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Implementing the EU's circular migration approach:
Legal and Migrant Perspectives on Entry and Re-Entry
Conditions in Bulgaria and Poland

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Abstract

This paper aims to examine the implementation of the EU's circular migration approach and its impact on entry and re-entry conditions for migrant workers from the Eastern partnership countries and Russia. The paper adopts a migrant perspective and analyses to what extent the implementation of EU and national instruments falling under the EU circular migration umbrella foster circularity and comply with international and regional human rights standards and soft law principles. The paper is an implementation study based on comparative legal empirical research. It provides policy and legal analysis of the developed EU and national circular migration instruments by taking Bulgaria and Poland as case studies. The empirical data is gathered through semi-structured interviews with policy-makers at EU and national level, and focus groups with low - and highly skilled labour migrants.

Keywords

Migration, High-skilled migration, Evidence-based policy-making

1. Introduction*

The circular migration concept was introduced as part of the EU policy agenda in mid-2000 as “a form of migration that is managed in a way allowing some degree of mobility back and forth between two counties” (European Commission, 2005, European Commission, 2007). Since its inception, it has had its moments of glory and oblivion. Many academics and policy makers would consider it well forgotten and ineffective as a policy concept for migration management (See for instance Castles and Ozkul, 2015). Nevertheless, it keeps appearing in different EU policy contexts: as one of the objectives of the Seasonal Workers Directive, in the proposal for the recast of the Blue Card Directive, as part of the pillars of the Mobility Partnerships; as well as a topic of events in the European Parliament.¹

It is not clear, however, how it is being implemented and what have been the effects for migrant workers thereof. Hence this paper aims to contribute to the understanding of the state of implementation of the EU’s circular migration approach and its impact on labour migration from third countries. In order to do that, the paper focuses on the rights of migrant workers in the context of circular migration from the Eastern partnership countries coming to two EU Member States from the last EU enlargement, Poland and Bulgaria.

To understand the implementation dynamics of the concept of circular migration and its effects on migrant workers’ rights, one needs to comprehend what constitutes circular migration and what are the instruments that are pertinent to it. Therefore, this paper first provides a brief overview of the meaning of the term and then moves on to examine the spectrum of instruments that needs to be considered when analysing EU’s approach – both at EU and national level. This is required because the concept of circular migration is amorphous and has different meaning in different contexts. Only by examining it both at EU and national level in a specific context, one can get an insight of its real meaning and impact. Bulgaria and Poland’s migration policies are to a great extent the result of the Europeanisation process and therefore one needs to also consider its influence on the national instruments developed during the pre-accession, as well as the post-accession periods.² Thus, the next section of the paper provides an insight into the effects of the Europeanisation process and conditionality, and their impact on the developed policy outcomes. Finally, the paper examines closely the instruments developed at EU and national levels, their implementation in practice and their effects on the rights of migrant workers.

2. Methodology

This paper is part of the PhD dissertation “Circular migration from the Eastern partnership countries to the EU: The rights of migrant workers in Bulgaria and Poland”. It is an implementation study based on legal empirical research. It uses empirical data collected through more than 40 semi-structured interviews with different stakeholders in Bulgaria and Poland, as well as nine focus groups with migrant workers from Russia and Ukraine working in Bulgaria and Poland.³ In addition, five of these

* An earlier version of this paper has been presented at the final conference of the TRANSMIC project, which was held on 18-19 May 2017 at the EUI. It is written within the PhD project “Circular migration from the Eastern partnership countries to the EU: The rights of migrant workers in Bulgaria and Poland” as part of the TRANSMIC project funded under the FP7-PEOPLE-2013-ITN call of the Marie Curie Actions — Initial Training Networks funding scheme (Project number – 608417). The author wishes to thank to Prof. Marise Cremona, Dr. Sergo Mananashvili, prof. Anna Triandafyllidou and Dr. Natasja Reslow for their valuable comments.

¹ “Circular Migration – Current Policy Practice and Future Options” organized by MEP Mariya Gabriel, EPP, 16 November 2016, Brussels.

² In this paper Europeanisation is understood as meaning spread of forms of life, production, habits and also political principles, institutions and identities from Europe to other territories (see Olsen, 2002, p. 937).

³ Only the relevant interviews with regards to the focus of this paper are used. See a list with interviews under the references of the primary sources.

focus groups were conducted with Blue Card holders from Russia and Ukraine working in the IT sector in both countries. Due to their geographical proximity, ethnic and historical ties, Bulgaria and Poland are attracting mainly migrants from the former Soviet Union republics, situated in Eastern European neighbourhood. Ukrainians are among the largest immigrant groups from the Eastern Partnership countries in both Poland and Bulgaria. Russians are the largest immigrant group in Bulgaria, and Russia is in the top five countries of origin of immigrants in Poland. Therefore it was logical to identify them as the immigrant groups most relevant to the aims of the focus groups, which consisted of five migrants on average.

In order to assess the impact of the developed circular migration policies on the rights of these migrants, the paper employs a benchmark framework based on global and regional international standards and soft law principles, as well as policy measures that have been identified as conducive to circular migration (for the full benchmark framework description covering several policy areas, see Vankova, 2016). This paper focuses on one of the policy areas that needs to be addressed with regards to circular migration: the entry and re-entry conditions for migrants as provided by the policies developed at EU and national level. In order to be beneficial for migrant workers, the policies need to accommodate the transnational links of migrants with both their countries of origin and destination, and allow for a certain degree of migrant-led trajectory of movement, which would differentiate them from the general time-bound migration policies, such as the guest-worker model. In addition, what needs to be assessed is whether they provide adequate protection of the rights of migrant workers that would also allow them to benefit from circulation. Thus, the policies would be assessed against the following benchmarks: possibility for facilitated entry and circulation friendly visa policies on the basis of multi-entry visas or visa free regimes (see Table 1).

Table 1. Entry and re-entry benchmarks. Source: (Vankova, 2016)

Policy area to be addressed with regards to circular migration	International standards	Benchmarks	Instrument/action to implement benchmark
Entry conditions	No general international law provisions. Admission is national prerogative of states. European Agreement on Regulations governing the Movement of Persons between Member States of the Council of Europe, Art. 1 European Convention on Establishment, Art. 1	- Facilitated personal travel of nationals of the contracting parties on the basis of 3 month visa Facilitate the entry into the territory of the contracting parties for the purpose of temporary visits.	- Multiple entry visas and/or visa free regime ⁴
Re-entry conditions	UDHR, Art. 13 ICCPR, Art. 12 ICRMW, Art. 8 ECHR Protocol No. 4, Art 2(2) and 3(2)	Right to return to his or her own country and leave any country, including one's own country of origin.	
	ILO Multilateral Framework on Labour Migration, Principle 15, Guideline 15.8	Adopting policies to encourage circular and return migration and reintegration into the country of origin, including by promoting temporary labour migration schemes and circulation-friendly visa policies.	

⁴ The full benchmark framework includes also re-entry conditions for EU long-term residents on the basis of permits allowing periods of absence.

3. What does “circular migration” mean?⁵

There is no single uncontested definition of circular migration provided by academics or policy-makers. Yet, on the basis of a literature review one can conclude that it concerns mainly cross-border movement occurring through legal channels.⁶ It is taking place mainly for economic purposes; therefore it involves labour migrants (Vertovec, 2007, p. 3). It is repeated, where migrants recurrently move between their countries of origin and destination (Hugo, 2013, p. 2 and Wickramasekara, 2011, p. 9). Furthermore, it involves a certain degree of voluntarism and “free” movement of circular migrants to their countries of origin and/or destination (Skeldon, 2012, p. 47). It is temporary in nature, but not limited to temporary stay solely, and it does not exclude circular migration of permanently settled migrants (Fargues, 2008, p.11).

According to Skeldon “the identification of a constant, clearly identifiable form of migration that can be called “circular” is problematic”, especially across borders because circular movements are prone to change their duration and composition over time (Skeldon, 2012, p. 44). In order to overcome the difficulties associated with the identification of a clear-cut form of circular migration, the paper employs a broad definition. It applies Skeldon’s understanding that circular migration changes over time – it can encompass different stays with various durations, including long-term ones; it can stop and restart again; yet, as long as there are recurrent movements between the countries of origin and destination where people live transnational lives, this will fit in the article’s definition. Therefore, on the basis of all characteristics presented, this paper proposes the following working definition of circular migration: Circular migration involves legal temporary migration of economically active third country nationals, spending periods of time repeatedly between their countries of destination and their countries of origin.⁷

4. EU Instruments falling under the EU’s circular migration approach

The comprehensiveness of this concept, as defined by the European Commission, includes a diversity of instruments that could facilitate circular migration. The Commission planned to promote it on the basis of a legislative framework through the harmonisation of already existing instruments and through the introduction of special measures in future legislative acts (European Commission, 2005). In addition, it was incorporated as a policy instrument in the Global Approach to Migration and Mobility (GAMM) and the European Commission’s plan was to facilitate the development of circular migration schemes with third countries. Both the legal and policy routes aimed to facilitate temporary engagement of third-country nationals settled in the EU in their countries of origin, and to provide temporary opportunities for entry and re-entry for persons residing in a third country for the purpose of work in the EU (Vankova, 2016). This paper focuses only on the latter category of circular migration.

