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# Migrant Workers on the Borderline: A Socio-Legal Study of the Implementation of an EU Directive

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## Abstract

This masters thesis in Sociology of Law is a comparative study which explores Europeanization, or more specifically how an EU directive is interpreted by the relevant bureaucratic institutions of a selection of EU countries. Through a discourse analysis based on gender theory, it is shown that from currently developing EU legislation on work permits emerges a policy of differentiation between migrant workers based on to what type of work these permits pertain. It is also shown through a further text content analysis of easily available official information on work permit application procedures that the institutions of a selection of EU countries interpret the EU legislation discourse very differently. The results indicate the existence of norms that are shaped by an institutional procedure, norms that cause the actual social effect to deviate from the intended effect.

Using a model based on multi-level governance, the socio-legal part of the thesis explores how a bureaucratic institution can be used as an instrument of power as interpreted from the ideas of Michel Foucault, and some problematic issues of norm-setting that occur in that process. It also explores from a gender perspective the Foucault-based concept of the subject in process as presented by Moya Lloyd as well as Ruth Lister's idea that citizenship is an experience as well as a legal status. The methodological part suggests a method for indicating Europeanization using a combination of critical discourse analysis and content analysis. It also provides a preliminary formula that—with some modifications—may provide a quite time-efficient but at the same time legally *and* socially comprehensive means of indicating Europeanization trends in comparative studies. The work retains a socio-legal focus intent on exploring the process by a bureaucratic institution of interpreting a legislative directive into a social context.

Key Terms: Michel Foucault, EU legislation, Europeanization, migrant work, bureaucracy, discourse analysis, multi-level governance

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## 1. Introduction

When I went to college in the USA in the early 1990's, I was offered a part time job at a municipal day care centre during my senior year. With only a student visa, I would not be allowed to take the job unless I got a work permit from the INS (Immigration and Naturalization Service). With some help from the international student advisor at the college, I soon had all the required documentation to apply: An application form for a work permit, a letter of confirmation from my college that I was a full time student, and a letter of confirmation from my would-be employer that the job was on a part time basis, and that my pay would not be below minimum wage. I would in fact receive the minimum wage. As I recall, it was \$4.25 an hour at the time.

To get my work permit, I was required to go personally to the local INS office. The advisor at the college gave me a strongly urged tip: the INS office opened at 7 a.m., but I would be wise to sacrifice a few hours' sleep and get there no later than 5.30 in the morning. Sure enough, when I arrived at the little square barracks-looking one-story building in an area not quite within and not quite outside the premises of Orlando International Airport at 5.45, there were about ten parties in front of me. There were both men and women, some had brought their children. One thing was obvious as the line gradually grew longer behind me: by appearance I was the odd one out, being the only Caucasian. The majority was Asian or Latin American.

The office opened at 7 a.m. and as there were a good number of officers there, my turn came up after just over an hour. By that time, none of the people ahead of me had come back out from their interviews. I went inside, presented my papers, was asked a few questions, then my application was approved and I was given a little laminated card that represented my work permit. I was commended on the fact that I had all the right paperwork ready from the start. The process took maybe fifteen minutes and I went back outside. The people that had been standing behind me in line were still waiting as I left.

A few years back, my brother in law was offered a very high executive position in the Canadian branch of an internationally prominent Swedish furniture store. In order to take the job, he would also require a work permit. He asked the human resources people at the company if this was a difficult process, and they told him not to worry.

When he arrived with his family at Toronto International Airport, at the immigration desk he stated that he was coming to work in Canada. The immigration officer checked his computer and said, "Why of course Mr. -----. I see you're expected. Just follow this officer and we'll take care of you."

Sure enough, the whole family was brought by the second officer to a cosy office, where a third officer had all the paperwork in front of him, neatly sent in by the furniture company HR department, including the application form, the confirmation letter from the company that he would not be working for below minimum wage (!), and a fairly extensive letter from the company's attorney. The interview took only a few minutes—they didn't even have time to finish the coffee they were offered—and mainly consisted of signing the already prepared application forms. A few minutes later, the family had long term visas for Canada with work permits for my brother-in-law.

Above I related two detailed stories of migrant work, one for unskilled and one for highly skilled work, and offered a shadow of a third, which I presume was mainly also for unskilled work. Allowing for the fact that INS processes may differ somewhat between the USA and Canada, I expect that the experiences described above are not so different from what would be experienced in many other countries. In all three cases, it is clear that the bureaucratic process

is important, complex, and dependent upon willing and able contacts from within the permit-granting country. There is also an indication that the physical facilities for handling the bureaucratic process is different depending on if the process concerns skilled or unskilled labour. This by extension indicates differentialization based on class. The group constitution I observed at Orlando Airport suggests that race is also a factor. Depending on the type of work, gender may also prove to be a factor, particularly in the unskilled work sector. For example, it may be easier for a confirmation letter from a manufacturing company in a typically male-dominated work environment to be accepted by the authorities, than one from a private household wishing to employ a woman for stereotypical housework.

## 2. Problem Description

### 2.1. Immigration Policy Reform and its Purpose

The so-called EU immigration policy is currently undergoing a reform with the aim of providing an all-covering and unified immigration policy (“balanced, comprehensive and common”<sup>1</sup>), so that immigrants will be treated the same way regardless of which EU country they choose to enter. A common policy is expected to, in the long run, contribute to the economic development of the whole community.

In theory, the adoption of an EU policy should lead to a homogenisation of national legislation, so the experience at the social level is reasonably similar regardless of which EU country is studied. Thus the national legislation that follows an EU policy should show similarities between individual nations rather than differences. Several studies show, however, that the implementation rate is very different in a comparison between EU countries.

### 2.2. Previous Research on Europeanization

Töller (2010) describes a number of different methods for measuring Europeanization, noting advantages and flaws in each. She calls for “the development of an *analytical tool* to measure the scope and extent of the Europeanization of national public policies across policy fields, time and countries, as a means of improving our knowledge and as a starting point for *explaining variance* across policy fields, across time and, most interesting, across countries.”<sup>2</sup>

Lampinen and Uusikylä (1998) compare the implementation rate to four indicating characteristics of the researched countries: political institutions, the degree of corporatism, citizens’ support for the EU and political culture, trying to find a correlation between any of these and the implementation rate. Results show that a “stable political culture combined with efficient and flexible institutional politico-administrative design” have a positive correlation with the implementation rate of a country.<sup>3</sup>

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<sup>1</sup> [http://ec.europa.eu/home-affairs/policies/immigration/immigration\\_work\\_en.htm](http://ec.europa.eu/home-affairs/policies/immigration/immigration_work_en.htm) 2012-02-21.

<sup>2</sup> Töller, pp. 417-8. Italics in the original.

<sup>3</sup> Lampinen and Uusikylä, p. 248.

Perkins and Neumayer (2007), in their study of economic incentives for following directives, approach the implementation rate question somewhat differently. They study the number of times the Commission has served a country with a “reasoned opinion,” in effect an argument to show that the concerned state has failed to implement a directive as intended by the Commission. Their results show that net receivers within the EU receive a greater number of reasoned opinions.<sup>4</sup> In other words, these countries fail to implement EU law the most. Another interesting observation from Perkins and Neumayer shows that there is “a negative and statistically significant relationship between voting power per capita in EU institutions and the number of reasoned opinions issued by the Commission.”<sup>5</sup> Does this indicate that a voting advantage in the Commission gives the consequential advantage that directives can be phrased to better suit existing domestic legislation? Or does it mean that a voting advantage stops the Commission from ‘taking action’ in the form of reasoned opinions? Both explanations are possible. Perkins and Neumayer also observe that “countries with higher bureaucratic quality and newly acceded states have fewer infringements.” Furthermore, “member states with a common law, French civil law or German civil law tradition all have a higher number of infringements than countries with a Scandinavian legal system.”<sup>6</sup> This is confirmed by Börzel et al. (2010), which also notes that the “United Kingdom is much more compliant than Italy, which commands similar political power but whose bureaucracy is far less efficient.”<sup>7</sup> This study also shows that political power within the EU appears to have no significant bearing on the compliance rate. “Power-based theories have to ask themselves why France and Italy yield similar economic and political power in the EU as Germany and the United Kingdom but are much less compliant.”<sup>8</sup>

Gerda Falkner attempts to provide a concrete perspective on measuring Europeanization, or “the reactions in domestic systems to top-down influences from the EU-level, be they directly induced by EC law or indirectly by European policies such as the Maastricht convergence criteria.”<sup>9</sup> Falkner identifies several problems in studying Europeanization, all of which point towards the same basic problem: the complexity of applying a common law in multiple legal systems. “We can only estimate the practical effect of any EU policy if we know where the member states started their process of adaptation. In other words, establishing in a detailed manner both the status quo ante in the member states and the demands embedded in any European directive is crucial. This is, at least in research practice, far from easy. Much EU regulation touches intricate details of national legislation that no one but a national expert can know. The great effort needed explains why qualitative implementation studies have traditionally only analysed a few cases.”<sup>10</sup> In a later study the implementation of new labour laws in three new EU countries (Falkner 2010), has met with little resistance, neither politically nor, so it would seem, from the population. When it comes to the *real* implementation, actually applying the new legislation (law in action), the changes are

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<sup>4</sup> Perkins and Neumayer, p. 197.

<sup>5</sup> Ibid., p. 197.

<sup>6</sup> Ibid., pp. 198-9.

<sup>7</sup> Börzel, pp. 1363-4.

<sup>8</sup> Ibid., p. 1366.

<sup>9</sup> Falkner (2003), p. 1.

<sup>10</sup> Ibid., p. 3.

noticeably slower. Falkner notes that introducing the legislation (law in the books) identifies three problematic factors in assessing the compliance of EU law:

1. Information for her studies are gathered from experts and focus groups specifically studying the implementation process of labour law. The findings are therefore questionable with respect to what would actually be found in the direct study of court cases. This is, to an extent, a specific problem with Falkner's set-up. At the same time, a study that could completely disregard this problem would have to be conducted by somebody (or a close-knit research group) with a full command of ALL EU languages and specific country cultures.
2. The studies cannot take into account other ongoing reform processes in the studied countries. In the 2010 study, the idea of EU law was so new, it could hardly be expected to have been assimilated into domestic legislation.
3. It is difficult to compare social effects of new legislation between different countries. The historical experiences and cultural structure of countries are so very different, it is very difficult to find an 'original point' with which to make a comparison.<sup>11</sup>

Falkner's methodological solution lies in identifying "the 'misfit' between European rules and pre-existing national standards that have to be replaced by the former in the implementation process and creating an index to provide a comparative illustration of to what extent a specific EU legislation is implemented... The argument is based on the assumption that one can expect a smooth implementation process if a directive requires only small changes to the domestic arrangements. Implementation problems, by contrast, are expected if a considerable degree of misfit must be rectified by a member state."<sup>12</sup>

I agree with all three points of Falkner above. However, I would suggest that her approach contains a flaw in that the approaches generally focus only on the political level without a regard for the social implications. She defines three types of misfits: policy, policy/polity, and costs. These three focus on problems at the national state level to explain why the implementation at the domestic law level differs between EU countries. From this perspective, the social effects at the individual level are discarded. This results in missing the overarching goal of finding the causes for misfits in the Europeanization process. Falkner also concedes (points two and three above) that her method is difficult to apply fully, as it does not take into account the social context into which new legislation is entered.

