).

While both sets of data confirm an increase of the victims of human trafficking, the data set provided by the ILO can only give very limited information on trends, not giving yearly figures but in the case of the Global Estimate of 2012, one figure for the period of 2002 to 2011. Further, Europe-specific data is not available but only in connection with other "Developed Economies" (ILO 2012: 15). The estimates by the ILO, based on pilot surveys, are considered rather conservative compared to the reality (ILO 2012: 11).

Human trafficking from third countries to the EU is a growing phenomenon with an increase of 18%, from 6,309 to 7,418 victims, in the period of 2008 to 2010. In contrast to the ILO, the Commission reports on numbers delivered by the member states on identified or presumed victims. However, only ten member states provided results from both sources, while two even relied on presumed numbers only. Still, the positive trend of growth of victims per inhabitants (see figure 9) can be one of the conclusions drawn from this data (European Commission 2013).

Figure 9: Victims per 100 000 inhabitants in the EU-27
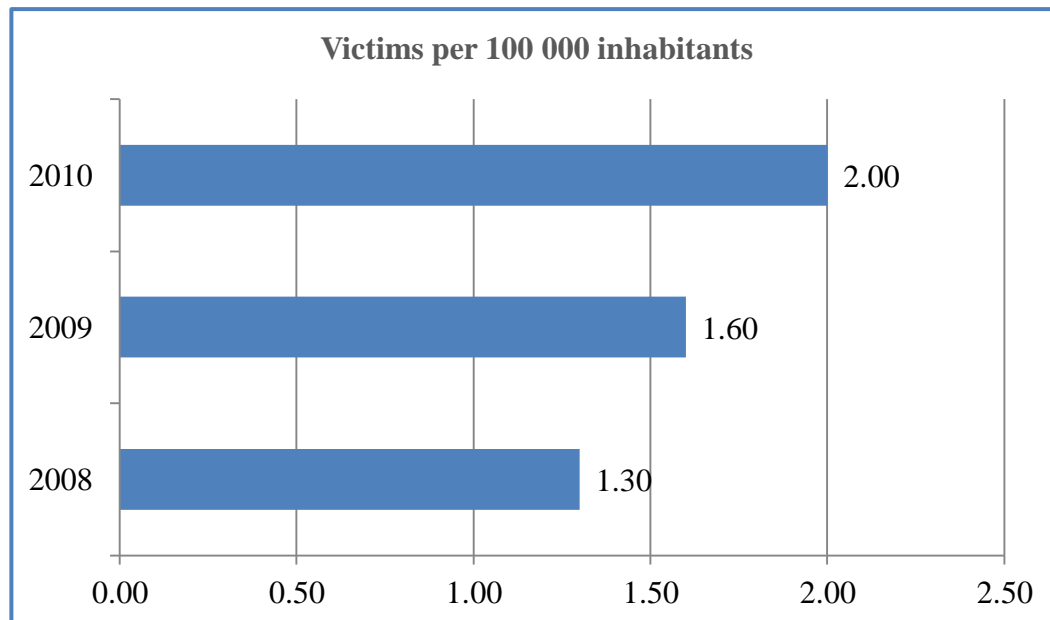
More than half of the victims of trafficking in the EU are sexually exploited, while labour exploitation made 25% in the period of 2008 to 2010 (see figure 10). The category 'other' includes exploitation for begging or the removal of organs (European Commission 2013).