The paper aims to assess entry and re-entry conditions for circular migrants created by (elements of) EU legislation. Therefore it considers the Blue Card Directive (Council Directive 2009/50/EC), which explicitly mentions the facilitation of circular migration amongst its aims; and relevant parts of EU visa legislation which do not mention the term explicitly but contain some circular migration elements and may foster this type of migration. The Association agreements with the Eastern Partnership countries are excluded from the paper’s scope of analysis because they are considered not to create any additional opportunities for enhancing mobility of their citizens, despite the fact that this

⁵ Parts of section 3 have been published in Vankova, 2016.

⁶ Even though circular migration can also have irregular character, most of the authors put an emphasis on its legal character. Sometimes the crossing of a border can be regular but the work itself irregular – e.g. Ukrainian circular migrants working on tourist visa in the domestic sector. In Triandafyllidou, 2013.

⁷ Circular migration can also occur between the country of origin and different Member States, as well as between different Member States. In this paper the author chooses to focus on a basic case of circulation between the countries of origin and destination.

is one of the core objectives of the Eastern Partnership (Elsuwege and Vankova, forthcoming). The Seasonal Workers' Directive (Directive 2014/36/EU) and the Intra-corporate Transferees Directive (Directive 2014/66/EU) are also relevant but are still pending transposition in Poland. Therefore they are not included in the paper because there is no comparability with Bulgarian legislation.

With regards to the policy channel for circular migration facilitation through GAMM, one should consider the implementation of the Mobility Partnerships (see Vankova, 2016). The annexes of the Joint declarations for the conclusion of Mobility partnerships and the so-called "scoreboards" contain information on the circular migration initiatives that are being implemented under the umbrella of these partnerships with third countries. When evaluating the GAMM policy channel, one should also take into account the Visa facilitation agreements, which are closely linked with the process of negotiation of the Mobility partnerships and aim to foster mobility.

5. National instruments falling under the EU's circular migration approach

5.1 Bulgaria and Poland: two different pre-accession conditionality strategies

The migration policies of both Poland and Bulgaria were to a great extent a product of the Europeanisation and conditionality pre-accession processes. The reason for that is the limited development of these types of policies during the communist rule, which mainly aimed at preventing unwanted emigration of their own citizens (Grabbe, 2006, p.167; Kicinger et al., 2007, p.181; Bobeva, 1994, p. 222; Markova and Vankova, 2014, p. 41). The Europeanisation process that had already started after 1989 filled "institutional lacunae" left by the communist legacy (Grabbe, 2006, p.167). Many institutions and legal and policy measures designed in Western Europe were transferred to Poland and Bulgaria as part of the Europeanisation process on the basis of policy transfer and policy learning through various channels (Kicinger and Koryś, 2011, p. 371, see also Pawlak, 2015), which led to the establishment of restrictive migration policies (Lesinska et al., 2010, p. 67; Iglicka and Gmaj, 2013, p. 170; Jileva, 2002, p.81). This created a paradoxical situation, where the foundations of their migration policies were being laid down in a top-down manner as a result of the conditionality pressure, rather than being based on a real necessity created by immigration processes (Kicinger and Koryś, 2011, p. 371).

Even though both countries had to adapt to the EU conditionality, their approaches differed. In the field of Justice and Home Affairs, the Schengen *acquis* transferring rules on visa and borders was the EU policy that caused most controversy at national level because it had the potential to affect the political and economic relations with the rest of the neighbours and partners in Central and Eastern Europe (CEE) (Grabbe, 2006, p. 168; Kicinger and Koryś, 2011, p. 372; Jileva, 2002).⁸ First of all, CEE countries were very sensitive to the possibility of creating a new "Iron Curtain". Secondly, both countries had close historical, cultural and economic ties, though of a differing character, with countries like Ukraine and Russia. Nevertheless, both countries were aware that failure to comply with Justice and Home Affairs conditionality could veto their EU accession and that they needed to respond to EU demands (Grabbe, 2006, p. 183). Therefore, the EU visa policies turned out to be illustrative for the different strategies adopted by Poland and Bulgaria.

Poland's strategy was "combative, involving tough negotiating stances and slow implementation of the policies that caused most domestic controversy" (Grabbe, 2006, p. 111). Poland had a clear national interest when it came to the eastern borders. Cross-border trade was the main economic activity for many Polish citizens living at the eastern borders, as well as for many Ukrainians. Over time, the difference between cross-border mobility and labour migration became vague (Stola, 1998, p. 88) and Ukrainians started to gradually dominate certain types of jobs and occupations, such as

⁸ Another one was the refugee protection system and the requirements of the Dublin II Regulation.

horticulture, housekeeping, construction, which were the least attractive employment niches for the Poles (Okolski, 2001, p. 102).

Furthermore, the visa-free regime with the Commonwealth of Independent States (CIS) which was preserved after 1989 was based on the former “socialist brotherhood” ties and reflected Poland’s foreign policy interest to maintain close contacts in the eastern neighbourhood in order to achieve a stable and predictable geopolitical order in the region (Kicinger et al., 2007, pp. 188-189). Therefore, Poland’s strategy was to postpone the introduction of visa requirements for as long as it could and to introduce them at the last possible moment (Iglycka, 2007, p. 265). In addition, shortly before the pending changes, the foreign ministry started an information campaign encouraging people in the neighbouring countries to apply for multi-entry visas to soften the impact of the visa requirements and the burden that they were expected to pose on its administrative capacity (Grabbe, 2006, p. 174).

On the other hand, Bulgaria’s approach was of “catch-up and imitation” (Grabbe, 2006, p. 111). The main driving force behind this strategy was entrenched in the desire to leave the EU’s visa negative visa list and show its EU partners that it could be trusted to implement the *acquis* (Grabbe, 2006, p. 175; Jileva, 2002, p.81; Gros-Tchorbadjiyska, 2010, p. 421). After the decision for lifting visa requirements for Bulgarians was reached, the country introduced a visa regime for Ukraine faster than Poland did, even though it was further away from an accession date (Grabbe, 2006, p. 175). With regards to Russia, Bulgaria delayed the introduction of visas due to the special relations between the two countries (Jileva, 2002, p. 82; Gros-Tchorbadjiyska, 2010, p. 255). It sent a readmission agreement to Russia in an attempt to circumvent the visa issue but since it did not have an agreement of this kind with any other country, this attempt failed and Bulgaria introduced visas for Russia, again years ahead of Poland. The economic effects of this decision were significant, especially with regards to trade with Russia, as well as tourism which was very popular with Russians and Ukrainians (Jileva, 2002, p. 83).

5.2 National circular migration instruments developed in Poland and Bulgaria during the post-accession period

The policy measures and regulations fostering circular migration that Poland developed after its accession to the EU were to a great extent a response to the barriers erected by the Schengen *acquis* (Iglycka and Gmaj, 2013, p. 170). Poland continued its pre-accession strategy as a participant in the EU decision-making process. It transferred its national foreign policy to the EU agenda and started advocating for a visa-free regime between the EU and the neighbouring CIS countries, incorporating them in the prevention of undesired migration to the EU and establishing exterritorial means of migration control (Müller, 2014, p. 135). Along with Sweden, it initiated the European Union’s Eastern Partnership, which among others focuses on the facilitation of arrivals from CIS under the Schengen *acquis* at EU level (European Migration Network, 2012, p. 32). In addition, with a view of Poland’s accession to the Schengen area, the country supported the introduction of a separate local border traffic regime at the external borders of the EU and signed a local border traffic agreement with Ukraine in 2008 (Kicinger et al., 2007, p. 189; Lesinska et al., 2010, p. 66). The existing border traffic agreement between the two countries had to be renounced before the EU accession date (Gros-Tchorbadjiyska, 2010, p. 267).

On a national level, after the introduction of visas, Poland managed to secure its interest by liberalising the issuing of regular visas and the provision of no-fee visas for Ukrainian nationals and Russians residing in Kaliningrad until 2007, when the whole Schengen *acquis* was implemented (Kicinger et al., 2007, p. 189; Lesinska et al., 2010, p. 64). After that, in line with Poland’s policy towards its eastern neighbours, citizens of Ukraine, Moldova and Belarus were exempted from paying the consular fees for the processing of visa applications when applying for a Polish long-stay visa (visa type D).

Poland's EU accession and the introduction of visas for Ukrainians had a strong impact on the availability of flexible labour force in Poland, which was supplied through the existing patterns of circularity of Ukrainian migrants. Most of them had legal stay in Poland because they did not need any visas to enter, but were in irregular employment due to the restrictive labour market legislation that made it very hard to obtain a work permit (Müller, 2014, p. 138). The adoption of the EU *acquis* on migration control and irregular migration "rendered the Polish "tacit tolerance" more difficult" (Müller, 2014, p. 138).