### 2.3. Purpose of the Thesis

**The purpose of this thesis is to explore what happens when an EU directive is passed down to individual countries and their law-implementing institutions, but also to suggest a method for measuring Europeanization that is based on Sociology of Law.** Legislation is primarily directed at achieving social effects, not simply exercising political power for power's sake. My suggestion is an approach that asks questions from the social level

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<sup>11</sup> Falkner (2010), pp. 110-2.

<sup>12</sup> Falkner (2003), p. 2.



perspective and then ‘returns back’ to the implementation at the domestic law level. This will provide more practical and socially relevant answers on how ‘possible’ it is to implement a specific EU legislation, than a legal/political perspective.

What I am suggesting is an approach, where ‘Europeanization measurement’ is the overlying question, with a gender-based theory that provides the units of the “yardstick”<sup>13</sup> used for the measuring in combination with a model of multi-level governance. The theory and method carry the common denominator of Michel Foucault, as first I explore how law and the legal system can be seen as an instrument of power, where the same European directive provides different degrees of social effects depending on the national context wherein the directive is ‘converted’ into national law. I also explore how a subject is constituted through discourse (with some added help from gender theory). This illustrates that the creator of the discourse—in this case national migration institutions interpreting a legal change—are the key actors in the interplay created by the implementation of a European directive. Because the discourse of work permit applications is constructed as a monologue, the individuals that the directives are meant to protect—working migrants—become props rather than actors.

### 3. Project Description and Research Questions

The question of work permits for migrants is controversial, since it involves two politically loaded topics: increasing immigration from the outside and effects on the labour market on the inside. “Labour policy that crosses international borders differs from national labour policy because it attempts to regulate relations between sovereign national political communities. This adds an extra layer of complexity to labour policy that tends to be highly charged even in the domestic context.”<sup>14</sup> The possible effects on the labour market include increasing unemployment and a lowering of wages. At the same time, migrant workers may also fill a gap of required labour in specific sectors. These sectors can be as diverse as highly skilled medicine to unskilled manual labour in the agricultural sector. The national interpretation of ‘desirable work migrants’ is not either, as might be suspected, isolated to skilled labour. Thomas Schindlmayr points out that “the need for workers is demonstrated by the reluctance of governments to deport ‘useful’ undocumented migrants, such as Mexicans working on agricultural farms in California (Greenhouse, 2000), and over-stayers working on Australian plantations and in the hospitality industry. Multinational firms desire the flexibility to move workers from country to country to alleviate skill shortages in their operations.”<sup>15</sup> In other words, in a globalized world nation states may adjust their criteria for granting work permits depending on current market conditions, rather than on Migration law. “Immigration challenges—and in some cases reaffirms—notions of national identity, sovereignty, and state control that have historically been linked to citizenship.”<sup>16</sup>

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<sup>13</sup> Yardstick is a term I borrow from Falkner.

<sup>14</sup> Yeates, p. 126.

<sup>15</sup> Schindlmayr, p. 117.

<sup>16</sup> Bloemrad et al., p. 154.

The facts above illustrate that the group ‘working migrants’ cannot be viewed or treated as a homogeneous group. Differences in skills, country of origin, class and cultural background as well as gender each play a part in the individual’s migration experience. This ties in with Moya Lloyd’s concept of identity and Ruth Lister’s concept of the experience of citizenship, which I address below. Both are responses to essentialist perspectives on the treatment of groups with a view to inclusion and exclusion. These two concepts form my theoretical guide in my approach to this topic.

Treating legal subjects differently due to their background is problematic. The principle of what we call a normal legal process is that all subjects are treated equally under the law. In other words, in a broad legal sense all work permit applicants should be treated as one homogeneous group; putting it in gender terms, ‘law in the books’ calls for ‘essentialist treatment.’ This creates a tension with ‘law in action,’ wherein social factors do play a part in the legal decision process, as Lloyd’s identity and Lister’s experience concepts indicate. Therefore in the application of law some groups may be disadvantaged whereas some have an advantage, even though they are technically subjected to the same legal process.

**This paper addresses two questions. The first concerns the currently developing work migrant policy of the EU. Do the directives associated with this policy contribute to a process of differentiation based on the origins, skills, or other characteristics of work permit applicants?**

**The second question addresses the national implementation process of EU directives by a selection of EU countries with respect to the same policy. Is there a difference in how the migration departments of this selection of countries apply EU directives?**

The first question is answered by analysing the discourse created by commonly available material on official EU sites as well as the directive texts. The second question is addressed through a comparison between the EU discourse attained in the first study and the corresponding discourses of a selection of five EU countries, as drawn out from a quantitative content analysis. The focus of the second question will be primarily on measuring the degree to which individual countries adopt and adapt to new EU directives.

The aim of the study is practical as well as theoretical. From a practical standpoint, an EU work permit policy whose aim is partly to differentiate between migrants is questionable from the perspective of legal security, especially if the policy is also applied differently by different EU countries. It would not only be questionable from a legal standpoint, but would also affect the experience of the citizenship status of the applicant. From a theoretical perspective, I wish to explore Foucault’s concept of power and how this applies to a socio-legal issue; and also how a model of multi-legal governance can be applied socio-legally. Furthermore, I am suggesting a method for indicating how a process of legal interpretation is reproduced through official internet sources.

## 4. Theoretical Considerations of Europeanization

### 4.1. Previous Research on European Governance

The majority of studies on European governance take on a political science-based framework, but many with an approach related to legal and constitutional structures and norms. Sandholtz and Stone Sweet (1998) identify a number of perspectives on institutional development and supranational governance with respect to European integration. Hix (1998) and Jarle Trondal (2010 and 2011) use rather different approaches to observe the same phenomenon, generally based on the idea that the decision-making system of the EU is 'stream-lined' by an informal structure. Hix claims that the EU should be viewed as a form of 'new governance' in which informal contacts, networks and norms carry great importance in the decision-making process of the EU. Trondal identifies a so-called European Executive order, which—if it exists—requires the fulfilment of a combination of both formal and informal conditions. Stone Sweet (2004) shows that the continually expansive judicial construction of the EU has effectively caused the community to develop from a union of values to one of norms.

From a 'purer' socio-legal perspective, Cotterrell (2012) discusses the importance of conceptualizing transnational law as a new legal field. The concept of legal plurality with respect to co-habiting societies and groups has been discussed by, among many, Melissaris (2004) and Teubner (1996).

### 4.2. Europeanization: A Socio-legal Model

The socio-legal approach to this paper relates to how 'higher level law' (represented by EU policies) affects 'medium level law' (represented by national legislation). In her recent dissertation Julija Naujekaite (2011) discusses this from the perspective of Multi-Level Governance (hereafter MLG). MLG is a model that has developed since the early 1990's "as an analytical framework to analyze developments in the EU empirically."<sup>17</sup> Primarily developed within the field of political science, the model is used to explain the mechanisms involved in the application of law, when these concurrently apply to several different states, each with a different form of national governance. "Most specifically in this case, multi-level governance crosses the traditionally separate academic domains of domestic politics and international politics."<sup>18</sup> MLG has primarily developed from studies of the EU.

MLG can be illustrated in both vertical and a horizontal dimensions. The multilevel dimension "refers to the increasing interdependence of actors situated or nested at different territorial levels—supranational, national, and subnational,"<sup>19</sup> whereas the governance dimension "refers to the increased role of nonstate actors in decision making."<sup>20</sup> Hooghe and Marks identify two forms of MLG, called type I and type II. Type I "is concerned with power sharing among governments operating at just a few levels. Federalism is chiefly concerned

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<sup>17</sup> Bache, Multilevel governance.

<sup>18</sup> Ibid.

<sup>19</sup> Ibid.

<sup>20</sup> Ibid.

with the relationship between central government and a tier of non-intersecting subnational governments. The unit of analysis is the individual government, rather than the individual policy.”<sup>21</sup> Type II is a form of MLG “in which jurisdictions are aligned not on just a few levels, but operate at numerous territorial scales; in which jurisdictions are task-specific rather than general-purpose; and where jurisdictions are intended to be flexible rather than durable.”<sup>22</sup> Whereas type I puts a focus on the transfer of governance from higher to lower levels of governance (such as a legal directive from the EU down to national legislation), type II is concerned with decision-making across different forms of actors and organisations, including nongovernment . For this thesis, where only government institutions are studied, type I is the most useful model to illustrate what happens as legislation is passed from the supranational level (EU directive) through the national level (the passing of legislation) and finally to the subnational level (the application of national legislation).