Figure 10: Type of exploitation EU-27
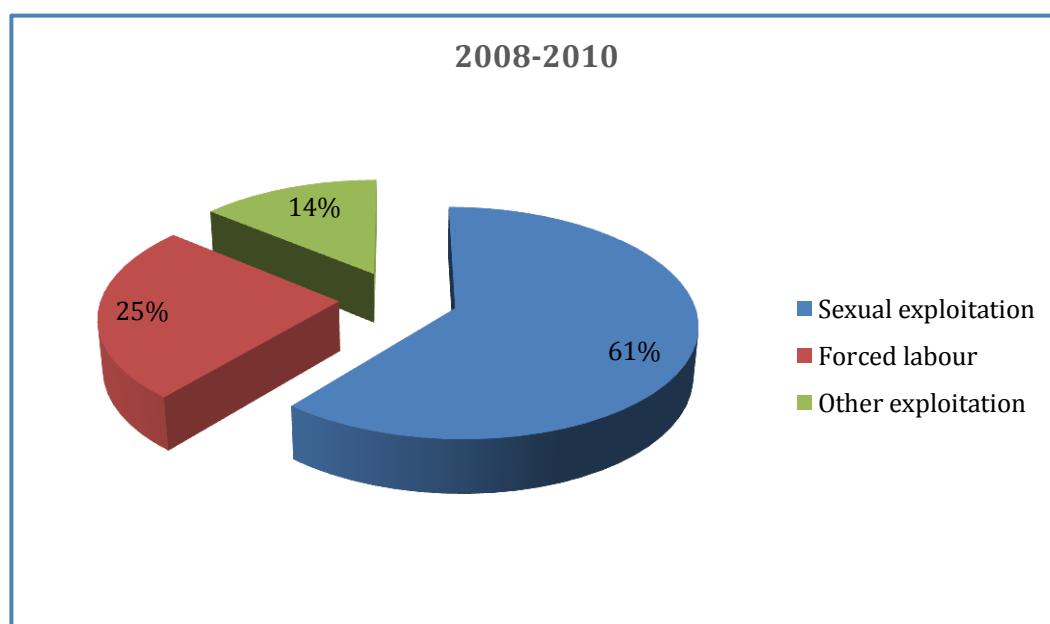
Most trafficking victims are trafficked from within the EU, with Romania and Bulgaria being the main countries of origin (61% in 2008-2010). However, the proportion of trafficked third-country nationals, who most often come from Nigeria and China, experienced a strong increase (European Commission 2013:50-51).

On a global level, the ILO identifies agriculture, domestic work, manufacturing, and construction being the main sectors affected from human trafficking for labour exploitation. Regional data on this relation is missing so far (ILO 2012; European Commission 2013).

5.2.3 Causes and challenges

Being the second most frequent form of exploitation, human trafficking for labour exploitation has gained attention on the political agenda only recently (Munck 2010: 21). Nevertheless, it is still received and treated as an issue of security and justice, while its connection with labour market demands and regular migration remains widely ignored (Mahmoud/ Trebesch 2010: 174). Instead, the criminal aspect with connection to organised crimes is highlighted with the Commission naming it in the same sentence with "child pornography, cyber crime, financial crime, counterfeiting of means of payment and drugs trafficking" (European Commission 2010e: 6).

Drawing a connection between human trafficking for labour exploitation and the demand for low- and unskilled labour on the basis of data remains difficult. Although generally growing numbers of the phenomenon with growing numbers of the demand for labour can be observed, no direct connections between specific sectors can be made due to a lack of specific data. ILO estimates at the global level do however identify low- and unskilled sectors like agriculture and domestic work as main receivers of trafficking victims.

A link that can however be established is between incentives for human trafficking and the lack of legal migration opportunities, which has created a large and profitable market for smugglers and traffickers (Feingold 2005: 27). While discussions are held on the question if too lax or too strict border controls incentivise crimes concerning border crossing (Salt 2000: 32), the numbers for the EU clearly show that the strict border control and entry policy of the past decades has increased rather than prevented human trafficking (ILO 2005; ILO 2012; European Commission 2013).

Apart from the missing connection to labour market policy, the treatment of the issue in criminal terms does not consider the danger of restricting border control either. Incentives for human traffickers are continuously raised by increasing border controls and limited legal migration opportunities, which increase the profit that can be made in terms of border crossing and satisfying labour demands in an irregular manner (Castles/ Millers 2009: 203-204; Salt 2000: 32; Jac-Kucharski 2012: 154). Meanwhile, intensified border controls make irregular migrants even more dependent on the safeguard of their traffickers and with that more vulnerable to exploitation even if the border crossing has started with a consent on smuggling (Salt 2000: 32).