In addition, Poland's increased economic growth combined with a decreased labour supply due to the massive exodus of Polish workers after the EU accession caused gaps in some labour market sectors, such as construction, agriculture and horticulture (Lesinska et al., 2010, p. 69). This resulted in employers' organisations being in a stronger position to lobby for the opening of the labour market for foreign workers, which was echoed by politicians and quickly entered the public discourse. All these factors, combined with the pressure exerted by farmers and fruit growers in need of foreign workers for the forthcoming harvest, and the participation of the farmers' party *Samoobrona* in the government coalition, led to the prompt adoption of the Order of the Minister of Labour and Social Policy in 2006 (Lesinska et al., 2010, p. 69; OECD, 2011, p. 310).

The Order provided for a simplified procedure for short-term employment of foreigners on the basis of a declaration submitted by the employer (*Oświadczenie* procedure). It allowed low skilled workers from neighbouring countries to work in the agricultural and horticulture sectors in Poland without a work permit for a period of three months in every six months on the basis of "an employer's pledge to employ the foreigner" (Kepinska and Kindler, 2014, p. 274). This programme expanded to all economic sectors in 2007 and the allowed duration of employment was extended from six months to twelve months in 2008.

Beyond its impact on border regions, the new visa regime was also perceived in public discourse as endangering the relations with the Polish diaspora in the East (Müller, 2014, p.148). Therefore, it is not a coincidence that the Act on the Pole's Card that has been in the process of preparation since the end of the 90's came into force on 29 March 2008, one day before the final step for full Schengen integration (Zogata-Kusz, 2013, p. 160; Gros-Tchorbadjiyska, 2010, p. 265). It simplified the procedure for obtaining a multiple-entry national visa and exempted the holder from Schengen visa fees (Gros-Tchorbadjiyska, 2010, p. 265). The Act gave special rights to foreigners belonging to the Polish nation who lived in the former USSR countries at the time.

This instrument can be granted to foreigners who can prove belonging to the Polish nation. Applicants have to demonstrate their links with the Polish provenance through at least basic knowledge of Polish language and knowledge and cultivation of Polish traditions and customs (Kozak et al., 2014, p. 188). They need to submit a written declaration for belonging to the Polish nation in front of a Polish consul. In addition, applicants need to prove that they are of Polish nationality, previously had Polish citizenship or at least one parent or grandparent or their two great grandparents were of Polish nationality or had Polish citizenship. The requirement for proving Polish nationality can be replaced by an attestation from a Polish organisation or a Polish diaspora organisation active in one of the countries whose nationals are eligible to apply for the Pole's card, stating that the applicant has been actively involved in the Polish cultural and linguistic activities within the Polish community in their region for a period of at least the past three years (Kozak et al., 2014, p. 188).⁹

It was not until the adoption of the document "Migration Policy of Poland: current state of play and further actions" in 2012 that the circular migration concept became officially a national policy term.

⁹ The countries whose citizens or non-citizen residents are eligible to apply for Pole's Card are Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kazakhstan, Kyrgyzstan, Lithuania, Latvia, Moldova, Russia, Tajikistan, Turkmenistan, Ukraine and Uzbekistan. Eligible for Pole's Card are also foreigners from one of the above-mentioned countries whose Polish origin has been established according to the procedure provided in the Act on Repatriation.

This strategic document recommended the creation of proper conditions for circular migration, for instance through further development of the *Oświadczenie* procedure, and thus linked the established simplified procedure to circular migration (Zogata-Kusz, 2013, p. 216; European Migration Network, 2011b, p. 13; Unterschütz, 2016, p. 162). When asked how they understood the term circular migration, many of the respondents representing different stakeholders directly referred to the *Oświadczenie* procedure between Poland and Ukraine as an example of such type of migration (Interview # 1 with official, Poland, November 2016; Interview # 2 with academic, Poland, November 2016, Interview # 17 with official, Poland, November 2016). Even though it is still “not present *expressis verbis* in existing national legal acts” or developed as part of an official policy on circular migration, this is the main national instrument considered to both represent and promote circular migration, and thus one of the national instruments that is assessed in this paper (European Migration Network, 2011b, p. 8; Iglicka and Gmaj, 2013, p.170).

Bulgaria did not respond as actively as Poland to the barriers introduced by the adoption of the Schengen *acquis*. It postponed the introduction of visas until the accession only for its closest neighbours (Gros-Tchorbadjiyska, 2010, p. 269). The country concluded bilateral intergovernmental agreements with Macedonia and Serbia regarding the mutual travel arrangements for their citizens, which allowed the issuing of visas for the citizens of those countries at the border for a stay of up to 10 days (Gros-Tchorbadjiyska, 2010, p. 267). These agreements also provided for rules that could facilitate the issuing of short-stay visas as well as the travel of citizens of Macedonia and Serbia to Bulgaria respectively. In addition, two more consulates were opened in Bitola (Macedonia) and Nis (Serbia). Unlike Poland which introduced the Pole's Card as a quasi-citizenship mechanism, Bulgaria provided a fast-track procedure for acquisition of Bulgarian citizenship on the basis of Bulgarian ethnic origin, which is outside the scope of this paper.¹⁰

The lack of policy enthusiasm in Bulgaria is not so surprising taking into consideration the low priority given to asylum and migration policies before the country's EU accession (European Parliament, 1999). Even though foundations for the development of migration policy were laid due to the conditionality pressure, it was established as a national public policy on strategic level just after the accession of Bulgaria to the EU (Krasteva et al., 2011). Bulgaria developed four national migration strategies after 2007. The National Strategy on Migration and Integration (2008-2015) claimed to set the grounds for the development of a consistent national policy on managing migration and integration. In fact, one of the main reasons for the creation of a strategy in this field could be found in the establishment of a general program on "Solidarity and Management of Migration Flows" and the available funds for all EU member states (Open Society Institute Sofia, 2011, p. 173). The second related document, the National Strategy in the Field of Migration, Asylum and Integration (2011-2020), was developed as part of the Bulgarian government's efforts to meet the accession requirements of the Schengen Area (Markova and Vankova, 2014, p. 42). Two other strategies were developed in 2014 and 2015, mainly as an answer to the refugee crisis in result of the conflict in Syria.

Three of the aforementioned strategies highlight that circular migration needs to be encouraged and promoted (see also European Migration Network, 2011a, p. 3). The following extract from the first national strategy shows how Bulgarian policy-makers understood this concept:

“The large-scale acceptance of third country nationals is not a good solution and has to be avoided, as the experience of other countries shows. An organized and balanced reception of third country nationals is undertaken. Their return to the country of origin is regulated after the expiry of their contract. In this way the European initiative at the community level for the promotion of the so-called „circular” migration is implemented in practice.”(National Strategy on Migration and Integration (2008-2015), p. 23).

¹⁰ See Article 15 (1) of the Act for the Bulgarian Citizenship. For more details see Smilov, D. and Jileva, E. 2009. The politics of Bulgarian citizenship: National identity, democracy and other uses. In Bauböck, R., Perchinig, B. and Sievers, W. (eds.) *Citizenship Policies in the New Europe*, Amsterdam University Press.

However, this approach – or labour migration in general – has never since been in the public, political or law-making discourse (Interview # 8 with lawyer, Bulgaria, July 2016). Rather, the Bulgarian “catch-up and imitation” model persists even after the accession but this time the “catch up” part concerns the accession to the Schengen zone. The Europeanisation process continues through a rushed “copy and paste” transposition of EU laws, which leads to restrictive and impractical provisions (Interview # 9 with lawyer, Bulgaria, July 2016). As one of the interviewed lawyers said: “*Bulgarian lawmakers create rules artificially and impose them on Bulgarian society even if they are not adapted to our reality*” (ibid).

The 2008 Strategy envisaged the signing of bilateral employment agreements for temporary labour migration with third countries coupled with bilateral social security agreements where feasible. As a follow up, in 2008 draft labour migration agreements developed on the basis of the approved template were sent to four countries: Moldova, Macedonia, Ukraine, and Armenia. These countries had been selected in view of the priorities of the National Strategy, with the goal of attracting foreign nationals of Bulgarian origin who were expected to integrate more easily into Bulgarian society. According to interviewed public officials, no agreements were ever signed due to the on-going financial crisis. Last year, the adopted Act on Labour Migration and Labour Mobility (ALLMM) provided a section on the possibility for conclusion of this type of agreements which are meant to create options for circulation (Interview #1 with official, Bulgaria, July 2016).¹¹

6. Entry and Re-Entry Conditions in Bulgaria and Poland – legal and migrant perspectives

The previous section demonstrated how Bulgaria and Poland’s differing pre-accession strategies shaped to a great extent their post-accession dynamics and the instruments developed. On the basis of its “combative strategy” Poland’s policies were targeted at overcoming barriers with the Eastern partnership countries erected by the Schengen *acquis*. Bulgaria, on the other hand, kept its “catch-up and imitation” model and despite the expressed position to encourage circular migration, did not share Poland’s active policy development.

This part of the paper brings together the EU and national instruments that were developed, and assesses whether they provide options for facilitated entry into Bulgaria and Poland, as well as circulation friendly policies. In order to do that, the section first presents the outputs developed and, as a second step, focuses on these instruments’ impact on the experience of migrants from Ukraine and Russia in Bulgaria and Poland.