Bulkeley et al. have illustrated type I MLG as follows:

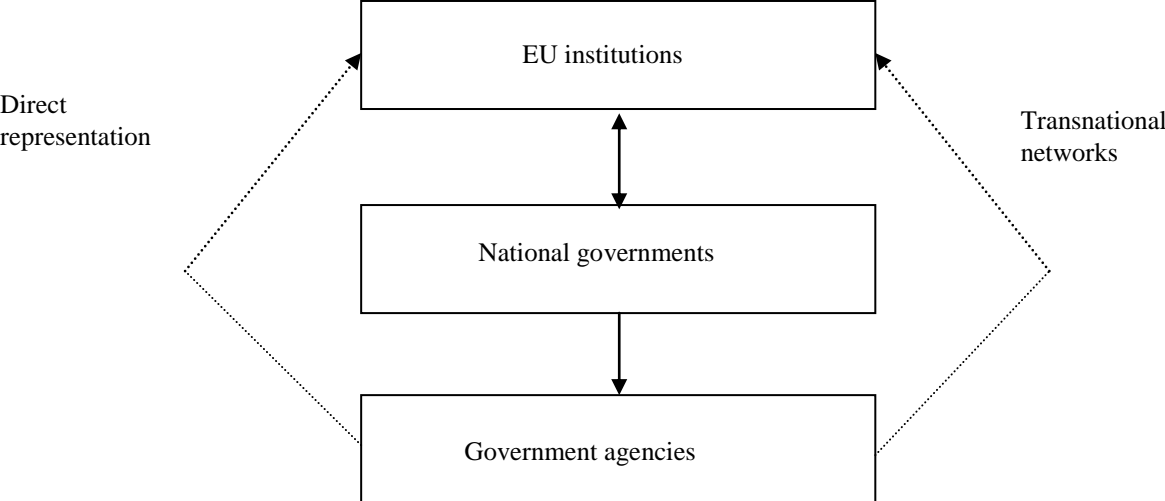


Figure 1: Type I (nested) multilevel governance (slightly modified).<sup>23</sup>

The figure above illustrates the ‘transfer of governance’ from the type 1-perspective of MLG. As is seen in the model, the step between EU institutions and national governments works in a two-way relationship. With respect to law, this implies that the legislative process involves a dialogue. The EU issues a directive, based on input provided by national political representatives in the European Commission and Parliament. The implementation of the law—as far as the passing of the law—also takes place in this dialogue, as national governments report back to the Commission that the directive has been passed as national law and in what manner. The application of the law, however, is delegated from the legislative body of the national government and down to bureaucratic government agencies, whose task it is to interpret and apply the law. The EU does not receive feedback from these government agencies, other than indirectly through direct (political) representation or other organisations, such as transnational networks. In the case of work permit directives, for example, the national immigration institution may provide some feedback through its national political

<sup>21</sup> Hooghe and Marks, p. 17.  
<sup>22</sup> Ibid., p. 20.  
<sup>23</sup> Bulkeley et al., p. 238.

body responsible for foreign policy, labour market, or legislation to the national commissioner responsible to represent the country with respect to the directive. Such an indirect feedback increases the risk that problems in practical applications are ‘forgotten’ in the legislative process, and only discovered afterwards.

The transfer of governance partly corresponds to Håkan Hydén’s model of the supra-state, state, sub-state and societal levels in a chain of implementation for international law as illustrated in figure 2, wherein Hydén provides a summary of the implementation chain with respect to the EU legislative process:

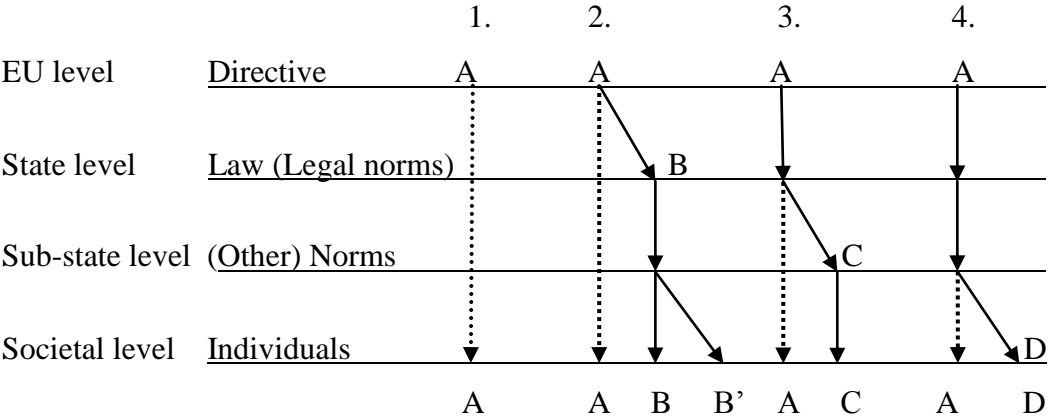


Figure 2: Possible deviations in multi-national law implementation (slightly modified).<sup>24</sup>

In the words of Naujekaite, “this order represents a clear top-down perspective of implementation and corresponds to nested MLG (Type I).”<sup>25</sup> I consider it, along with the extension of this model presented in figure 3, an excellent model to illustrate the *process of interpretation* of new supranational legislation. That said, it is important to note that it does not illustrate the function of norms correctly, since legal norms do not hold a ‘special position’ that distinguishes them in importance from other norms. In a 2008 article, Hydén clarifies this with respect to the very similar figure that illustrates the relation between law, norms, and society. “The construction of the figure is made for analytical purposes. In a sense the illustration can be said to be misleading, since both law and norms operate within society and cannot be separated from the society they ‘belong to.’ But by introducing norms as something operating in-between law and society we want to underline that norms can be seen both as something lying behind legal rules and also something that may distort the legal regulation.”<sup>26</sup> To indicate this, I have suggested the expressions ‘legal norms’ and ‘other norms’ rather than ‘law’ and ‘norms’ as in the original. To study the *process* of implementation, however, this model works with the understanding that the model indicates a time line. The change in legal norms takes place first—as a result of the EU directive and in a dialogue between the supra-state level and the state level—and other norms ‘enter the process’ after the passing of legislation as the implementation is initiated.

<sup>24</sup> Hydén (2012), p. 2.  
<sup>25</sup> Naujekaite, p. 40.  
<sup>26</sup> Hydén (2008), p. 24.

In the ideal type scenario (Figure 3, arrow 1) sketched above, the legal text of the EU regulation will be translated properly into national legislation. The national legislation (provided it is implemented) will then be interpreted ‘correctly’ at the sub-state level—where we find government agencies, and social behaviour will be influenced in such a way that the goals of the regulation are fulfilled.

At each level there are problems of possible deviation, and different forms of intervening factors occur at separate levels. The multi-national law implementation model indicates three steps of implementation, where A represents the intended—and therefore assumed—social effect of an EU directive, B, C, and D respectively illustrate possible deviations from that intended effect. Each deviation derives from a misinterpreted or neglected implementation at a different societal level. In the case of B, national state law (legal norms) contains a misfit, in the case of C, other norms fail to accept or correctly interpret the national legislation, possibly because of ‘clashes’ with other legal norms, although there could be other social causes for this. In the case of D, the intended effect is adopted as far down as the sub-state level, but a significant number of individuals refuse to accept the novelty. File sharing is a possible example of this. As a final twist, in the case of ‘B’, deviations may occur at two different societal levels, in which case it becomes increasingly difficult to identify the source of the discrepancy.

I would like to draw upon both the models above and suggest an alternative to the MLG type I illustration above:

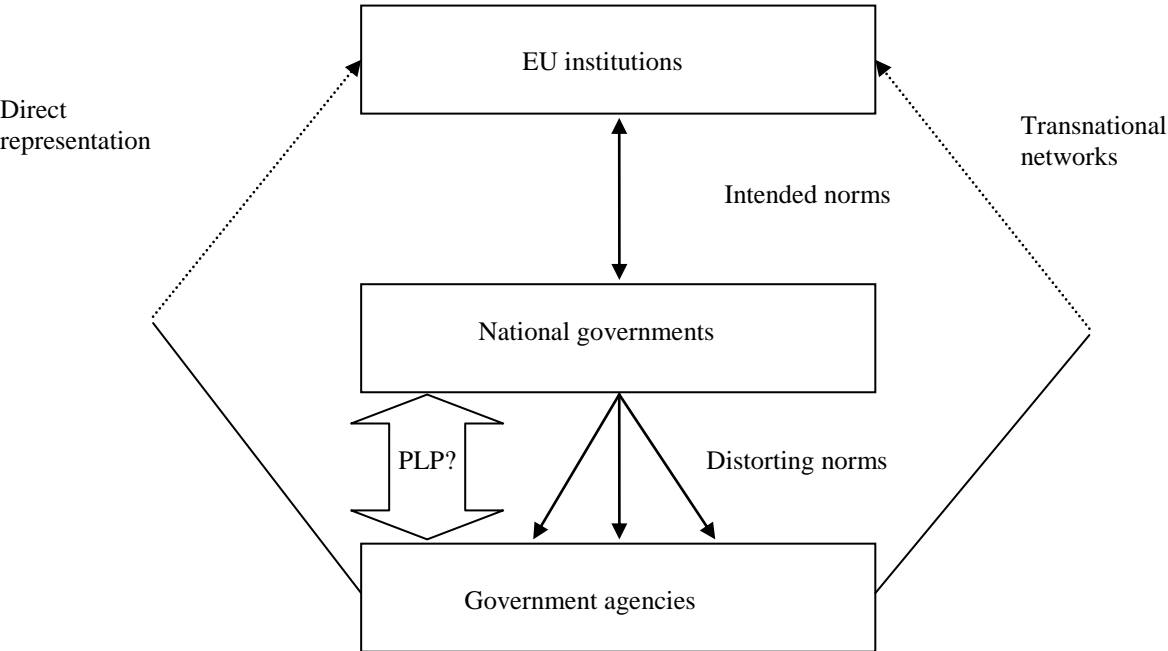


Figure 3: Type I (nested) multilevel governance from a socio-legal perspective.<sup>27</sup>

Figure 3 illustrates what happens when governance is transferred from the legislative process of the supra-state and state level to the sub-state, or primary social level. The intended

<sup>27</sup> Bulkeley et al., p. 238.

norms—as expressed by legislation have been determined in a direct dialogue between the top-two levels. When government agencies seek to implement the intended norms, other norms distort the process of implementation. These *distorting norms* influence the interpretation of the legislation to greater or lesser extents, and cause the interpretation of the legislation to be interpreted differently than was originally intended. The distorting norms will have different degrees of influence depending on the order of governance of the individual country, but also on the type of legislation that is being interpreted. In many cases, one and the same legislation will be interpreted and applied by several national government agencies. This increases the risk of an even greater distortion of interpretation.

A greatly influential part of the interpretation process is of course the national pre-legislative process (PLP), wherein a dialogue between the national government and the government agencies (and other actors) takes place. This thesis does not cover that scope, but acknowledges that there are methods to apply that aspect of the above model as well. What can be seen, however, is that when the PLP comes into play, the supra-national level is disconnected. The directive has been passed, the PLP therefore becomes a part of the national interpretation process. I would claim that this is also a potential source of distortion. The national legislation becomes a compromise between the intentions of the EU directive and the possibilities and limitations of the government agencies to apply the directive. It is therefore likely that there will be a distortion between intended and national legal norms even in the passing of national legislation.

### 4.3. Foucault and Power

Michel Foucault (1926-1984) is considered one of the primary sociological thinkers of the twentieth century. One of his primary concepts is that of power and its role in society. Although virtually all of Foucault's work alludes to identifying power and its social functions, it is perhaps best scrutinised in detail in *Power* (1994) and Colin Brown's anthology *Power/Knowledge: Selected Interviews and Other Writings 1972-77* (1980).

Foucault's understanding of power is different from more traditional interpretations, which hold it to be repressive and negative. Rather, he regards power as something creative and expansive. He also holds the view that power is non-tangible; one cannot 'grasp' power and thus keep it from others. Carol Smart calls Foucault's concept of power "non-economic."<sup>28</sup> I interpret this expression to mean that power lacks the element of scarcity; it is unlimited and available to all. The limitations in how we use it is rather related to the instruments available to us.