The fact that human trafficking for labour exploitation does not necessarily involve border-crossing and that the statistics presented above do show the majority of victims of human trafficking in Europe being from EU member states, thus trafficked across open borders, does not reduce the essence of these results but draws the attention to the limits of preventing human trafficking with migration policy only (Salt 2000: 32; Shelley 2010: 42-43). Attention deserves Romania and Bulgaria being identified as main source countries within the EU with both countries being denied the access to the freedom of movement in the Schengen area despite their EU accession in 2007 (cf. European Commission website 2013).

Another problem connected with labour exploitation and migration policy is current migration regulations making employees dependent on their employer by making the work and residence permit dependent on the existence of the working contract with this specific employer that has signed the contract that enabled the entrance to the country. A change of employers within the country of residence is not possible, which means that with complaining about working conditions, victims of labour exploitation risk being dismissed and with that sent back to their countries of origin (McDowell 2009: 32).

5.3 Option 2: preventing irregular migration

Reducing irregular migration is the key interest in the security-based discourse and so far mainly addressed with restrictive migration policies and intensified border controls. These do not only contradict the interests of economic- and human rights-based agents in EU migration policy but also recreate the problem they address.

Consistent with correlations between irregular migration and missing legal migration opportunities made in the beginning of the chapter, Mahmoud and Trebesch (2010:174-175; 186) identify human trafficking as a direct consequence of closed borders with missing legal opportunities to enter the EU with a simultaneously growing demand for foreign labour.

Although the data on human trafficking is not sufficient for establishing direct links between victims of labour exploitation in certain sectors and the general demand for labour in these sectors, correlations between the growing trend of human trafficking for labour exploitation with growing demand for foreign labour and meanwhile strict admission policy and increased border control cannot be denied.

While the EU's approach to preventing human trafficking concentrates on reducing the demand with "means of research, including research into new forms of trafficking in human beings, information, awareness-raising, and education" (Article 25, European Parliament and Council of the European Union 2011) and at the same time increasing border controls and aiming for stricter rules for the conviction of traffickers (European Commission 2011a), the root cause of irregular migration being the lack of opportunities for legal migration, is scarcely addressed so far.

An option that has therefore to be considered in a common EU migration approach is the introduction of legal migration opportunities in order to reduce pressure into irregularity. Having concluded with a call for more legal migration opportunities in chapter 4 on regular as well as this chapter on irregular migration and establishing a nexus between both issues that are treated separately at the EU level, the idea of opening borders is more closely examined in the following chapter.

6. Open borders – a human right?

A main point of criticism concerning the Commission's approach to migration policy from the human rights perspective is the continuing emphasis on border control and restriction of access for asylum seeker, both intensifying migrants' vulnerability and risking violating human rights.

With the leading interests behind EU migration being security-related, economic-led and human rights-based, an attempt to consider all these interests in one strategy, requires a differentiated answer to the question whether to open or close external borders. While the examination of labour demand and irregular migration above have indicated that opening legal opportunities for migration can help reducing economic and security problems as well

as the vulnerability of migrants, this proposal is closer examined with looking on different approaches to opening external borders. This lays the foundation for the reconstruction of a common EU approach to migration policy meeting all interests involved.

6.1 Open border concepts

Opening external borders has existed as a claim since the starting of introducing more restrictive policies of migration and had been based mainly on the consideration of complying with internationally agreed human rights but also promoted EU values (cf. e.g. Gibney 1988). Since then, the discourse has changed towards diverse approaches considering human rights, security and economic argumentation.

All authors on open border approaches start from the assumption that the closed-border concepts has failed and that instead opening external borders would reduce many of the problems we face in the field of migration today. Taking the correlation between restrictive policies and pushing migrants into irregularity and exploitation as a starting point, they reverse the thesis claiming that open borders will reduce irregularity and exploitation (Basik 2013; Casey 2009; Harris 2004; Wilcox 2009).