Legal and policy outputs: National instruments

The Polish Act on Foreigners lists 22 purposes for which a national visa may be issued among which, for example, “performing work for a period no longer than 6 months within 12 consecutive months, based on a declaration of intent to entrust the performance of work, registered in the poviats labour office” (Article 60, Para 1 (5), AF), “carrying out research or development” (Article 60, Para 1 (13), AF), “enjoying the rights of a holder of Pole’s Card” (Article 60, Para 1 (20), AF). Furthermore, in a flexible manner, the Act allows a foreigner to provide reason for arriving in Poland, which has not been specified (Article 60, Para 1 (25), AF) (Kozak et al., 2014, p. 132).

In line with Poland’s policy towards its eastern neighbours, citizens of three countries are exempt from paying consular fees for processing of visa applications when applying for Polish long-stay visas. Following the adoption of a bilateral intergovernmental agreement, citizens of Ukraine are exempt since August 2012 on the basis of reciprocity (Polish National Contact Point to the EMN, 2013).

¹¹ See Chapter 5 of the ALLMM.

Citizens of Belarus have been exempt from visa application fees since January 2011 on the basis of a unilateral decision taken by the Polish Minister of Foreign Affairs (European Migration Network, 2012, p. 17). Prior to that, citizens of Belarus had to pay a fee of 20 EUR. A similar decision was taken with regards to citizens of Moldova, who as of 1 May 2013 are also exempt from paying visa processing fees. In addition, foreigners who have obtained the Pole's Card are entitled to receive a special long-stay visa for multiple crossings of the Polish border free of charge, issued on the basis of Article 60, Para 1 (20) of the Act on Foreigners.

When a foreigner applies for a work visa based on Article 60, Para 1 (4-6) of the Act on Foreigners, he/she needs to either obtain a work permit or have a written declaration of the intention to commission work to a foreigner in line with the *Oświadczenie* procedure (Unterschütz, 2016, p. 163). The application for and issue of a work permit is regulated by the Act of 20 April 2004 on Employment Promotion and Labour Market Institutions. Article 88 of the Act lists all cases when an employer needs to apply for a work permit.¹² A work permit is issued by the regional administration entity, called *voivode*, if the remuneration offered to the migrant worker is not lower than the remuneration of employees performing work of comparable type or comparable work post, and if the results of a performed labour market test are negative (Article 88c, Para 1 AF). Nonetheless, there are several cases in which specific categories of migrant workers could be exempt from the obligation to perform a labour market test.¹³ In case of a successful application, a work permit is issued for a definite period of time, which cannot be longer than three years and can be prolonged (Article 88e, AF).

In addition, the Act on Employment Promotion and Labour Market Institutions allows for many exemptions from this provision, which are enumerated in Article 87, Para 2. This Article is further detailed in an Order issued by the Minister of Labour and Social Policy.¹⁴ According to its Para 1 (20), workers applying through the *Oświadczenie* procedure are among the foreigners who have the right to perform work on the territory of the Republic of Poland without the requirement of obtaining a work permit. The Order states that eligible candidates are nationals of Armenia, Belarus, Moldova, Russia or Ukraine, performing work within a period not exceeding 6 months within the following 12 months, independent of the number of employers (referred to as the entity in the Order) entrusting them work. The sole prior requirement is that the employer registers a written declaration of intention to commission work to the foreigner concerned in the district (*poviat*) labour office competent with respect to the place of residence or seat of the employer. A signed and registered declaration can serve as a basis for the work visa application (Kozak et al., 2014, p. 142). However, performing work on the basis of the declaration is only legal when, after entry in Poland, the foreigner concludes an employment or civil contract with the employer.

The report on circular migration prepared by the Polish National Contact Point to the request of the European Migration Network in 2011 highlighted the *Oświadczenie* procedure - also referred to as the simplified system - as one of the national instruments fostering circular migration (European Migration Network, 2011b, p. 15, p. 19). It emphasized that the *Oświadczenie* procedure is not a "circular migration instrument *per se*" or one of the typical circular migration programmes based on international bilateral agreements aiming to attract "guest workers". Nonetheless, it contains features promoting this form of migration on the basis of national law which, amongst others, facilitates foreigners' access to the Polish labour market (European Migration Network, 2011b, p. 18). Migrants can circulate during the period of six months between Poland and their home country. One can also

¹² For a detailed description of the different work permits, see Unterschütz, 2016, pp. 167-168.

¹³ For full description of these cases, see Kozak et al., 2014, pp. 151-153.

¹⁴ Order of the Minister of Labour and Social Policy of 21 April 2015, concerning cases where commission of work to foreigners in the territory of the Republic of Poland is permitted without the requirement of obtaining a work permit. Issued on the basis of Art. 90, paragraph 4, of the Act of 20 April 2004 on Promotion of Employment and Labour Market. (Dz. U. z 2015 r. poz. 149 i 357).

distribute these 6 months over 12 months and circulate in regular intervals (usually migrants would get a 12 month visa). If the allowed periods of stay are exhausted, circulation can restart again after 6 months. Interviewed state official shared that the *Oświadczenie* procedure was created to facilitate access to both the visa and the labour market (Interview #1 with official, Poland, November 2016).

The other circulation friendly mechanism is the Pole's Card. Foreigners who have obtained a Pole's Card are also exempt from the requirement to apply for a work permit in line with Article 6 of the Act on the Pole's Card. They are entitled to take up employment on the territory of Poland and carry out economic activity under the same conditions as those applicable to Polish citizens (European Migration Network, 2012, p. 21). It does not pose any restrictions for circulation except for the validity of their visa.

In comparison, according to the Bulgarian Act on Foreigners, national long-term visas can be issued when the foreigner intends to apply for continuous, long-term or permanent residence on one of the grounds stipulated by the law (Article 15, Para 1 AF). Once a permit is issued, the visa is annulled (Article 15, Para 4 AF). According to the Act on Labour Migration and Labour Mobility (ALMLM), the initial application for access to the Bulgarian labour market is only possible when the applicant is outside the territory of Bulgaria (Article 5, Para 2 in conjunction with Article 7, Para 5 ALMLM). Authorisation for access to the labour market is subject to: the negative results of a labour market test performed by the employer; proof that in the previous 12 months the total number of third-country nationals working for the local employer does not exceed 10 per cent of the average number of workers employed; the work and pay conditions offered are not less favourable than the conditions for Bulgarian citizens in the respective labour category; and finally, possession of specialized knowledge, skills and professional experience required for the post in question (Article 7, Para 1 ALMLM).

Currently, no national circulation-friendly visa policies were identified in Bulgaria with regards to the Eastern partnership countries. According to Article 7 (4) of ALMLM work permits are issued with a validity of maximum 1 year only and the overall duration of the work authorisation can be extended for up to 3 years if the circumstances for its issue have not changed (Article 7 (5) ALMLM). The fee for issuing or extension of the work permit is 200 EUR, to be paid by the employer (Article 7 (8) ALMLM). The initial application for access to the labour market, as well as follow-up applications after the 3-year period in Article 7 (5) has elapsed, are made when the foreigner is outside the territory of Bulgaria.

Article 62 ALMLM stipulates the possibility for conclusion of bilateral agreements with third countries. Priority will be given to countries with which there is an on-going negotiation for the conclusion of social security coordination agreements or already signed social security agreements (Article 62 (3) ALMLM). According to an interviewed official, the model of future agreements would likely follow the framework agreement signed with Israel (Interview # 1 with official, Bulgaria, July 2016). However, this agreement was modified during the negotiations due to demands of the Israeli contracting party. It provides for temporary employment in the construction sector for maximum of 3 years, with no option for re-entry and does not allow circularity.

Migrants' perspective on entry and re-entry conditions provided by national instruments

The focus groups' participants in Poland shared diverse experiences with regards to circular migration, which in most of the cases presented a picture of circularity consisting of a chain of different trajectories supported by various instruments. The main national instruments used are the *Oświadczenie* procedure and the Pole's Card (or *Karta Polaka*). The data gathered through the focus groups and interviews shows that the migrants using the *Oświadczenie* procedure for circular migration purposes do not face any problems with regards to entry and re-entry conditions, when the registered declaration is filled in correctly (Focus groups with Russian and Ukrainian migrants, Poland, November 2016; Interview # 9 with employer, Poland, December 2016).

Almost all Ukrainians and few of the participants in the Russian focus group had experience with the *Oświadczenie* procedure at some point, which they used both as an entry route into Poland and as means of circulation (Focus groups with Russian and Ukrainian migrants, Poland, November 2016). Many of them had experience with obtaining a fake declaration, which would enable them to enter Poland to look for a job and obtain a new *Oświadczenie* (declaration) stating the real employment or other ways to “legalise their stay”, e.g. starting studies. Fake declarations were usually obtained through friends, acquaintances or colleagues who registered a declaration stating that they needed the person in question. They could also be bought online through different social media channels for 100 USD or through brokers, when the migrants did not know anyone in Poland who could register a declaration for them (Focus group with Ukrainian migrants, Poland, November 2016; Focus group with Russian migrants, Poland, November 2016).