Clare O'Farrell summarizes Foucault's concept of power in the following points:

- Power is not a thing but a relation;
- Power is not simply repressive but it is reproductive;

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<sup>28</sup> Smart, p. 6.

- Power is not simply a property of the State. Power is not something that is exclusively localized in government and the State (which is not a universal essence). Rather, power is exercised throughout the social body;
- Power operates at the most micro levels of social relations. Power is omnipresent at every level of the social body;
- The exercise of power is strategic and war-like power.<sup>29</sup>

In *Discipline and Punish: The Birth of the Prison*, Foucault illustrates that in modern times, the exercise of State power does not lie in the ability to confine and punish law breakers. Rather, it lies in the ability to monitor and control social behaviour. He uses the panopticon as an example of an instrument of power, enabling a lone prison guard (a controller) to keep surveillance over a great number of prisoners (controlled subjects) without himself being seen. In fact, he does not even have to be in place; the very presence of the enclosed tower in which the guard *may* be on duty, is enough to provide an instrument of control, or power. As Roach Anleu expresses it: “Surveillance is permanent in its effects even if it is discontinuous in its action. The perfection of power should render its actual exercise unnecessary.”<sup>30</sup>

An even more modern version of the panopticon are permanently placed speed cameras that may or may not be activated. Motorists do not know whether they will be caught for speeding or not, and so have the freedom to drive at the speed they please. Their power, represented by the ability to drive faster if they want to, is therefore not diminished. The instrument of surveillance, however, will deter most motorists from speeding; the risk of being punished in the form of a fine is greatly increased. So the speed cameras serve as an instrument for controlling social behaviour in the interest of traffic safety. Expressing this socio-legally, traffic norms are affected through a instrument that facilitates the enforcement of law. “It is through the repetition of normative requirements that the ‘normal’ is constructed and thus discipline results in the securing of normalisation by embedding a pattern of norms disseminated throughout daily life and secured through surveillance.”<sup>31</sup>

#### 4.4. Foucault and Multi-Level Governance

With respect to MLG and the comparison of institutional law application in European countries, we must take a look at governance from a Foucauldian perspective. Hunt and Wickham provide a definition of governance that offers a link to Foucault’s concept of power and instruments of power. According to Hunt and Wickham, governance is “any attempt to control or manage any known object. A ‘known object’ is an event, a relationship, an animate object, an inanimate object, in fact any phenomenon which human beings try to control or manage.”<sup>32</sup> In other words, a key function of governance is to exercise control over a social situation. It is important to note that this can be any social situation; Hunt and Wickham draw upon examples as diverse as a government controlling the economy, a couple falling in love,

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<sup>29</sup> O’Farrell, pp. 149-50.

<sup>30</sup> Roach Anleu, p. 57.

<sup>31</sup> Hunt and Wickham, p. 50.

<sup>32</sup> *Ibid.*, p. 78.



and cleaning a bathroom. As my main concern is the role of MLG in relation to Europeanization, I shall try to relate Hunt and Wickham's Foucault-inspired definition of governance to this example. In doing so I shall also define some key terms that relate to the MLG model (figure 3) above. The terms occur in italics below.

Hunt and Wickham summarize governance into four principles.<sup>33</sup> Their one-sentence summary of these respective principles are indicated in bold text in the paragraphs below.

**All instances of governance contain elements of attempts and elements of incompleteness (which at times may be seen as failure).** By this is meant that society (or any social situation) is a constantly evolving entity. Throughout this ever-changing process, attempts are made to 'control' or steer the evolution in a certain direction. Although this attempt to control a part of society reaches its goals to some extent, the process is never finished. New situations constantly occur that 'force' the element of control to adapt and change its goal-setting. Hunt and Wickham exemplify with the fact that keeping unemployment at a minimum percentage 'failed' with respect to how the economy looked in the 1960's when the goal was first set, but was acceptable with respect to how the economy looked thirty years later. In other words the governance continues, but in a new context. With respect to Europeanization, there is an intention to induce a specified set of norms into a number of national legislative processes. Even though countries reach a form of consensus and provide a set of *intended norms* as expressed in an EU directive, once each country applies the intended norms in its own national context, the result will fall short of the intentions formed by the consensus. This is a failure with respect to the intention of the EU directive, but merely a state of incompleteness with respect to the individual country.

**Governance involves power (but only in a very particular sense) and as such involves politics and resistance.** The 'particular sense' of power here is the non-tangible but strategic power summarized by O'Farrell above. Hunt and Wickham compare the term 'power' to an engine designed to drive society forward. In the case of governance, power provides the driving force to create a movement towards the intended change.<sup>34</sup> This is a good illustration of how Foucault interprets power as productive rather than repressive. However, since power is not monopolized by one party in society, other social elements may resist the exercise of governance. In other words, some social elements will not happily adopt the change, but will, consciously or subconsciously, hinder its progress. This resistance is, to a large extent, the source of the *distorting norms*.

Hunt and Wickham do not address the concept of instruments of power in the Foucauldian sense. I think that adding this concept here clarifies their principles of governance and how it is exercised. With respect to Europeanization, and in this thesis specifically work permit applications, the *national institutions* or migration authorities take on the same role as the panopticon or the speed cameras, providing the source of control and surveillance that

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<sup>33</sup> Ibid., pp. 79-97.

<sup>34</sup> Hunt and Wickham (p. 81) make it very clear (and I wish to do the same) that power as a machine is only a metaphor for the evolving movement of social change in the context of governance. "Society is not a machine in a simple functional sense. In this sense, the performance of a machine can be assessed against its design. Society is *not* designed" (italics mine).

facilitate the exercise of governance. The institutions take on the role of interpreting and applying the newly created legislation.

In contrast to a speed camera however, a bureaucracy is not a machine. A speed camera is a perfect instrument of power since it has a simple binary task: too fast/not too fast. Were we to add more criteria and thus complicate the task, such as ‘only drivers of speeding red cars should be fined’ or ‘only speeding male drivers under twenty-five should be fined,’ then the camera is not equipped to determine what to report back. As the legal criteria increases in complexity, so does the level of interpretation. As the complexity rises, more question marks occur and more possible interpretations enter the process. This, in my view, is a primary source of distorting norms.

**Governance always involves knowledge.** Hunt and Wickham identify “two crucial roles for knowledge. Knowledge is used to select objects for governance and knowledge is used in the actual instances of governance.”<sup>35</sup> These two roles are those of legislation. In normal legislation, the legislative text is normally laid out in a specific order. At the beginning definitions are provided of what the legislation regulates and what individuals (or other social actors) are involved in the regulation. After the preliminary definitions come the actual regulations, those that guide the intended social effect, or exercise of governance. With respect to this thesis then, the EU directives I am studying define the objects of governance (work permit applicants) and the intended process of application and assimilation for working migrants. In the MLG model above, then, the intended norms are provided through the generation of knowledge in the form of legislation, first at the EU level and then at the national government level in the form of national legislation.

**Governance is always social and always works to bind societies together (which sometimes, ironically, involves social division).** Here, Hunt and Wickham make a return to the first principle, that of society as a continuum. However, Foucault distinguishes himself in his view on how governance works in modern society. Other, more traditional views claim that ‘society’ and ‘social’ have no beginning and (hopefully!) no end. It develops continually, encounters and solves problems, and evolves regardless of governments and governance. Foucault, however, claims that modern society (what he calls ‘the social’) is constructed through the exercise of governance in the form of regulations and planning. “Society or the social is a new conjunction of certain concerns about populations, their health, their longevity, their education, their children. These concerns are the targets for new governmental techniques which we might nowadays summarise in English by the term ‘welfare.’”<sup>36</sup> In this sense, governance, as opposed to power, has a will.

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<sup>35</sup> Ibid, p. 87.

<sup>36</sup> Ibid, p. 93.

## 5. Theoretical Considerations of Gender and Citizenship

### 5.1. Previous Research

From a gender perspective, different aspects of the experience and exercising of citizenship has been discussed by Bhachu (1988), Brah (1996) and Anthias (1992, 1998). Also, Shah et al. (2007) provide a string of socio-legal perspectives on multi-ethnicity and migration issues.

### 5.2. Foucault and Gender/Citizenship Discourse

Foucault's works are highly multi-faceted, but centre around how social facts are constructed, or constituted, through discourse. Discourse is an expression of "the rules that determine which statements are accepted as meaningful and true in a particular historical epoch."<sup>37</sup> An illustrative example of this is the truism: "History is written by the victors." When studying ancient historical texts of war, it can normally be assumed that the most easily found texts are those written by the winners, who naturally proclaim their cause as just and right. The renditions of the losers are often lost or destroyed. To be historically factual, it is important to acknowledge this circumstance and either 'dig deeper' or try to read between the lines of the presumably one-sided accounts. The importance lies in thinking of the context in which the text is produced.

In *History of Madness* (1961), Foucault studies the phenomenon of what we now term as a medically treatable illness, and arrives at the conclusion that madness is in fact a relatively recent term that provides society with means (or excuses) to confine asocial but non-criminal individuals within institutions. These institutions can be traced back to the earlier confinement of leper sufferers and plague victims, and illustrates that the confinement of 'madmen' was made more convenient by the already existing means (as in physical buildings) of confinement. If it had been more difficult to provide a 'cure' or 'solution' to madness, then fewer individuals would have been diagnosed with such a condition. Since the means of confinement existed, a great many "unreasonable" people, or those who were simply "socially unproductive or disruptive" were locked up.<sup>38</sup> "So the history of madness is not the history of a disease (of what we now consider as such, of its treatments and of the institutions developed to deal with it). Rather, and in order to grasp what is no longer accessible, it is the history of the gesture of *partage*, division, separation, through each of its moments, incarnations or *figures*...to describe a process of division through which a reality splits into radically different parts until a new realisation takes place, a synthesis which in itself is a new reality."<sup>39</sup>

A key to working with Foucauldian discourse is to define which subject is actually being studied. In *History of Madness* the subject at face value is the medical condition of madness. As the development of this subject is scrutinised, however, a new, 'more-encompassing' subject emerges, that of confinement in general or even confining institutions in particular. It is found that madness cannot be studied outside of the context of the institutions to which the

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<sup>37</sup> Jørgensen, p. 12..

<sup>38</sup> <http://www.michel-foucault.com/concepts/index.html> 2012-04-08.

<sup>39</sup> Foucault (2009), foreword by Jean Khalifa, p. xv. Italics in the original.

‘mad’ belong, neither can the placement of the mad be discussed outside the context of confinement. It becomes a matter of definition where ‘the mad’ must be controlled and ‘the unmad’ must be exempt from the same control. By and large, ‘the unmad’ are also unaware of the control as well as their exemption from it. They are unsubjected, whereas ‘the mad’ are subjected. A social construct is created that places citizens on one side or the other.