The idea of, open borders, thus no border controls at all, is meanwhile only a vision, acknowledged not being likely to be implemented soon. It is rather seen as "an inevitable long-term consequence of globalisation" (Casey 2009: 18). With this being said, the discussion of open borders in this chapter is not only considering arguments from advocates for entirely open borders (e.g. Basik 2013; Casey 2009; Harris 2004; Wilcox 2009) but also from solely more liberalised approaches that still include border control to some extent (e.g. Castles 2006).

In order to link them to the different types of discourse treated in this paper, the main arguments for open borders are classified under the three headlines in the following paragraphs.

6.1.1 Upholding EU values

Respect for the human person and human dignity, freedom, equality, and solidarity are our everlasting values at a time of unrelenting societal and technological change. These values must therefore be at the heart of our endeavours. (European Commission 2010e: 2)

Strict border controls combined with restricted legal access to the EU have brought these values, articulated by the Commission and cornerstone of the EU's self-perception as a global actor in foreign policy, into question and weakens the Unions credibility. A value-based approach to open borders therefore provides important arguments considering EU migration policy.

A normative, human rights-based approach to open borders is drawn on the interests in granting (human) rights and decreasing migrants' vulnerability. A main concern is raised towards a growing economic consideration of the issue leading to a consideration of migrants being admitted due to their economic contribution to a host country instead of based on values (Wilcox 2009; Basik 2013). The authors therefore start from the assumption that states have a "moral obligations" (Wilcox 2009: 1) to allow migration due to their commitment to human rights and "basic liberal egalitarian ideals" (Wilcox 2009: 1). Border restrictions are seen as contradictory to values like freedom and equality (cf. Basik 2013; Higgins 2008).

This is not at least due to the risks migrants are exposed to when crossing borders, which are under strict surveillance. The "human costs" (Pécoud/ De Guchteneire 2006: 74) are increasing with stricter border controls and are not only reflected in the 1,500 deaths that have been estimated for the Mediterranean border of the EU in the year 2011 alone (UNHCR 2012).

Casey (2009: 33) approaches the issue less value laden but argues, open borders can reduce the problems caused by the criminalisation of irregular migrants that goes hand in hand with border control and results in a steady increase of the need for security measures. Without being criminalised, migrants would be less vulnerable for exploitative employers due to the possibility to report mistreatment to the authorities without fearing to be penalised themselves for staying in a country without legal documentation (cf. Franke at al. 2010). Further, without being dependent on help from groups of organized crime when crossing the border, labour migrants avoid getting into an exploitative relationship in the first place (Salt 2000: 32, Pécoud/ De Guchteneire 2006: 73).

Not being criminalised for crossing the borders, migrants can further decide to return to their home countries at any time, without fearing losing the opportunity to re-enter the country they reside in (Casey 2009: 28). In terms of possible exploitation, this means that traffickees do have an alternative and do not need to fear being detected when defending their rights towards an employer (cf. Sommer 2013b: 9-11).

Another human rights concern is the compliance with commitments under international law, which require the protection of those in need of protection from persecution. Asylum policy under current restrictions of access to EU territory suffers from high burdens put on those seeking protection, many of whom are often pushed into irregularity together with those migrating for economic reasons. This does not only increase the risk the affected asylum seekers have to take to cross the border but has also produced a complex system of proving the existence of persecution when making an asylum claim. The misuse of the asylum system by economic migrants who evade due to missing alternatives to legally enter the EU has increased the suspicion of fraud towards asylum seekers and with that increased the hurdles to prove their status (Pécoud/ De Guchteneire 2006: 73). Finally, "closed borders make the very fact of leaving one's country to seek protection problematic" (Pécoud/ De Guchteneire 2006: 72) with that, the human right to leave a country is in danger as well when imposing border controls.