The participants using the *Oświadczenie* procedure as an entry mechanism shared that most of them had troubles finding a job in Poland, which would have allowed them to enter on a work visa (Focus groups with Russian and Ukrainian migrants, Poland, November 2016). Utilising the declaration system afforded them limited time to enter Poland, look for a job and convince an employer to hire them, so that they could start the single permit procedure. Seasonal workers, however, used the *Oświadczenie* procedure as an entry mechanism but in most of the cases did not seek to regularise their work through the signing of a contract (Interview # 9 with employer, Poland, November 2016) (see also Iglicka and Gmaj, 2013). In the case of recently arrived Ukrainians, this was the fastest possible way to leave Ukraine due to political reasons (instead of applying for asylum) or try to set foot in Poland as soon as possible before “some new regulations”¹⁵ were introduced in January 2017 (Interview # 9 with employer, Poland, November 2016).

Both Russians from Kaliningrad and Ukrainians used *Karta Polaka* and found it very useful with regards to their circularity between Poland and their countries of origin. Furthermore, they shared that it saved them a lot of bureaucratic hurdles: “*Queues, loss of documents, prolonging issuing time, and all those horrible things*” and fees that most of their friends faced when applying for residence permits (Focus group with Russian migrants, Poland, November 2016). One of the participants in the focus groups shared:

“I obtained *Karta Polaka* and since then I had no problems with visas, because the consulate has a very good attitude to Polish people. You come with *Karta Polaka* and all will be done fast and without any problems. There are some special regulations, which simplified the procedure and allowed to obtain visa in an easier way. So it is not because they like us but there is a legislation which allows them to do it in this way” (Focus group with Russian migrants, Poland, November 2016).

During the recruitment process for the focus groups in Bulgaria, it turned out to be challenging to find migrant workers employed on labour contracts. This was due to the restrictive entry conditions dependent on the performance of a labour market test as a requirement to obtain a work permit. According to one of the interviewed lawyers, the labour market test put migrants into dependency from the employer and created breeding ground for corruption. Furthermore,

“[t]hey need to find someone to do this test for them. This test is formal and does not prove anything and it leaves discretion in the hands of the administration that can refuse to issue a permit. Who is going to fight for you? You need to be exceptional for the employer to be willing to go through all this” (Interview # 9 with lawyer, Bulgaria, July 2016. Also in focus group with Russian migrants, Bulgaria, September 2016).

The state officials interviewed, on the other hand, stated that the test is a requirement aiming to protect the labour market and “*keep the Bulgarians with high qualifications here*” (Interview # 20 with officials, Bulgaria, July 2016). In line with this policy, the fee that the employer was required to pay for a work permit was purposefully high compared to the fee level of other administrative documents

¹⁵ Referring to the pending changes due to the transposition of the Seasonal Workers’ Directive.

for Bulgarians because it aimed to protect the labour market. According to these state officials, foreigners were supposed to come temporary and train Bulgarian workers. The alleged aim of the three-year period of validity of the work permit was to allow for Bulgarians to qualify and get the position.

These impediments pushed most of the foreigners to use different channels to circumvent the entry procedure (Interviews # 8 and # 9 with lawyers, Bulgaria, July 2016; Focus groups with Russian and Ukrainian migrants, Bulgaria, September 2016). According to the migrants interviewed, due to the extremely restrictive access to the Bulgarian labour market and the labour market test requirement, most of the foreigners entered Bulgaria through the registration of a trade representation and then sought employment (Article 24 (1) 6 AF) (Focus groups with Russian and Ukrainian migrants, Bulgaria, September 2016).¹⁶ The trade representation registration was used only as an entry ground on the basis of which a residence permit was issued but did not give the right to work. After entering the country many of the migrants registered a Bulgarian company, so that they were allowed to work. The alternative entry ground in the Act on Foreigners, required the foreigner to register a firm as well as to provide 10 working places for Bulgarians, which according to the interviewed migrants was impossible for a small fledgling business.

An alternative option for migrant workers is to use a multi-entry visa C or D to work in Bulgaria for a short time and receive their remuneration in their country of origin. However, the Ukrainian respondents shared that this was good neither for their family, nor for their business. Well-off Russians often used the grounds of Article 25 (1) 6 AF to obtain permanent residence on the basis of investment of more than 500 000 EUR in Bulgaria. The permit also allows them access to the labour market. Even Russian pensioners, who had bought a flat not as expensive as to be considered an investment (in line with Article 24 (1) 19 AF), still needed a visa every year. In order to circumvent the law and get a residence permit, they registered a trade representation, so that they could circulate freely and less expensively (Focus groups with Russian and Ukrainian migrants, Bulgaria, September 2016). One of the participants in the focus groups added: *“Another entry option is to get married.”*

The interviewed migrants described the reality as “forced circulation”. For the majority of them, being granted a long-term residence status was the desired option, rather than engagement in voluntary circular migration. Bulgarian migration law is based on the premise that in order to change status (and visa from C to D) or renew one’s permit, a person needs to leave Bulgaria and re-apply from another country (European Migration Network, 2015). According to one of the interviewed lawyers this was a result of the logic of the law: “[t]he foreigner must suffer” (Interview # 8 with lawyer, Bulgaria, July 2016). The Russian participants in one of the focus groups shared: *“When you need to go out to change your visa from C to D and pay so much, you do not want to circulate.”*

In line with the Act on Foreigners, a worker can stay for a maximum period of 3 years and then he/she needs to leave and re-apply again from abroad, which means that a labour market test should be performed again. According to officials, there are just a few cases of people who re-apply (Interview # 20 with officials, Bulgaria, July 2016). Another interviewee said:

“If sent back home after 3 years, the migrant is discouraged to come back! Everyone loses. Re-entry is not guaranteed. You can be refused visa D, which means a waste of time, money and opportunities. Who would risk coming back if he/she can go somewhere else?” (Interview # 9 with lawyer, Bulgaria, July 2016).

¹⁶ This provision has been amended in the end of 2016 (amendment of Article 24 (1) 6, SG. 97, 6 December 2016) and further detailed in the Implementing Regulation of the AF (amendment of Article 19, SG. 51, 27 June 2017) and currently requires additional check of the activity and the fiscal integrity of the trading company, which the foreigner is to represent in Bulgaria, as well as a document demonstrating the trade representation’s planned activities. This amendment is expected to limit foreigners from using this article as a ground for application for continuous residence permit.

Russians who are trying to reach the five-year threshold for long-term residence shared that they paid 350 EUR per year per person for the renewal of their residence permit and their ID card, and that voluntary “circular migration would be a big risk” (Focus groups with Russian migrants, Bulgaria, September 2016).

Legal and Policy outputs: EU instruments

Local border traffic agreements

The Local Border traffic agreements are instruments that could be of benefit only to Poland with regards to its relations with the Eastern partnership countries. However, the only bilateral local border traffic agreement in force between Poland and its eastern neighbours currently is the 2009 one with Ukraine. The Polish Act on Foreigners stipulates the general provisions on crossing the border under the local border traffic regime (Articles 37-48 AF). According to the agreements, border area residents are persons with documented permanent residence in the border area for a period of at least 3 years, and their spouses and children who are their dependents.¹⁷ The Agreement with Ukraine covers the border area zone up to 30 km from the shared border. The suspended agreement with the Russian Federation provided that the local border traffic regime applied to all of the inhabitants on the Russian side of the Kaliningrad region, and on the Polish side to the residents of large parts of Pomerania and Warmia-Mazury *voivods* (Migrantinfo.pl, retrieved on 27 April 2017).

The fee for submission and processing of an application for a permit is 20 EUR but there are exemptions from the payment of the fee (*ibid*). A local border permit holder can cross the border unlimited times but can stay in the designated border areas for a period of up to 60 days from the date of entry in the case of the Ukrainian citizens, and 30 days in the case of the Russian citizens. However the total period of stay cannot exceed 90 days during any given six months calculated from the date of first entry. The regime, however, shall not affect the EU and national laws applicable to third country nationals in regards to long-term stays and access and exercise of economic activity.¹⁸ Migrants can use this possibility mainly for job seeking rather than for work-related circular migration and therefore this instrument falls outside the scope of the paper.

Initiatives under the GAMM umbrella:

Visa facilitation agreements

The EU has concluded Visa Facilitation Agreements with Russia and all Eastern partnership countries except Belarus. The main features of these agreements are that they aim to simplify and provide a clear determination of the supporting documents that need to be provided regarding the purpose of the journey for certain categories of travellers;¹⁹ facilitation of multi-entry visas for certain categories of travellers; reduction of visa from 60 EUR to 35 EUR and full visa fee waiver for some categories of travellers; reduction of the duration of the application procedure from 15 to 10 calendar days, as well as the possibility to further reducing to 2 working days or less in urgent cases (Andrade et al., 2015, p. 40).

¹⁷ See for example Article 2, Para 1 (e) and Para 2 of the Agreement between the Government of the Republic of Poland and the Government of the Russian federation on the Rules of Local Border Traffic.