This Foucauldian reasoning ties in with gender theory, particularly that of the subject in process of Moya Lloyd, and of inclusion and exclusion with respect to experiencing citizenship of Ruth Lister et al. (which I discuss below). In her study of the identity of subjects, Lloyd puts a particular focus on “the subject-politics *relation*.”<sup>40</sup> This she distinguishes from a more popular feminist standpoint, which positions the subject identity as an *effect* of politics. “The claim that politics requires a stable subject operates within certain forms of feminism, as if it has a *prima facie* legitimacy.”<sup>41</sup> Lloyd establishes a contrasting model, wherein the subject and prevailing politics form a dialogue in which the two communicate with each other. During the process of communication, the identity of the subject is gradually developed. Lloyd argues that for the subject to become an essence (or gendered), the essence must be repeated time and again. The very act of that repetition causes a change of the essence. “It is in the necessity for reiteration that alterations in gendered identity can be inaugurated. For every reiteration of the norms and practices that produces gendered identity is a reiteration *with a difference*.”<sup>42</sup> So the essence (or gender—or identity) does not stay the same; it changes every time. The subject assesses how politics identifies her. Concurrently, politics assesses and identifies the subject. This is established through a dialogue wherein is mapped a “‘subject-in-process,’ a term I use heuristically to capture the idea that subjectivity is constituted (by language, discourse, or power), inessential and thus perpetually open to transformation.”<sup>43</sup>

Foucauldian reasoning claims the same, that the identity of the subject is dependent upon the ‘institutionalized truths’ of a society, or in other words and in the context of this thesis, the official discourse. In *Archaeology of Knowledge*, Foucault says that discourses should be seen as “practices that systematically form the objects of which they speak.”<sup>44</sup> It is the privilege of the included to establish the conditions of inclusion. The excluded—those who experience the process created by these conditions—are therefore not the only subject of an immigration process. The system that defines the criteria of inclusion exposes itself through the discourse surrounding these criteria. As Hunt and Wickham point out: “Discourse emphasises the processes that produce the kinds of people, with characteristic ways of thinking and feeling and doing, that live lives in specific contexts.”<sup>45</sup> If there were a dialogue between the migrant worker and the migration department, then both would engage in the discourse. In reality, however, the discourse takes the shape of a monologue. The migration department—the institution—defines the conditions of inclusion and concurrently creates a definition of

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<sup>40</sup> Lloyd, p. 6. Italics in the original

<sup>41</sup> Ibid., p. 6.

<sup>42</sup> Ibid., p. 26. Italics in the original.

<sup>43</sup> Ibid., p. 1.

<sup>44</sup> Foucault (2002), p. 54.

<sup>45</sup> Hunt and Wickham, p. 7.

exclusion. The only means for the non-included migrant worker to be included is to accept the conditions and somehow create a change to him/herself in order to fit in with the ‘inclusion criteria.’

### 5.3. The Experience of Citizenship

An equally important subject-in-process is the citizenship process itself, or the legal and bureaucratic discourse of a migration policy. For, just like in the case of madness and institutions, one cannot exist without the other.

Migrant work is closely connected to citizenship. Although it does not involve permanent citizenship in the receiving country, it normally involves a longer stay in a foreign country than for instance recreational or family purposes. It also entails tangible social effects on the labour market and social welfare system. Thus migrant work corresponds to the traditional idea of citizenship as spending time inside some type of national border. Probably the most quoted definition of citizenship is that of T. H. Marshall in 1950: “Citizenship is a status bestowed on those who are full members of a community. All who possess the status are equal with respect to the rights and duties with which the status is endowed.”<sup>46</sup> Interestingly, this traditional expression does not include ideas of passports, nationality, nor migration. Rather, it creates a very general picture of ‘community belonging.’ Yet the idea of ‘membership’ indicates that there is an element of inclusion or exclusion; in other words, borders—visible or invisible—still exist.

Ruth Lister places a very different stress on the concept, suggesting that “citizenship is not only a legal status but also a practice and lived experience.”<sup>47</sup> This perspective indicates a clear distinction between the normative and the experienced ‘status’ of citizenship. In her dissertation on citizenship applicants in clandestinity (meaning that they have been refused citizenship), Maja Sager also addresses clandestine migrants’ experience of different fields of social policies. She finds that “clandestinity is shown to be a location characterised by exclusion and fragmentation on some levels, but also by limited kinds of collectivity and inclusion on other levels.”<sup>48</sup> I would claim that this experience may be applied on individuals subject to citizenship processes in general, including those applying for work permits.

### 5.4. Migrant Work Application: A Gendered Experience?

Lloyd’s model of the subject-in-process portrays an ongoing communication between the subject and what I would term the political agent. From a socio-legal standpoint, it is equally significant to establish how individuals and the legal process interrelate. Legislation and the legal process are a manifestation of prevailing politics. To speak figuratively, the law is an interpretation of how the nation and its citizens wants situations to be resolved. Thus it becomes an extension of the accumulated will of the people.<sup>49</sup> It becomes a manifestation of power. In a bureaucratic situation such as an application for a work permit, the privilege of

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<sup>46</sup> Crowley, p. 169.

<sup>47</sup> Lister, p. 17.

<sup>48</sup> Sager, p. 10.

<sup>49</sup> In a democracy, at any rate. In a dictatorship, it is the manifestation of the will of the dictator and so on.

interpretation of the acquired information lies with the bureaucratic body, what Lloyd terms “politics” above. The bureaucratic body also possesses the superior knowledge of how the information is processed. It also has unilateral executive power.<sup>50</sup>

To use Foucauldian terminology, then, the power and knowledge are both situated within the bureaucratic institution. But given that we are studying the work permit application process of democracies (which EU countries are) there is also the assumption that there exists a reasonable balance in how the institution applies its power and knowledge. As Peter Dahlgren points out on the concept of discursive power: “Deliberative democracy asserts that meaningful political discussion can only take place if all participants are on an equal footing, that is, if respect, a pluralist outlook, and reciprocity prevail.”<sup>51</sup> I would claim that law in action is a political process that provides a discursive illustration of a (democratic) nation’s consensus of popular will on an issue, even<sup>52</sup> when the counterpart is an individual subject. For the example studied in this thesis, in order for the discourse to attain meaning, the applicant must have a chance of (a) attaining a work permit in the first place (otherwise what would be the point in applying?), and (b) knowing how good the chances are of attaining work permits. To provide that balance, the institution that handles work permit applications must offer applicants information on the legal process. If the information is differently targeted towards different professional groups, this indicates that the institution differentiates on the basis of worker groups and not country of origin. Questions that come to mind then address whether this is a legitimate and practical means of applying legislation, and by extension whether this constitutes a social construct that is in line with the general consensus of the institution’s country.

The comparison of the national discourses of work permit applications should then be studied with respect to:

- (1) How applicants experience the dialogue with work permit authorities;
- (2) How applicants are experienced/defined by those authorities; and
- (3) How the discourses create these experiences.

## 6. Method

### 6.1. Selection of Empirical Material

The empirical material comes from the information provided publically with respect to work permit applications, collected from the Board of Migration or corresponding institution in a selection of EU countries. This easily available information is what I claim is the most likely information a prospective work migrant will search for in order to understand the application procedure. In the dialogue-like encounter between the potential applicant and the bureaucratic institution that is created through the information search, a social situation occurs. The

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<sup>50</sup> Unless the decision can be appealed to a higher institution, such as a court. In work permit cases, this can only be done under special circumstances.

<sup>51</sup> Dahlgren, p. 92.

<sup>52</sup> ...or perhaps more significantly so...

discourse created in the institution's answer indicates to the potential applicant whether he or she fulfils the criteria to receive a work permit. Because it is an information page, the discourse also explains (or at least indicates) the social factors that affect the legal criteria. The law by itself does not do this.

My original plan was to study legal decisions in the form of actual work permit applications and the outcome of these. Law in action is often found in how the law is applied, in courts or court-like institutions, so this approach would seem logical. As the project has progressed, however, it has gradually dawned on me that a study of application decisions gives little reflection on the social conditions that give rise to the legislation that, in turn, guide the application process. An application process is, using Teubner's terminology, binary.<sup>53</sup> An application for work permits is either accepted or refused; if it is refused, it is normally because it is incomplete, not because it provides faulty or ambiguous information. In fact, whether the information is incomplete, faulty or ambiguous, all will result in a request for completion. The application process itself, therefore says very little about the social impact of the legislation.<sup>54</sup>

I have also considered the possibility of using one (or both) of two possible alternate sources. Either I could study the experience of migration from the point of view of actual migrants, either through field work or interviews. This does not address the legal application process, however, but rather serves to indicate the social effects of migration law, which does not match my purpose.

The other possibility would be to interview or conduct surveys with personnel at the migration authorities, which would provide a deeper study of how the application process—and the information surrounding it—came to end up looking the way it did. This method would provide answers in a similar way that the chosen discourse analysis does. However, I considered that in order for such a method to be meaningful, it would be necessary to 'mix' methods and concentrate on interview responses in relation to the information discourse. Within the scope of a masters thesis, this would allow me to study only one country, or two at most. As I view it, my main purpose is to study Europeanization from a comparative standpoint, similarly to the previous research I have listed. One country (and even two) does not provide enough material for a meaningful comparison. Therefore my choice was to only study the discourse, but with more countries. For later research, and on a larger scope, however, a dialogue with the migration authorities would be an interesting way of extending the research.

Note that it is not necessary to study the prior discourse. It is true that effects are more easily identified by studying the change in the before and after respectively, and this is also often a recommended approach for discourse analysis. The prior discourse is not always available, however, and in many cases, the prior discourse may be 'distorted' by other factors that are difficult to take into account. For example, the prior discourse on work migration in an

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<sup>53</sup> Teubner, p. 10.

<sup>54</sup> In this case, I should add. There are other legal procedures that provide more extensive elements of 'negotiation' between the applicant and the bureaucratic institution.

individual country may have been affected by tax laws making it more or less attractive to work in that country. If that tax law has changed concurrently with the introduction of the EU directive we are studying here, then that is a factor that either increases or decreases the change in that country. Better then to focus on the intended effect (or motive) of the EU directive and compare that with the immediate national effect. The question to ask is: How far has the intended new discourse penetrated into the existing discourse?