The opening of external borders therefore meets the core interests of a human rights perspective on migration in the EU and could be a way to satisfy the demands of its advocates. The main contradiction to an open border approach from an economic perspective is not to differentiate between 'beneficial' migrants and those who do not directly contribute to the economy but search for protection in the first place.

6.1.2 Economic benefits

Latest open border approaches focus on the economic benefits of unrestricted migration following the economisation trends in the area of migration. Main interests, as pointed out above, are the access to a flexible labour force and meeting current and future demands for various skill levels increasing with demographic changes.

Arguing for an opening borders for the movement of people, Harris (2004) states that the economic interconnectedness of countries requires a "world labour market" (Harris 2004: 11) that goes along with opening borders. While trade and other issue areas have been liberalised, the freedom of movement is still restricted and with that hinders economic

growth. Employers are generally in favour of this model with the opportunity to "draw on a wide pool of flexible labour" (Bach 2010: 252). With emerging and increasing demands for labour force in industrial countries, "readily available migrant labour is an important response" (ILO 2008: 5) to globalisation and demographic changes. A discussions on 'desirable' and undesirable' skills levels becomes obsolete, with "better labour market matching" (Barbone et al. 2013: 14) due to a purely demand-driven system.

Differences in the approaches to open borders from an economic point of view exist concerning the involvement of governments into the migration process. Harris (2004: 13) expects migrants to follow previously identified jobs, although not denying that push factors can also play a role, and therefore sees no need for government involvement but relies on a demand-driven system. In contrast, he argues, government management of migration, based on estimates of labour and skill demands, would mislead labour flows due to the difficulties coming with predicting migration flows.

From a trade union perspective as well as for the ILO, government involvement in form of labour market tests and the strict control of workers' rights, employments standards and wages are an important condition for opening borders (Kuptsch/ Martin 2011: 45; UN 1990; Bach 2010: 262). The concerns are however encountered with studies on the effects of migration on native wages and employment levels, which show rather positive results (e.g. Castles 2006; Greenwood et al. 1997; Harris 2004).

Opening the borders can also stimulate a circulation of labour migrants and with that reduce pressure of migration flows to a country. Without being criminalised for border-crossing, migrants can decide on returning to the countries of origin in case they lose their jobs or find a perspective to work in their home country or another country of destination. Thus, circular migration without the rather problematic involvement of the state is encouraged (Casey 2009: 28).

With regard to asylum, Harris (2004: 13-14) argues that an open border would give those seeking asylum the opportunity to directly access the job market instead of searching for assistance, which would not only take pressure off social security systems and benefit the economy but also avoid social tension with the prominent claim of asylum seekers exploiting social security systems.

In conclusion, opening the borders clearly meets the interests of economic advocates in the EU, mainly employers, concerned about the current and especially future competitiveness of the EU economy due to increasing labour shortages is some sectors. For trade unions, limits to the openness are required in order to protect the own citizens from a decline of wages, employment standards or rights as well as migrants from being exploited.

6.1.3 Human security

All of the approaches to open borders mentioned, argue against the securitisation trend in migration policy of the past decades. However, this does not mean that they do not refer to security-related advantages of open borders, but that security is approached differently. With security concerns being the uncontrolled and irregular mass influx of migrants and connected organised crimes, increasing border controls is not the only measure for prevention. Instead, open borders reduce irregularity of migration and discourage organised crimes.

Casey (2009) further encounters fears of mass influxes of migrants to developed countries by referring to examples that show that an influx, if it is occurring at all, is temporary and counterbalanced by "remigration" (Casey 2009: 27-28). Returning to the

countries of origin is stimulated by eliminating the obstacles for migration introduced with restrictive migration policy, which currently force migrants into "exile" (Harris 2004: 12). With the option to re-return if necessary or wanted, the decision of returning to the country of origin is facilitated.