¹⁸ See point 24 of C-254/11 Oskar Shomodi [2013] OJ C 156.

¹⁹ For example, for close relatives - a written request from the host person; for persons participating in scientific, academic, cultural or artistic activities, including university and other exchange programmes - a written request from the host organisation to participate in those activities.

Table 2: Overview of the Visa facilitation agreements and visa free regimes with the Eastern partnership countries and Russia

Country	VFA	Visa-free regime
Armenia	2012/2014 ²⁰	
Azerbaijan	2013/2014	
Belarus	Negotiations since 2014	
Georgia	2010/2011	2017
Moldova	2007/2008; 2012/2013 – amended	2014
Russia	2006/2007	
Ukraine	2007/2008; 2012/2013 – amended	2017

Source: Author's own elaboration based on (Elsuwege and Vankova, forthcoming)

The agreements provide for the issuance of multiple-entry visas with a term of validity of 5 years to spouses, children (including adopted) who are under the age of 21 or are dependant, parents (including custodians) and permanent members of official delegations. Multiple-entry visas with a one year term of validity can be issued to, among others, persons participating in scientific, cultural and artistic activities, representatives of civil society organizations travelling regularly, business people and representatives of business organisations, provided that during the previous year they had obtained at least one visa, had used it in accordance with the laws on entry and stay of the state visited.

Generally, these Visa Facilitation Agreements have a visa-free travel regime as their long-term objective (Trauner and Kruse, 2008, p. 421). As a result of the successful Visa Liberalisation Dialogues, a visa-free regime for holders of biometric passports was introduced for Moldova in 2014. Furthermore, in 2016 the Commission presented a proposal for amending the Visa List Regulation 539/2001, moving Ukraine and Georgia to the positive list because they had met the benchmarks for visa liberalisation. In February 2017 the regulation amending the Visa List Regulation moving Georgia from Annex I (countries whose nationals need a visa to enter the Schengen area) to Annex II (visa free countries) was approved by the European Parliament and came into force in March 2017. The Council adopted a regulation on visa liberalisation for Ukrainian citizens travelling to the EU on 11 May 2017.

Mobility Partnerships

The *Oświadczenie* procedure has a dual role, as a national instrument facilitating circular migration and as an initiative which was introduced by Poland under GAMM in response to the Commission's Communication on Mobility Partnerships and Circular Migration in 2007 (Interview # 1 with official, Poland, November 2016). Initially open only to Ukraine, Belarus and Russia, it was gradually included in the scoreboards of the countries from the Eastern partnership, which concluded Mobility Partnerships. Bulgaria, on the other hand, currently uses the GAMM channels mainly to initiate negotiations for the conclusion of bilateral social security coordination agreements (Interview # 1 with official, Bulgaria, July 2016). In addition, it participates in projects that are being implemented by ICMPD and IOM in the Eastern partnership countries but not in any circular migration initiatives.

EU Blue Card Directive

One of the main differences between the transposition of the Blue Card Directive in the two countries is that Bulgaria restricts application for this permit to foreigners who are residing in a third country,

²⁰ The first date corresponds to the date of signature of the agreements, the second to the date of the agreements' entry into force. For more details see the Treaties Office database of the European External Action Service at: <http://ec.europa.eu/world/agreements/>.

whereas Poland allows applications from both inside and outside the country. Both countries require a labour market test during the first two years of a foreigner's stay. Recently, after more than 2 years of lobbying by the IT sector in Bulgaria, the government exempted several IT positions from this procedure on the basis of Article 18 of the ALMLM. In comparison, there are several options for exemptions from the test in Poland; for instance, if the profession that the foreigner will perform in Poland is part of the list of professions and types of work in short supply in the local labour market prepared by the *voivode* (Unterschütz, 2016, p. 185). Exemptions from the labour market test for foreigners and employers are also possible when the foreigner had a work permit or a residence and a work permit immediately before filing the application for the same employer, entrusting him/her to perform work in the same position, or when he/she meets the conditions for exemption of a work permit regulated in the Ordinances pursuant to Article 90 (5) of Act of 20 April 2004 on Employment Promotion and Labour Market Institutions.

Another difference between the two countries is the transposition of Article 2 (g) of the Directive. Poland provides flexibility with regards to the evidence attesting the relevant higher professional qualifications, applying the derogation whereby at least five years of relevant professional experience at a comparable level to higher education qualifications suffices as evidence of higher professional qualifications. Bulgaria on the other hand violates this Article of the Directive requiring both higher education qualification and professional experience. Article 17, Para 2 (1) of ALMLM stipulates only the requirement for a higher education qualification. However, the Implementing Regulation of ALMLM requires both (see Article 15, Para 2 in conjunction with Article 2, Para 1 (4)).

Migrants' perspective on entry and re-entry conditions provided by EU instruments

Initiatives under the GAMM umbrella:

Visa Facilitation Agreements

One of the Russian participants in the focus group shared her experience of multi-entry visas under the Visa Facilitation Agreement with the Russian Federation. The participant from Kaliningrad felt that this type of agreements simplified the entry procedure and “*really facilitate it for people from Russia and Ukraine, as it is easier for them to get visa and they can avoid issuing residency card*” (Focus group with Russian migrants, Poland, November 2016). She was eligible for a multi-entry visa throughout a period of several years based on her employment contract, *Oświadczenie* from employer or civil contracts. After a change of the local consul, who had started to demand additional documents and due to the changed nature of her work in Poland which required longer periods of stay there, she decided to apply for a Pole's Card in order to be able to circulate between the two countries without problems when needed (Focus group with Russian migrants, Poland, November 2016).

Mobility partnerships

Even though the *Oświadczenie* procedure currently covers all six Eastern partnership countries, in practice it is used for circulation purposes mainly by the neighbouring countries. There are several reasons for that. Firstly, according to interviewed experts, the act of extending the *Oświadczenie* procedure to the Eastern partnership countries was driven by foreign policy rather than migration policy (Interview # 4 with expert, Poland, December 2016; Interview # 18 with official, Poland, November 2016). Therefore, this instrument had not been promoted among the local population after the conclusion of the Mobility Partnerships with Armenia, Georgia and Azerbaijan. Secondly, in practice mainly nationals of the neighbouring countries, mostly from Western Ukraine, Kaliningrad and Belarus, were interested in this type of migration because of the costs involved.

According to the interviewed officials and experts, Ukrainians were the main beneficiaries of this opportunity (Interview # 4 with expert, Poland, December 2016. Interview # 18 with official, Poland,

November 2016) (see also Iglicka and Gmaj, 2013). For example, employers from the agricultural sector in the border region between Poland and Ukraine benefited from well-established informal channels for recruitment through a network of bus drivers (Interview # 9 with employer of seasonal workers, Poland, November 2016). Employers contacted them and requested a number of seasonal workers that they needed. The bus drivers recruited the workers. Then the employers registered their declarations in the local labour office in their name, the bus drivers helped the workers with their visa applications and transported them to the employer's farm.

Another pull factor is the higher earnings that Ukrainians make for a few months and can use to support their families when they go back home. Therefore, *“the ones who need some additional money would come for 1 or 1,5 months to pick apples or strawberries. A pensioner would get around 300 PLN as a pension and would earn about 80-100 PLN per day in Poland”* (Interview # 9 with employer of seasonal workers, Poland, November 2016). Along with the geographical proximity, Poland is attracting Ukrainians because of the historical, cultural and linguistic proximity between the two countries (see for instance Kindler et al., 2016).

EU Blue Card Directive

The focus groups in Poland and Bulgaria included mainly participants who were supported through the application process for a Blue Card permit by the IT companies' relocation manager. Yet, they also shared some of the experience of their colleagues who had to apply by themselves at some point in time. Most of the participants explained that they were given a choice between the national general permit and the EU Blue Card, and were advised by the company that was recruiting them to apply for the Blue Card permit. The rest had informed themselves about the advantages of the permit and even about the differences in the EU Members States.

All applicants in Poland first applied for a national visa D to enter the country and stayed on the basis of this visa initially. Some of them indicated that they had to go through a probation period and received a labour contract a few months after their arrival, which would allow them to submit an application for the Blue Card permit (Focus group with Blue Card holders: mixed group of Russian speakers, Poland, December 2016). According to most participants, it took on average six months from the time of receiving a job offer to the time of receiving the Blue Card permit, and 2-3 months, maximum up to 4 months, to receive the actual permit after submitting the application.

In Bulgaria the same process took initially 7-8 months and at the time of the interviews takes on average 5-6 months (Focus group with Blue Card holders from Ukraine and Russia, Bulgaria, September 2016). All interviewed foreigners had to apply for a work authorisation while in their country of origin and then for a visa on the basis of the obtained decision for work authorisation. They needed to present the work authorisation decision and a health insurance to apply for a visa but often the consuls also required a rental contract, from which Blue Card applicants are exempt. The relocation managers had to call the embassies and explain the legal provisions for this group of migrant workers, including that the deadline for issuing visa D for Blue Card holders was 15 working days (Interview # 18 with representatives of an IT company, Bulgaria, September 2016). In practice, this period was not respected and the issuing of visa took up to 30 days. This caused delays adding up to the already long application process.