## 6.2. Collection of Empirical Material

The empirical information was collected in the following manner. The EU information (which is the ‘ideal type’ against which I compare the national implementations) was deduced from the official European Commission information page “Well-managed Labour Information in all our Interest.”<sup>55</sup> This information was compared with the legal texts of the ‘Blue Card directive’<sup>56</sup> and the proposal for the ‘directive on Seasonal Employment’<sup>57</sup> respectively. This comparison enabled me to identify what is a ‘tool’ and what is a ‘vision’ of the EU directive (‘tools’ and ‘visions’ are explained further below). I identified ‘tools’ and ‘visions’ for highly skilled workers and seasonal workers respectively. I then looked for the same ‘tools’ and ‘visions’ in the information gathered from the respective countries.

I collected the corresponding information texts from five countries: Sweden, Ireland, Germany, Lithuania, and France. The selection of countries was made with the aim of creating a mix geographically as well as with respect to newer/older members, and also with respect to population and economy size as well as type of legal system. The texts were gathered through a Google search with the key words ‘work permit [country].’ From the search results I sorted away the many commercial sites offering assistance with the immigration process, and identified a government-sponsored information website. To simplify the study (and for my own sake!) I added the extra criteria that the information had to be in English. This was not a great problem for the first four countries in the list, but almost impossible for Southern European countries (those that border on the Mediterranean), France in fact being the only alternative.

To limit the amount of empirical material, the study is based on the premise that the information is made available without a great effort on behalf of the applicant. Consequently I used the information gathered through the first Google search to find information corresponding to the ‘tools’ and ‘visions’ of the EU directive. If the site offered direct links to the information, then it was gathered. When I had concluded that the desired information was unavailable unless I made another general Google search, then I determined it as unavailable.

It might be argued that this limitation may be ‘unfair’ to some of the countries of the study. The information may be just ‘a search and a click away.’ I acknowledge that this is true. At the same time one must draw the limit somewhere. Internet searches will essentially give you any information you want—eventually. A commercial site may provide the information. I

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<sup>55</sup> [http://ec.europa.eu/home-affairs/policies/immigration/immigration\\_work\\_en.htm](http://ec.europa.eu/home-affairs/policies/immigration/immigration_work_en.htm) 2012-02-21.

<sup>56</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2009:155:0017:0029:en:PDF> 2012-04-18.

<sup>57</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=COM:2010:0379:FIN:EN:PDF> 2012-04-18.



might find a newspaper article or preparatory legislative text addressing it. This puts some of the countries at a ‘disadvantage,’ since, for instance, it is likely that I would find it difficult to find information in a Lithuanian newspaper (or legal text), but quite easy in a Swedish or Irish one. My claim is that the official government information page provides the information that the government deems relevant. Therefore I place the limit there.

### 6.3. Method Description

I draw some inspiration from the method I described by Gerda Falkner that I have already mentioned and criticized. Falkner has designed a method for comparing the implementation of EU legislation by EU countries by degree measurement. Simply described, the extent of implementation is compared on a scale from none through low, medium, and finally to high. More specifically, the implementation is evaluated by identifying “misfits” between EU legislation and individual country legislation. In Falkner’s study, these misfits are categorized into three types: policy, policy/polity, and costs. I propose to use this model in a similar way, but using other categories.

If I were to conduct a ‘pure’ Foucauldian analysis, then I would be committed to finding ‘everything’ in what is often described as Foucault’s ‘archaeological’ method of digging deeper and further until no questions remain. The new sources of the internet makes it easier—and more difficult—to conduct such a study. The information is there; the difficulty of deciding when a question is fully answered is enormous. I might also point out that Foucault’s actual studies (*History of Madness*, *Discipline and Punish*, *History of Sexuality* etc.) are *just a little bit longer* than a master’s thesis. The length of his studies is highly linked to his archaeological method, and a master’s thesis can hardly be done from that scope.

The method instead takes the form of a critical discourse analysis in which the documentation is analysed with respect to the implementation of the categories (‘tools’ and ‘visions’) I identify. Critical discourse analysis (CDA) is a process of reading and re-reading material, in order to identify the prevailing patterns that provide hegemony, or established power structures. It ‘is ‘critical’ in the sense that it aims to reveal the role of discursive practice in the maintenance of the social world, including those social relations that involve unequal relations of power.’<sup>58</sup> By highlighting how background factors of work permit seekers may affect the legal process to which they are subjected, social effects such as informal labour markets and exposure to mistreatment by employers may be explained.

Since discourse analysis, and particularly CDA, stems from linguistics and descriptions of language use, it is somewhat controversial to ascribe numbers to the observations obtained through this method. At the same time, if one searches for and finds patterns in a number of essentially similar discourses that provide a web of closely related but still distinct observations, is not an arithmetic description an excellent means of summarising those observations? I rest the choice of presenting my results in figures on the discourse analysis-related method called content analysis. “Content analysis is the longest established method of

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<sup>58</sup> Jørgensen, p. 63.

text analysis among the set of empirical methods of social investigation.”<sup>59</sup> Primarily developed in the 1960’s and used prominently in measuring effectiveness within public relations, it involves analysing the content of a text by coding and counting key words or phrases. “Content analysis is any research technique for making inferences by systematically and objectively identifying specified characteristics of messages.”<sup>60</sup>

CDA in particular searches for patterns that show how elements of power are used to establish social facts—or affect them in a particular manner. “In any case, related to the object of investigation, it remains a fact that CDA follows a different and critical approach to problems, since it endeavours to reveal power relations that are frequently obfuscated and hidden, and then to derive results which are also of practical relevance.”<sup>61</sup> In the case before us in this thesis, a measure of Europeanization is also a measure of the extent to which EU legislation is able to penetrate into the legal practice of a selection of countries, and to establish if the countries adapt EU directives similarly or not. Summarising the results in numbers will provide a manageable overview of the findings. That overview is complemented by a written summary of the findings from each country, and so is open to scrutiny. I also find that ascribing a number to each category is helpful to provide an objective dimension. Naturally, that number is my personal assessment of the information provided, and as such open to criticism.

Simply put: this is not quantitative research using discourse analysis. This is discourse analysis illustrated by figures. Although I draw my conclusions using this quantitative presentation as a rough guide, I concurrently acknowledge that it carries only partial value in light of the wholeness of the results, which are found in the analysed texts. To illustrate this acknowledgment, I have also chosen to create almost no nuances in the numerical assessment. There are only three ‘degrees’ of implementation: Zero points (indicating a complete misfit), one point (a partial misfit) and two points (no misfit). If I wanted to give greater value to the numerical presentation, I would ascribe at least two and possibly more further degrees of assessment, using expressions of ‘almost perfect fit’ or ‘almost total misfit’ or ‘somewhat less than half a misfit’ etc. I don’t do that, but refer the critical reader to adjudging my assessment and the broad brush strokes it provides.

At this point I allow the secondary gender theory to enter the field, to provide me with a structure for the questions I want to ‘ask’ the collection of texts. The overall gender perspective is based on Moya Lloyd’s ‘subject-in-process.’ This perspective assumes a dialogue between two parties, the ‘subject’ and ‘politics’ taking turns in evaluating the subject. The subject assesses how politics identifies her. Concurrently, politics assesses and identifies the subject. My claim is that in the political assessment of the subject—in the creation of the EU directive on migrant workers—differentiations will be made to identify and ‘recreate’ different ‘model subjects’ into something that can in later assessment fit into the legal picture and bureaucratic process of issuing work permits.

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<sup>59</sup> Titscher et al., p. 55.

<sup>60</sup> Holsti, p. 601.

<sup>61</sup> Wodak and Meyer, p. 20.

Here is where the process of differentiation of the EU directive discourse—and the national legal discourse that follows—is identified. This differentiation must be balanced against essentialist treatment, whereby all subjects are given equal treatment under the law but at the same time gathered under one roof, where everyone is a ‘foreigner’ regardless of background. The subject-in-process must ‘prove her worth’ in order to be accepted into the community. Her background may be of use for her if she represents an ‘attractive migrant work category’ or comes from an ‘uncontroversial country,’ but at the same time a burden if her work category is less called for, or she comes from a country or region from which it is desired to limit migrant movements.

Secondly, we will look at the ‘vision’ of the directive and subsequent national legislations. This I relate primarily to Ruth Lister’s concept of experienced citizenship, whereby the legal status is only one part of the wholeness of citizenship. Practicing and living as a citizen are equally important aspects of functioning in a country. As Maja Sager observes, the experience of the citizenship establishment carries elements of inclusion and exclusion respectively. Where the *vision* of the EU directive is connected to simplifying inclusion of work migrants, this indicates *inclusion*. Conversely, if it suggests aims at keeping migrants—as a group or in specified sub groups—out, this will be identified as an element of *exclusion*.

#### 6.4. ‘Scoring’ the Discourse

As I mentioned above, I will use figures to illustrate the difference in discourses between the five studied countries. I draw my inspiration from Falkner’s method of measuring Europeanization that I presented above. Her approach is to create an index showing the misfit between EU directives and national legislation, thus providing a means for comparing implementation processes ‘across borders.’ Whereas Falkner draws her units of measurement from theories in political science, I draw mine from gender theory related to inclusion and exclusion.

I call my categories ‘tools’ and ‘visions.’ The tools represent the limitations and opportunities offered by the legislation itself, whereas the visions are descriptions of the expressed goals of the EU directive. The same tools and visions are then identified from the migration institutions of the individual countries. The goal is to see to what extent these tools and visions have been ‘adopted’ in the national information text that corresponds most closely to the information text provided by the EU.

The tools and visions are subcategorized into providers of ‘inclusion’ and ‘exclusion’ respectively. Providers of inclusion are factors aiming at facilitating assimilation into the job market and other social institutions, such as housing, access to healthcare, etc. Providers of exclusion are factors that ‘block out’ permit applicants, such as specifying ‘desirable’ and ‘non-desirable’ work categories or providing financial requirements.

Finally, since I am studying the possibility that some categories of working migrants will be given a ‘better chance’ of receiving work permits, I also identify tools and visions specifically aimed at highly skilled workers and non-skilled (seasonal manual labour) workers respectively. This should in theory provide two tools and two visions for each group of

workers. As it turns out, the discourse provided by the EU information pages (which is what I compare the individual countries against) ‘forces’ me to modify the categories somewhat. The reason for this is that I match all the discourse provided by the information pages against the relevant EU directive. If the information corresponds directly to an article, then I categorize it as a tool, since it carries direct legal weight. If it is only ‘mentioned in passing’ in the directive itself or in the information pages, then I categorize it as a vision. In the end I end up with a total of eight subcategories (four for each work category), but for highly skilled work I have identified two tools and two visions, and for seasonal workers three tools and one vision.

This provides a total of eight categories of study. Each category is allocated two points from the EU information, which is my ‘ideal type.’ The ‘ideal’ attains a ‘score’ of (2 x 8) sixteen. In the comparative study, I then evaluate the information discourse of each country. If I find that a country has adopted a key concept to the full, it is given a score of two. If it has adopted it partially, it is given a score of one, and if it has failed to take it into account, then the score will be zero. When I have added up the scores of all eight subcategories, I arrive at the total ‘adoption score’ for that country.