Additionally, the assumption that mass influxes of migration occur after opening borders has been disproved (see chapter 4). Casey (2009: 28) argues that the majority of people worldwide does not intend to migrate or at least aim to return at some point. This is confirmed by data showing that within the EU only 0.3% of the EU-27 population annually moves to another member state, despite (mostly) open borders (Dhéret et al. 2013 based on Eurostat data). Estimates on the Eastern Partnership countries suggest that even with a scenario of a full liberalisation of migration policy, migration would decline after a short-term influx (Barbone et al. 20013: 25).

In general, as already mentioned above, migration occurs in any case, if restricted or not and can only be reduced with simultaneously increasing the pressure into irregularity while regular migration is easier to be monitored and more secure. This also ensures the request by security advocates for the state's sovereign right to control the access to its territory (Joppke 1998: 11; Ghosh 2005: 7) which is less given in cases of irregular migration, although also given up to an extent when opening the borders (Castles 2006a: 747). Drawing from experiences from the United States, Castles (2006a) argues, that "[i]f migration is going to take place anyway, politicians now think it better to control entrants to ensure that they do not pose a security threat" (Castles 2006a: 747).

In terms of organised crimes like human trafficking and smuggling, currently posing a growing security threat, the profit for those involved are decreasing with less border control and with that decreasing need of assistance for border crossing (Jac-Kucharski 2012: 162). Furthermore, with the demand for labour force being met with legal migration, human trafficking for labour exploitation will be reduced to cases where the need for cheap labour prevails despite the accessibility of labour.

A security approach based on stability and avoiding or preventing conflict, as outlined here, can be seen in accordance with the principles of the EU security strategy, which relies on stabilising the neighbourhood instead of military build-up and control. This European security approach differs from traditional state security policy focusing on the role of the EU as a promoter of human rights, referred to as "human security" (Kaunert/ Léonard 2011: 364; Biscop 2010; Burgess 2009; Pécoud and de Guchteneire 2004).

6.2 Option 3: decreasing migrants' vulnerability

In the course of this chapter, the option to open legal migration opportunities in order to reduce migrants' vulnerability has proven not to be contradictory to economic or security interests in EU migration policy. As opening legal opportunities for migration has also been the main claim in option 1 and 2, opening borders will serve as a starting point for the reconstruction of an EU approach to migration policy in the following chapter.

7. Opening fortress Europe – facilitating migration

Using the "greater willingness to recognize the positive contribution of migrants" (Castles 2006a: 762) in EU migration policy and the acknowledgement that "when there are high emigration pressure in sending countries, and powerful demand pull in the destination countries and especially when the two converge, restrictions on admission […] only drive the

movements into irregular channels" (Gosh 2005:2), the chances for a new EU approach on migration turning away from restrictive border control-centred ideas seem given.

Addressing all three identified shortcomings of the current managed migration approach by the Commission and the options for avoiding them has made visible the interconnectedness of issues of regular and irregular migration as well as of the interests in the conflict analysed. While the Commission's attempt to address the positions expressed from economic-, security- and human rights-based agents has proven its limits, in this chapter an approach is reconstructed based on reconciling interests instead of positions (Fisher et al. 1991: 41), reducing conflict potential and drawing together what has been proven to be a very similar set of options.

The options developed throughout the study, being to (1) consider all skill levels for legal migration opportunities, (2) create legal migration opportunities in order to reduce pressure into irregularity and (3) open legal migration opportunities in order to reduce migrants' vulnerability, indicate a very strong "zone of possible agreement" (Sebenius 1983: 288) in terms of opening opportunities to legally enter the EU as a migrant. Opening borders for legal migration, suggested in the first pillar of the Commission's managed migration approach to a very limited extent and without connection to the other pillars – nevertheless revolutionary after a long period of restriction-only policies – and raised as a claim in the very beginning of this research, thus presents itself as an option to solve the conflict in EU migration policy.

However, with border opening having been looked at in chapter 6, it has become clear that differences do exist in the opinion on who shall enter legally as well as the degree of state control, which will extend in the case of the EU with the question being if control is exercised at the member state or the EU level. Thus, the governance issue will remain an area of conflict.