After they arrived in Bulgaria, foreigners had to find an apartment first because they needed a rental contract in order to be able to apply for the Blue Card permit (Focus group with Blue Card holders from Russia, Bulgaria, September 2016). During this period, which could take up to a month, they could not be officially employed and start working because they had to register their personal number printed on the Blue Card in the National Revenue Agency. Only afterwards the employer could register the employment contract with the same agency and the Blue Card holder could start work.

The main issues raised by respondents with regards to the application procedure in both countries were caused by the condition to prove that the foreigner had a higher professional qualification, either through completion of at least a three-year course of study at a higher education institution or through five years of professional experience in a field that is relevant to the profession. Currently, in violation of the Directive, applicants in Bulgaria are required to present both types of documents – diplomas and proof of professional experience. In addition, the ALMLM does not specify how many years of experience are required and whether they need to have been acquired at the same place of work, which creates problems for applicants and leaves too much discretion to the administration.

One of the respondents in Poland shared that he decided to apply for a Blue Card permit through the procedure taking into account his diploma because his education was directly related to the job position (Focus group with Blue Card holders: mixed group of Russian speakers, Poland, December 2016). However, because the translation of his diploma did not contain the same words as the job description, the local authority officer did not accept his documents and he had to apply on the basis of his professional experience by translating his “workbook”.²¹ Another problem in this regard, as outlined by one of the respondents, was caused by the nature of work arrangements of IT specialists in Ukraine who very often work as sole traders or self-employed (Focus group with Blue Card holders from Ukraine, Poland, December 2016). This would prevent them from proving professional experience and if their diploma was not related to the job description, they would receive refusals.

When asked whether they had returned to their countries of origin for work, those respondents in Poland and Bulgaria who had, said that they had done so several times through the internal “home office” system that the company offers through its network of branches in the region (Focus group with Blue Card holders from Ukraine, Poland, December 2016; Focus group with Blue Card holders from Ukraine, Sofia, September 2016). This type of circulation did not create any problems connected to visas and taxes for them. Apart from that, most of the circulation of the Ukrainian Blue Card holders in Poland was due to personal reasons, although not very frequent because of long queues at the border with Ukraine (Focus group with Blue Card holders from Ukraine, Poland, December 2016). In two cases, the spouses of the Blue Card holders went back and spent up to six months in their country of origin. The interviewed Russians in Bulgaria and Poland were not interested in general in going back to Russia due to political reasons (Focus group with Blue Card holders from Russia, Bulgaria, September 2016; Focus group with Blue Card holders from Russia, Poland, November 2016). Some of them shared that they were afraid for their safety and stated that they might get into trouble because of the Russian laws on currency and tax.

7. Assessment of the entry and re-entry conditions provided by national and EU instruments in Bulgaria and Poland

The presented data suggests that Poland facilitates entry for nationals of Eastern partnership countries and Russia through both national and EU visa policy instruments, as well as on the basis of national mechanisms such as the *Oświadczenie* procedure and the *Karta Polaka*. It is in the process of gradually liberalising access to its labour market through a wide spectrum of exemptions from the requirements of work permit applications and performance of labour market test regulated through several Ordinances. Nevertheless, even these channels for facilitated entry do not remedy migrants’ difficulties in finding jobs or potential employers, which necessitates the use of fake declarations as part of the *Oświadczenie* procedure as an entry mechanism. It is expected that the visa liberalisation with Ukraine would bring positive change in this regard.

²¹ According to one of the respondents: “Work book in Russia is the official CV from the Russian employer. It comes from the Soviet Union”. From focus group with Blue Card holders: mixed group of Russian speakers, Poland, December 2016.

Contrary to Poland, Bulgaria does not provide options for facilitated entry for any citizens from the Eastern partnership countries. They can benefit only from the EU visa facilitation instruments developed or through the fast-track citizenship procedure in case they decide to apply for Bulgarian citizenship on the basis of Bulgarian ethnic origin. Bulgaria follows its pre-accession “catch-up and imitation” model and has created an extremely restrictive national legislation, which triggers various circumvention practices as described by migrants. The transposition of EU labour migration law also follows this restrictive entry policy line, which renders possibilities created by these EU norms ineffective. Only recently under pressure by the IT companies in Bulgaria, entry conditions for Blue Card holders have been slightly liberalised and several positions in the IT sector have been exempted from the performance of a labour market test.

The Polish migrants interviewed use different EU and national circulation-friendly instruments as part of their changing migrant-led trajectories. In contrast, the restrictive entry policies in Bulgaria trigger “forced circularity”, which aim to keep migrants in a temporary position. This conclusion is supported by governmental plans to re-initiate the signing of bilateral agreements for temporary employment. Migrants find voluntary circulation too risky because it involves much effort to enter the country and stay, whereas their main goal is to obtain long-term residence. Blue Card holders are an exception in this regard because they use their internal “home office” mechanisms to circulate back and forth. Outside of this practice however, they are not interested in going back to their countries of origin for work.

8. Conclusion

EU’s circular migration concept has entered the migration policy agendas of Bulgaria and Poland as part of the policy transfer driven by the Europeanisation process. It is an empty shell filled by EU and national instruments, which are developed and implemented successfully, as the Polish case demonstrates, in cases where there were already existing spontaneous patterns of circularity. On the ground, circular migration is “shaped by labour market dynamics, and driven by the agency of the migrants” and does not necessarily match the EU’s approach (Triandafyllidou, 2013). The empirical data gathered through the conducted focus groups supports this conclusion by illustrating that migrants do not always follow the predetermined model of migration as envisaged by policy makers. Furthermore, in the case of Russian and Ukrainian migrants, factors such as the political situation in their countries of origin also contributed to changes in their migration trajectories.

Bulgaria and Poland present two contrasting examples when it comes to implementation of circular migration policies. Their pre-accession models are still valid and provide an explanation for the (lack of) developed circular migration instruments. Poland’s “combative” strategy characterised by a strong national stance on maintaining the existing close contacts in the eastern neighbourhood led to the development of instruments facilitating circular migration on both EU and national level, to a great extent as a reaction to the created Schengen barriers. The entry and re-entry conditions that they provide allow for migrant led-trajectory and voluntary circulation. Nevertheless, Poland needs to target more efforts in the enforcement of rights-based circulation, which will protect migrants’ rights. The outlined problems put migrant workers in a vulnerable position and can lead to abuse from their employers (see also Iglicka and Gmaj, 2013). In contrast, Bulgaria has created restrictive migration legislation, which leads to “forced circulation” on the basis of both national and EU law. Due to the restrictive entry conditions and the involuntary circulation mechanisms for change of visas and statuses, migrants’ main desire is to achieve security of residence after five years and not to circulate between their countries of origin and destination. This type of circular migration approach resembles the guest worker’s model and does not provide for a migrant-led trajectory. Furthermore, it is a breeding ground for migrants’ rights abuses. It pushes migrants into circumvention of the legislation, leads to dependency from employers and leaves wide discretion to the administration.

References

A. Primary sources

Official documents:

Poland:

ACT ON EMPLOYMENT PROMOTION AND LABOUR MARKET INSTITUTIONS, Consolidated text Journal of Laws of 2015, item 149 as amended

ACT ON FOREIGNERS, Journal of Laws of 2013, item 1650 as amended

ACT ON THE POLE'S CARD, Consolidated text, Journal of Laws of 2014, item 1187 as amended

Bulgaria:

ACT ON FOREIGNERS, State Gazette 153 from 23 December 1998, last amendment in State Gazette State 103 from 27 December 2016

ACT ON LABOUR MIGRATION AND LABOUR MOBILITY, State Gazette 33 from 26 April 2016, last amendment in State Gazette 97 from 6 December 2016

National Strategy on Migration and Integration (2008-2015), Sofia 2008

Migration Policy of Poland: current state of play and further actions, Warsaw 2012

EU:

EUROPEAN COMMISSION, Communication on Policy Plan on Legal Migration, COM (2005) 669

EUROPEAN COMMISSION, Communication on circular migration and mobility partnerships between the European Union and third countries, COM (2007) 248

Interviews:

Poland:

Interview # 1 with official, Poland, November 2016

Interview # 2 with academic, Poland, November 2016

Interview # 4 with expert, Poland, December 2016

Interview # 9 with employer of seasonal workers, Poland, November 2016

Interview # 17 with official, Poland, November 2016

Interview # 18 with official, Poland, November 2016

Bulgaria:

Interview #1 with official, Bulgaria, July 2016

Interview # 8 with lawyer, Bulgaria, July 2016

Interview # 9 with lawyer, Bulgaria, July 2016

Interview # 18 with representatives of an IT company, Bulgaria, September 2016

Interview # 20 with officials, Bulgaria, July 2016

Focus groups:

Poland:

Focus group with Russian migrants, Poland, November 2016

Focus group with Ukrainian migrants, Poland, November 2016

Focus group with Blue Card holders from Ukraine, Poland, December 2016

Focus group with Blue Card holders from Russia, Poland, December 2016

Focus group with Blue Card holders: mixed group of Russian speakers, Poland, December 2016

Bulgaria:

Focus group with Russian migrants, Bulgaria, September 2016

Focus groups with Ukrainian migrants, Bulgaria, September 2016

Focus group with Blue Card holders from Ukraine, Bulgaria, September 2016

Focus group with Blue Card holders from Russia, Bulgaria, September 2016

B. Secondary sources

ANDRADE, P. G., MARTIN, I. & MANANSHVILI, S. 2015. EU cooperation with third countries in the field of migration. Study for the LIBE Committee, European Parliament; Policy Department of Citizens' rights and Constitutional Affairs.