Note that the units of measurement are up to the researcher. This division into just three possible scores is the second simplest; if one desires a purely binary analysis (fully adopted / not adopted), then each subcategory can be given a score of one from the EU information, and the same from the individual countries. If the researcher feels that there are more degrees of subtlety between ‘fully adopted’ and ‘not adopted at all’ (as Falkner does in her study), then the scores are simply increased for each subcategory.

## 6.5. General Considerations on Discourse and Content Analysis

### 6.5.1. Questions of Validity

When discourse analysis is used as a method for describing social change, one could describe the researcher as a ‘painter’ that, using words instead of paint, creates a picture of a chosen social situation. The analysis is conducted by a rewriting of the situation, identifying and highlighting details within the discourse in order to present a clearer picture of what is actually happening. This presentation becomes an interpretation of what the speakers or writers of the discourse really mean, whether they are aware of it or not. Thus, discourse analysis can be an “eye-opener” for social actors.

The disadvantage of discourse analysis is that the receiver of the interpreted information is restricted to the researcher’s interpretation of the event. The analysis itself is in itself, of course, also a discourse wherein the researcher provides a personal opinion. The research may highlight less important aspects of the discourse for personal purposes, but may also include overinterpretations—intentional or not—that require knowledge outside the discourse itself. This is always a risk in discourse analysis and must be avoided. “For the discourse analyst, the purpose of research is *not* (our italics) to get ‘behind’ the discourse...The starting point is

that reality can never be reached outside discourses and so it is discourse itself that has become the object of analysis.”<sup>62</sup>

Since the analysis is subject to personal interpretation, there is always a risk that another researcher, using the same method and empirical material, will attain quite different results, thus throwing the study into scientific doubt. To overcome such validity issues, two courses of action should be undertaken. One is a highly detailed (to the point of tedious) description of the method. It is also wise if not necessary to make the discourse available for the reader, through clear references or even in an appendix. This enables the reader to make a personal assessment of the method used as well as the actual analysis.

With respect to content analysis, the validity of the results falls back into the integrity of the researcher. As one of the leading current experts on content analysis, Klaus Krippendorff, expresses it: “content analysis is fundamentally concerned with readings of texts, with what symbols mean, and with how images are seen, all of which are largely rooted in common sense, in the shared culture in which such interpretations are made, which is difficult to measure but often highly reliable at a particular time.”<sup>63</sup> In my mind, in order to achieve the highest possible degree of validity, it is therefore important for the researcher to form a rigid platform on which to build the empirical information attained. Steve Stemler summarizes Krippendorff’s six pillars for such a platform:

- 1) Which data are analyzed?
- 2) How are they defined?
- 3) What is the population from which they are drawn?
- 4) What is the context relative to which the data are analyzed?
- 5) What are the boundaries of the analysis?
- 6) What is the target of the inferences?<sup>64</sup>

I feel that the study conducted in this thesis can answer all of these questions concretely. The data is easily available official information on migration policy, defined as that which is available from official sources over the internet through a single Google search. The data is drawn from a small selection of EU countries for comparative purposes. The data is analysed with respect to the context of the ‘tools’ and ‘visions’ found in the primary discourse analysis of the EU directives. The boundaries are provided through the coding units on the basis of full fit, partial misfit, or complete misfit with respect to the goals of the EU directives. The target is to answer the second research question and establish if there is a difference in the way the selection of countries implement the EU directive.

### 6.5.2. Questions of Reliability

Whereas validity is concerned with how the analysis is able to provide ‘truths,’ reliability addresses the concern that the results attained will look the same every time the same analysis is made from the same material. “To perform *reliability tests*, analysts require data in addition

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<sup>62</sup>Jørgensen, p. 21.

<sup>63</sup> Krippendorff, p. 314.

<sup>64</sup> Stemler, 2012-08-24.

to the data whose reliability is in question. These are called *reliability data*, and analysts obtain them by duplicating their research efforts under various conditions—for example, by using several researchers with diverse personalities, by working in different environments, or by relying on different but functionally equal measuring devices. Reliability is indicated by substantial agreement of results among these duplications.”<sup>65</sup>

In this study, I have ascertained reliability by conducting the content analysis on three different occasions, at different times of the day, and with at least a week’s time between each occasion. In each case I have attained the same ‘score’ for each coded category with just three exceptions.<sup>66</sup> These three cases involved analytical dilemmas of whether the information indicated a partial misfit or no misfit at all, or in the Irish case where I needed to make an assumption based on the information given. Based on a relatively small number of exceptions from attaining the same result, I feel I can say that the results are reliable.

### 6.5.3. Ethical Considerations

Most social research involves descriptions of the personal experiences and interpretations of individuals. The researcher has a responsibility to uphold the integrity of these individuals. When the empirical material consists of interviews, for example, it is essential to correctly express the views of the interviewees. For example, it is important that views are not cited out of the context in which they were expressed. Similarly, if the study involves case studies or field work, all reasonable provisions must be made to uphold the anonymity of the individuals involved in the study. Questions of breaking anonymity should only be considered if it is absolutely necessary for understanding the research—and even then as restrictively as possible, or (naturally) if individuals have expressly consented to making their identity known.

With respect to the empirical material in this thesis, such ethical issues have been considered. However, since the material consists solely of official government information, it has been determined that the risk of affecting the integrity of individuals is negligible.

## 7. Observations

### 7.1. EU Labour Immigration directives

#### 7.1.1. Description

My study of migration discourse begins with a look at the EU directive on labour immigration.<sup>67</sup> The so-called EU immigration policy is currently undergoing development with an aim to provide an all-covering and united immigration policy (“balanced, comprehensive and common), so that immigrants will be treated the same way regardless of

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<sup>65</sup> Krippendorff, p. 212. Italics in the original.

<sup>66</sup> Tool B2 (Sweden), Tool A2 (Irish Republic) and Tool B2 (Lithuania)

<sup>67</sup> [http://ec.europa.eu/home-affairs/policies/immigration/immigration\\_work\\_en.htm](http://ec.europa.eu/home-affairs/policies/immigration/immigration_work_en.htm) 2012-02-21.

which EU country they choose to enter. A common policy is expected to, in the long run, contribute to the economic development of the whole community.

The information page does not exactly try to hide that "certain categories of immigrants" are very welcome through the EU Blue Card directive, which provides "attractive conditions for non-EU workers considering taking up highly skilled employment in the EU states, creating a harmonised fast-track procedure and common criteria." Contrast this with the first couple of sentences of the section on seasonal workers, who although they are welcome since they provide a workforce in areas where it is difficult to find labour from within the EU, are grouped with irregular migrants. This motivates a primary 'splitting up' of my observation categories into highly skilled and seasonal workers respectively.

At the same time, there is an acknowledgment of the complexity of the immigration process, and particularly on the issue that a great deal of the irregular immigration stems from that complexity. A simplified process for seasonal workers is expected to reduce the number who immigrate irregularly. Irregular migration is connected to poor working and living conditions, so the immigration process is simplified primarily with the migrants' best interest in mind. "Employers will be required to prove that seasonal workers have appropriate accommodation during their stay, and a complaints mechanism will be available for non-EU seasonal workers and third parties."

There is also a declared ambition to increase collaboration with the non-EU countries of origin, with the aim of facilitating re-entry. "This would bring those countries providing seasonal workers with a reliable flow of income, skills and investment, thereby contributing to development." So the immigration process is simplified with the best interest of the originating countries in mind.

On the issue of skilled or highly skilled workers, there are plans to introduce a "fast-track procedure" to simplify and accelerate procedures regarding evaluation of credentials. For highly skilled workers, the "Blue-Card directive" creates specific advantages not only for admission, but also from several other social viewpoints. "The Blue Card facilitates access to the labour market and entitles holders to socio-economic rights and favourable conditions for family reunification and movement around the EU." Seasonal workers do not appear to be candidates for the Blue Card. Similarly, the issue of irregular working migrants does not appear to be a factor among those eligible for the Blue Card.

Whereas there is a differentiation in the immigration process with respect to skills level, there is also an ambition to limit the number of skilled migrant workers that originate from countries experiencing a "brain drain."

Finally, the reform includes the "Single Permit directive," adopted in December 2011, whose main purpose is to provide legal non-EU workers with "rights and obligations comparable to those of citizens of the Union" (paragraph 2).<sup>68</sup> In a sense, the directive ensures that migrant workers enjoy social security comparable to the EU country where they are working, and that this right can be carried into other EU countries as well. Also, the directive aims at creating

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<sup>68</sup> <http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=OJ:L:2011:343:0001:0009:EN:PDF> 2012-02-21.

harmonized application procedures for such a single permit (paragraph 5), but at the same time leaves the procedure to the discretion of each member state (paragraph 6).

Immigration policy is first and foremost a tool for control, in a sense a means for ‘keeping count’ of the number of citizens or residents of a country (or region), and also of keeping a reasonable check<sup>69</sup> of where individuals are currently residing. The Single Permit directive, which has already been passed, poses a limit on the control when it comes to ‘controlling’ the interior movement of non-EU citizens who have already (legally) entered the EU’s exterior borders. The Single Permit directive, of course, is quite logical with respect to the founding principle of the free movement of goods, services, and labour. At the same time, the overall reform also involves the development of a more rigorous control of the actual entry into the EU. A call for the harmonization of the entry procedure could be interpreted as a concession or compromise to enable the passing of the Single Permit directive. It is quite obvious that there will be elements of differentiation with respect to the background and skills of migrant workers—and also the possibility of (selective) limitations on the admittance of skilled workers as well. It is possible (even likely?) that these differentiations and limitations have been provided in the overall negotiation process of the immigration policy reform. So the reform is on the hand one of increased freedom of movement, but on the other an issue of inclusion and exclusion.

### 7.1.2. Summary

The discourse of the EU migration policy can be categorized into a differentiation between highly skilled and seasonal workers. Each of these two groups are given differentiated criteria, which can in turn be divided into ‘tools’ (directly supported by a directive) and ‘visions’ (stated intentions not directly supported by legislation). The criteria for highly skilled workers are largely found in the discourse on the Blue Card directive. These are identified as:

**Tool A1:** facilitated access to labour market (Blue Card directive Article 12) and other welfare (Blue Card directive Article 14), simplified family reunification (Blue Card directive Article 15);

**Tool A2:** A fast-track procedure (Blue Card directive Article 11) and common admission criteria (Blue Card directive Article 5);

**Vision A1:** Strengthening (EU:s) competitiveness (Blue Card directive whereas-paragraph 3: “ The Lisbon European Council in March 2000 set the Community the **objective** of becoming the most competitive and dynamic knowledge-based economy in the world...); and

**Vision A2:** Ethical recruitment standards (for example limiting “brain drain”). (Blue Card directive whereas-paragraph 22: In implementing this directive, Member States **should** refrain from pursuing active recruitment in developing countries in sectors suffering from a lack of personnel).