While the idea of being able to 'manage' migration flows has been looked at critically from the beginning due to the decade-long failure of restrictive migration policy and the difficulty of pre-selecting who is 'desirable' and who 'undesirable' (De Haag 2007: 826; Gosh 2005: 2), the reconstruction of a common EU approach on migration in this chapter does not take over a similar concept. Rather, the starting point is a more pragmatic approach to migration policy that should bring together interests and generally sees migration as an opportunity, as this is common ground in EU migration policy of today.

In a rather 'facilitating' than 'managing' manner, the approach then needs to address the interests (a), together with the identified problems (b) and the suggested solutions (c) summarised in figure 11.

Figure 11: Zone of possible agreement

	a) Interest	**b) Individual problem statement**	**c) Options/ Zone of possible agreement**
Economisation	Satisfy labour demands	No acknowledgement of need for low- and unskilled labour migration	Consider all skill levels for legal migration opportunities
Securitisation	Reduce irregular migration	No link between irregular migration and legal migration opportunities	Create legal migration opportunities in order to reduce pressure into irregularity
Human rights	Reduce vulnerability of migrants	Intensification of border control increases migrants' vulnerability	Open legal migration opportunities in order to reduce migrants' vulnerability

To begin with, the most extensive option (3) of opening the borders for migration is the starting point, making it possible for asylum-seeker to apply for asylum without barriers and labour migrants to apply for open positions in the labour market. The evasion of economic migrants onto asylum-seeker roots due to lacking legal access is with that made unnecessary and strengthens the rights for asylum seekers, reducing the general suspicion of fraud. Furthermore, the labour demand decides on who is entering on the side of economic migration with the difference that all skill levels are considered for legal admission with less migrants being pushed into irregularity and with that vulnerability for exploitation. Satisfying labour demands, the system can reduce irregular migration and with that increase security at the EU external borders (see figure 12).

The approach would still split up migrants into 'wanted' and 'unwanted', however, without giving preselected categories but leaving the decision to the individual case and to the mechanism of labour market admission and the asylum system, deciding on the question if a migrant suits the labour market needs or if an asylum-seeker classifies for being granted the right of international protection.

Figure 12: Facilitating migration
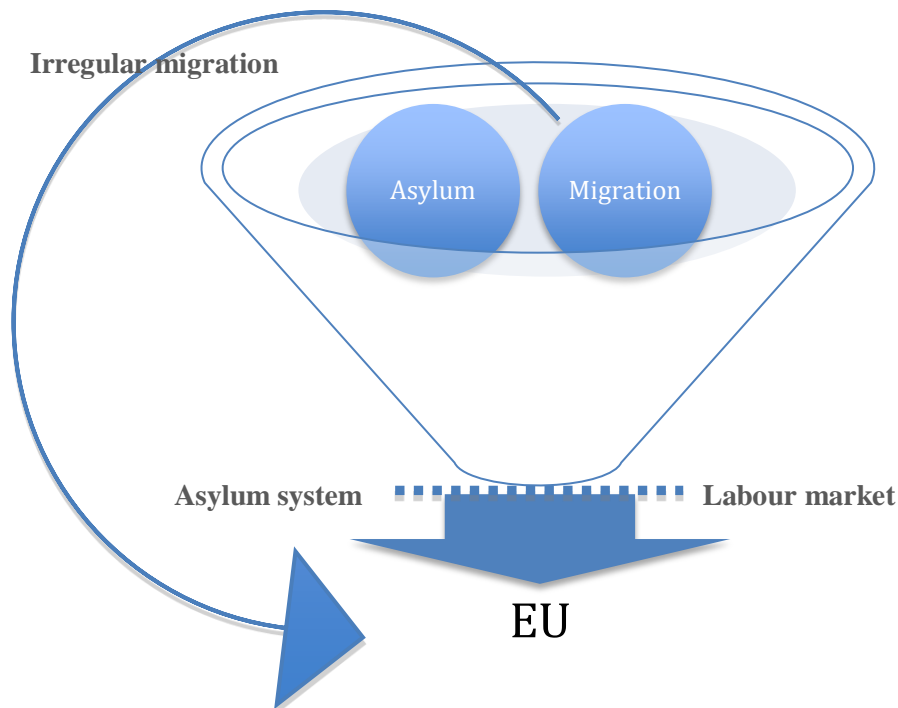
The main difficulty of this model, considering the balance of the three interests, is meeting the security interest in state sovereignty-based control, which excludes a purely labour market-based, demand-led migration approach. This, in the EU context, contradicts "the right of Member States to determine volumes of admission of third-country nationals coming from third countries to their territory in order to seek work, whether employed or self-employed" (Article 79 (5) Lisbon Treaty). It also leads to a broader problem considering the lack of a single European labour market, which is a condition for a successful demand-led model of admission. Tools like the European Employment Service (EURES) can serve as a facilitator of migration, however, are still underdeveloped with a single European labour market with intra-EU mobility for EU citizens as well as third-country nationals being far from established (Dhéret et al. 2013; Barbone et al. 2013: 25).