BOBEVA, D. 1994. Emigration from and Immigration to Bulgaria. In FASSMANN, H. and MÜNZ, R. (eds.), *European migration in the late twentieth century. Historical patterns, actual trends, and social implications*. Hants: Edward Elgar Publishing.

CASTLES, S. & OZKUL, D. 2015. Circular Migration: Triple Win, or a New Label for Temporary Migration? In: BATTISTELLA, G. (ed.) *Global and Asian Perspectives on International Migration*. Switzerland Springer International Publishing.

ELSUWEGE, P. V. & VANKOVA, Z. forthcoming. Migration and Mobility in the EU's Eastern Neighbourhood: Mapping out the Legal and Political Framework. In: IPPOLITO, F., BORZONI, G. & CASOLARI, F. (eds.) *Bilateral relations in the Mediterranean: Prospects for migration issues*. Cheltenham: Edward Elgar.

EUROPEAN MIGRATION NETWORK 2011a. Temporary and Circular Migration in Bulgaria: empirical evidence, current policy practice and future options in EU Member States.

EUROPEAN MIGRATION NETWORK 2011b. Temporary and Circular Migration in Poland: empirical evidence, current policy practice and future options in EU Member States.

EUROPEAN MIGRATION NETWORK 2012. Visa policy as migration channel in Poland. National report.

EUROPEAN MIGRATION NETWORK 2015. EMN Focussed Study 2015: Changes in immigration status and purpose of stay: an overview of Bulgarian approaches.

EUROPEAN PARLIAMENT 1999. Bulgaria LIBE Committee. Retrieved at http://www.europarl.europa.eu/workingpapers/libe/104/bulgaria_en.htm#top on 2.05.2017.

- FARGUES, F. 2008. Circular Migration: Is it relevant for the south and east of the Mediterranean? *CARIM - AS*, 2008/40.
- GRABBE, H. 2006. *The EU's Transformative Power. Europeanization Through Conditionality in Central and Eastern Europe*. Palgrave Macmillan UK
- GROS-TCHORBADJIYSKA, A. 2010. *The Europeanization of Visa Policy: A Transfer of Sovereignty Shaped by enlargement (PhD dissertation)*. Katholieke Universiteit Leuven
- HUGO, G. 2013. What We Know About Circular Migration and Enhanced Mobility. *Policy Brief No7. Migration Policy Institute*.
- IGLICKA, K. 2007. Poland In: TRIANDAFYLLIDOU, A. & GROPAS, R. (eds.) *European Immigration: A Sourcebook*. 1st Edition ed.: Ashgate
- IGLICKA, K. & GMAJ, K. 2013. Circular Migration Patterns between Ukraine and Poland In: TRIANDAFYLLIDOU, A. (ed.) *Circular migration between Europe and its neighbourhood: choice or necessity?* Oxford: Oxford University Press.
- JILEVA, E. 2002. Larger Than the European Union: The Emerging EU Migration Regime and Enlargement In: LAVENEX, S. and UCARER, E. M. (eds) *Migration and the Externalities of European Integration*. Lanham, MD: Lexington Books
- KEPINSKA, E. & KINDLER, M. 2014 Poland In: TRIANDAFYLLIDOU, A. & GROPAS, R. (eds.) *European Immigration: A Sourcebook*. 2nd Edition ed.: Ashgate
- KICINGER, A. & KORYŚ, I. 2011. The case of Poland. In: BORKERT, M., PENNINX, R. & ZINCONE, G. (eds.) *Migration Policymaking in Europe: The Dynamics of Actors and Contexts in Past and Present*. Amsterdam University Press.
- KICINGER, A., WEINAR, A. & GORNY, A. 2007. Advanced yet Uneven: the Europeanization of Polish Immigration Policy In: FAIST, T. & ETTE, A. (eds.) *The Europeanization of National Policies and Politics of Immigration: Between Autonomy and the European Union*. Palgrave Macmillan.
- KINDLER, M., KORDASIEWICZ, A. & SZULECKA, M. 2016. Care needs and migration for domestic work: Ukraine-Poland. *Global Action Programme on Migrant Domestic Workers and their Families. An ILO/UE project*. Geneva
- KOZAK, I., TOTA, M. & WOJCIK, B. 2014. *Long-term Residence of Foreigners in Poland in the Light of Act on Foreigners of 12 December 2013* Lublin, Rule of Law Institute Foundation.
- KRASTEVA, A., OTOVA, I. & STAYKOVA, E. 2011. Labor Immigration to Bulgaria. *European migration network report*.
- LESINSKA, M., DUSZCZYK, M., SZULECKA, M., SZCZEPANSKI, M. & STEFANSKA, R. 2010. Migration Policy in Poland and its impact on the inflows and settlement of immigrants In: GRABOWSKA-LUSINSKA, I., OKOLSKI, M., LESINSKA, M. & GORNY, A. (eds.) *Immigration to Poland: Policy, Employment, Integration*. Warszawa: Wydawnictwo Naukowe Scholar.
- MARKOVA, E. & VANKOVA, Z. 2014. Bulgaria. In: TRIANDAFILLIDOU, A. & GROPAS, R. (eds.) *European Migration: A Sourcebook*. Ashgate.
- MÜLLER, A. 2014. *Governing mobility beyond the state: centre, periphery and the EU's external borders* Palgrave Macmillan.
- OECD 2011. *International Migration Outlook: SOPEMI 2011*.

- OKOLSKI, M. 2001. The transformation of spatial mobility and new forms of international population movements: Incomplete migration in Central and Eastern Europe *In: DACYL, J. W. (ed.) Challenges of Cultural Diversity in Europe*. Stockholm: CEIFO.
- OLSEN, J. 2002. The Many Faces of Europeanization. *Journal of Common Market Studies*, 5.
- OPEN SOCIETY INSTITUTE SOFIA 2011. Current Trends in Cross-border Workforce Migration, in Labour Migration Trends and the free movement of people – the effects for Bulgaria.
- PAWLAK, M. 2015. Research-Policy Dialogues in Poland. *In: SCHOLTEN, P., ENTZINGER, H., PENNINX, R. & VERBEEK, S. (eds.) Integrating Immigrants in Europe: Research-Policy Dialogues*. Springer International Publishing.
- SKELDON, R. 2012. Going Round in Circles: Circular Migration, Poverty Alleviation and Marginality. *International Migration*, 50, 43-60.
- STOLA, D. 1998. Poland as a Migration Middle Zone at the EU Eastern Border *In: HAKOLA, K. (ed.) Migration and Refugee Policy on the Eastern Border of the European Union*. University of Jyväskylä.
- TRAUNER, F. & KRUSE, I. 2008. EC Visa Facilitation and Readmission Agreements: A New Standard EU Foreign Policy Tool? *European Journal of Migration and Law*, 10.
- TRIANDAFYLLIDOU, A. 2013. Circular Migration at the Periphery of Europe: Choice, Opportunity, or Necessity? . *In: TRIANDAFYLLIDOU, A. (ed.) Circular migration between Europe and its neighbourhood: choice or necessity?* Oxford: Oxford University Press.
- UNTERSCHÜTZ, J. 2016. National Report on Implementation of EU Migration Directives in Poland *In: BLANPAIN, R., HENDRICKX, F. & OLSSON, P. H. (eds.) National Effects of the Implementation of EU Directives on Labour Migration from Third Countries*. The Netherlands: Kluwer Law International.
- VANKOVA, Z. 2016 EU Circular Migration Policies: Dead or Alive? Developing a Rights-based Benchmark Framework for Policy Assessment. *Journal of Immigration, Asylum and Nationality Law*, 30.
- VERTOVEC, S. 2007. Circular Migration: The Way Forward in Global Policy? *International Migration Institute Working papers, University of Oxford*. University of Oxford.
- WICKRAMASEKARA, P. 2011. Circular Migration: A Triple Win or a Dead End. *Discussion Paper No 15, The Global Union Research Network*.
- ZOGATA-KUSZ, A. 2013. *Labour immigration policy in a country known for emigration: Poland's policy towards economic immigration after EU accession*, Olomouc: Univerzita Palackého v Olomouci.

Internet sources:

- POLISH NATIONAL CONTACT POINT TO THE EMN, 2013, information retrieved from <https://emn.gov.pl/ese/news/10543,Poland-abolished-long-term-visa-fees-for-Moldovan-citizens.html>
- MIGRANTINFO.PL, information retrieved from http://www.migrant.info.pl/Local_border_traffic.html

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