With regards to the approach developed in this chapter, attention has to be drawn to its nature being the result of de- and reconstructing discourse with a fact-based development of options. However, not taken into consideration are all factors outside these discourses influencing EU policy and migration. The suggestion of a concept of 'facilitated migration' is hence to be understood as a model of mediating a variety of interests and not as a solution given to the problem of today's challenges of EU migration policy.

8. Conclusion

In conclusion, while the call for opening 'fortress Europe' has long been rejected, rather considered as "Absurd Chimera" (Casey 2009: 14), today the arguments of advocates for opening legal migration opportunities meet the tone of the discourses led in EU migration policy and has been captured by the Commission in its 'managed migration' approach to

migration. However, not fully acknowledging the claim and missing the drawing of connections between migration phenomena and interests, the Commission's approach reproduces problems in terms of security, economic and human rights issues.

The connection between irregular and regular migration, in this context broken down to the connection between low- and unskilled labour migration and human trafficking for labour exploitation, gives important points of reference to current failure to address different interests in migration policy at the EU level. However, the still very fragile basis of data on human trafficking makes a generalisation on the basis of data difficult.

Reconstructing the discourses in EU migration policy, the 'facilitated migration' approach is a model of how interests in migration policy can be mediated and united, facilitating state cooperation at the EU level in this issue area. Further, this unification of key interests in the area of migration, a main issue of EU foreign policy, can give implication for state cooperation in a complex issue in general.

The method and theory used in this study displays that the differences of the interests in migration are socially constructed in a highly politicised area. While the positions constructed are contradicting and therefore lead to the construction of a conflict, the interests – constructed themselves – shaping the discourses are compatible. With that, a zone of possible agreement can be reconstructed using arguments established in the discourses.

Using this approach to migration policy, a highly complex and controversial issue, especially at the EU level with many agents involved considering 28 different states which are no black boxes but influenced in their behaviour by social interaction within, shows how complexity in state cooperation can be reduced. The initiator of the possibility to reconstruct the EU approach to migration has been the changing context or environment with changing dominance of agents and interests, the introduction of the Lisbon treaty, demographic change and labour shortages, the economic crisis bringing the economy to the centre and EU values being highlighted in newly established EU foreign policy being only the key issues.

Reacting very sensitively to changing environments, the future of migration policy however remains unpredictable, which is why no attempt is made to give a prognosis on the likeliness of an introduction of a 'facilitated migration' approach. Merely, the openness of the discourse after years of a very clear dominance of securitisation can give cause to see a possibility for change, triggering the approach taken in this study.

However, currently increasing xenophobic movements in many member states can have consequences for EU politics, especially with regards to the European elections in the upcoming year. A general anti-migration discourse based on pure ideology would eradicate the possibility to solve conflicts in this area on a similar basis as approached in this paper.

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