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<sup>69</sup> Within limitations related to personal integrity—which carries some cultural connotations. I would think that definitions of reasonable integrity differ greatly between EU member states. An interesting research topic, I think.



Criteria for regulating the seasonal workers, verified through the proposed directive on the conditions of entry and residence of third-country nationals for the purposes of seasonal employment are identified as:

**Tool B1:** A fast-track procedure (Proposal, Article 13) and a single residence/work permit simplifying the rules currently applicable in EU States.<sup>70</sup> (Proposal Articles 8-9);

**Tool B2:** A complaints mechanism available for non-EU seasonal workers and third parties (proposal Article 17);

**Tool B3:** Stronger protection for seasonal workers; limit exploitation from employers (Proposal whereas-paragraphs 19-23 and Articles 15-16); and

**Vision B1:** The limitation of irregular workers (Proposal whereas-paragraph 6).

### 7.1.3. Legislative Implementation by Country

According to EUR-Lex, three of the five countries in the study have implemented the Blue Card directive.

Sweden have implemented it through twenty different amendments. Lithuania have adopted the directive through 46 legal acts. France have implemented the Blue Card directive through two legal acts. There are no references available for Ireland and Germany. Deadline for the transposition (implementation) was 19 June, 2011.<sup>71</sup>

There are no references available for any EU countries with respect to the Seasonal Workers directive, which has not as yet been passed as a directive.

## 7.2. Labour Immigration Sweden

### 7.2.1. Description Sweden

The Swedish Board of Migration (Migrationsverket), creates distinctions between specific categories of work permit seekers on their website, thus distinguishing out professions as diverse as artists, sports professionals and coaches, students, visitors to Swedish employers, au pairs, berry pickers, and visiting researchers.<sup>72</sup> This indicates that the Board of Migration takes consideration of the fact that there are different motives for seeking work permits in Sweden. A closer comparison of specific information indicates that there is a differentiation in the assumed needs of categories of a selection of two categories, one presumably unskilled and akin to the EU directive term 'seasonal workers' (berry pickers) and one presumably highly skilled (visiting researchers). Aside from a valid passport, visiting researchers must

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<sup>70</sup> This differs from the Blue Card Directive in that it does not require quite so 'fast' a procedure

<sup>71</sup> [http://eur-lex.europa.eu/Notice.do?val=505452:cs&lang=en&list=505452:cs.&pos=1&page=1&nbl=1&pgs=10&hwords=&checktexte=checkbox&visu=#FIELD\\_FR](http://eur-lex.europa.eu/Notice.do?val=505452:cs&lang=en&list=505452:cs.&pos=1&page=1&nbl=1&pgs=10&hwords=&checktexte=checkbox&visu=#FIELD_FR) 2012-05-29.

<sup>72</sup> <http://www.migrationsverket.se/info/160.html> 2012-01-24 . There is also special information for citizens of Australia, New Zealand and South Korea as well as Canada, but this is due to a special treaty, and therefore not of interest for this study.

show a hosting agreement from the employing research organisation which includes (in a short selection) how the research is funded, the individual's qualifications, terms of engagement, means of health insurance, and sufficient funds for maintenance and the return journey.<sup>73</sup>

The corresponding page for berry pickers poses requirements from the worker for a valid passport and to be able to support him/herself from the employment. Specific requirements are placed on the employer—not on the individual worker, who must have advertised the position in Sweden and the EU, follow employment conditions corresponding to Swedish collective agreements, including a monthly salary level of at least SEK 13,000. The employer is also required to prove that the worker has received information of what is expected from the work (and an overview of Swedish traffic regulations!), that it is possible to pay the agreed wages, and that, where applicable, the previous year's workers were properly paid by the employer. A trade union representative must also comment on the terms of conditions before a work permit may be issued. For berry pickers, the information is provided in Swedish, English, and Thai. For this category of workers, an explanation of the application procedure is provided: “The purpose of the new requirements is to ensure your salary and that you have received information about the job and Swedish regulations.”<sup>74</sup>

For berry pickers, the bulk of the application work is not placed on the applicant, but on the potential employer. This contrasts with the visiting researcher, who provides that information for him/herself. Placing a greater responsibility and increased application work for the employer limits the demand for unskilled workers from outside the EU. Unskilled work (and I would assume particularly berry picking) is highly labour intensive. A major employer could be facing the task of filling in forms for a great number of migrants. A possible, if not likely, social effect of the added bureaucracy is then to limit the number of migrant workers that receive employment on the official labour market. So the application process is made more complicated and bureaucratic for seasonal workers, and this process is also regulated since it is a requirement in the application. This counteracts the aim of fast-track and simplified procedures for seasonal workers, and therefore qualifies as a misfit. Note that this differs from the situation in Lithuania, where this requirement from the employer is similar, but applies to *all* workers, not just one singled-out group. The increased bureaucracy is a hindrance for seasonal workers in Sweden, whereas it is a general requirement in Lithuania.

### 7.2.2. Summary Sweden

**Tool A1: 1 pt.** The information for visiting researchers points out specifically that “people who stay in Sweden for a period that is shorter than one year are not entitled to the same welfare benefits as those who reside here.” On the other hand, family members of those with longer work permits do enjoy the possibility of also receiving a work permit. I interpret this as an indirect access to welfare and job market, so the misfit is only partial.

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<sup>73</sup> [http://www.migrationsverket.se/info/157\\_en.html](http://www.migrationsverket.se/info/157_en.html) 2012-02-25.

<sup>74</sup> [http://www.migrationsverket.se/info/2104\\_en.html](http://www.migrationsverket.se/info/2104_en.html) 2012-02-27.

**Tool A2: 2 pts.** Aside from a valid passport, visiting researchers must show a hosting agreement from the employing research organisation which includes (in a short selection) how the research is funded, the individual's qualifications, terms of engagement, means of health insurance, and sufficient funds for maintenance and the return journey.<sup>75</sup>

**Vision A1: 0 pts.** The Swedish page contains no information on any goals with regard to the competitiveness of the EU (nor of Sweden).

**Vision A2: 0 pts.** There is no information to suggest that Sweden takes an ethical responsibility in limiting brain drain effects.

**Tool B1: 0 pts.** The more complicated and bureaucratic application process for seasonal workers counteracts the directive's prescription for fast-track and simplified procedures for seasonal workers, and therefore qualifies as a misfit.

**Tool B2: 1 pt.** There is a complaints mechanism available for anybody who has been denied a work permit in Sweden, in the shape of the Court of Migration (Migrationsdomstolen). However, appeals can only be made in relation to a decision of expulsion. Therefore this aspect of the EU directive cannot be considered fulfilled, although the misfit is partial.

**Tool B3: 2 pts.** There is information provided for seasonal workers aimed at limiting or warning against exploitation. Also, a Labour Union representative is given the task of ensuring that labour law is followed.

**Vision B1: 0 pts.** Sweden's general information pages do not address any ambitions to limit irregular workers.

### 7.3. Labour Immigration Irish Republic

#### 7.3.1. Description Irish Republic

The Irish information page on work permit application<sup>76</sup> establishes a clear distinction between which applications will be accepted and which will not. "Applications for work permits fall into 2 categories as follows: (a) Jobs with an annual salary of €30,000 or more [and] (b) Jobs with an annual salary of less than €30,000 - these are only considered in exceptional cases." The information page also presents a list of types of work that will not be considered regardless of annual salary. This exclusionary list is quite extensive and includes many forms of relatively skilled labour, such as clerical and administrative staff, sales representatives, hotel, tourism and catering staff and a long list of specified crafts workers. It is difficult to generalize from the list, although an overview in context give a sense that the majority of the trades would place below the stated income limit.

The application must be accompanied by a specific job offer for which the applicant must be qualified. The employer must not be a recruitment agency or similar employer intermediary.

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<sup>75</sup> [http://www.migrationsverket.se/info/157\\_en.html](http://www.migrationsverket.se/info/157_en.html) 2012-02-25.

<sup>76</sup> [http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/work\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/work_permits.html) 2012-03-11.

Also, a work permit will not be issued if this results in that the employer's staff would consist of more than 50% non-EEA nationals.<sup>77</sup> All applications must also show that the job offer has undergone a "labour market needs test," which means that "evidence must be provided that a Labour Market Needs Test has been undertaken for the vacancy. To comply with the Labour Market Needs Test requirement the employer must advertise the vacancy with the FÁS/EURES employment network for at least eight weeks and in local and national newspapers for at least six days...The employer must contact their local FÁS office after eight weeks if they have been unable to source an Irish or EU national and request that a decision is made on the vacancy they have advertised. At this point, FÁS will review the number of enquiries which have been made about the vacancy and, bearing in mind the specifics of the local labour market, will determine whether a work permit is justified in order to fill the vacancy."<sup>78</sup>

As an alternative to a work permit, a Green Card may also be issued provided that some further specifics are fulfilled. The two primary prerequisites are that the job either carries a salary level above €60,000, or, if the salary is between €30,000 (but no lower) and €59,999, that the job is found in a limited list of job titles in specific sectors.<sup>79</sup> Green Cards are issued for two years and do not require a labour market needs test. In contrast to a regular work permit, the holder's spouse and immediate family may enter the country immediately without any further immigration work, and they are also automatically given a regular work permit. Upon the expiry of a Green Card, there is no longer a need for the holder to apply for extensions, as it automatically converts into a permanent work permit.

### 7.3.2. Summary Irish Republic

**Tool A1: 2 pts.** Fulfilled through the simplified family reunification, similarly to the case of Sweden, as well as the fact that a work permit guarantees "full employment rights" for the duration of the work permit.

**Tool A2: 2 pts.** Fulfilled assuming that the higher salary level also indicates that the work is of a highly skilled type.

**Vision A1: 0 pts.** Not acknowledged.

**Vision A2: 0 pts.** Not acknowledged.

**Tool B1: 0 pts.** Since Ireland quite explicitly refuses work permits to applicants for 'seasonal type' jobs, this part of the directive cannot be considered fulfilled.

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<sup>77</sup> EEA is the European Economic Area, which comprises the EU plus Iceland, Liechtenstein and Norway. Swiss nationals are in principle treated under the same rules as these countries. Although they are EU countries, Romania and Bulgaria fall into a separate category.  
[http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/green\\_card\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/green_card_permits.html) 2012-03-11.

<sup>78</sup> <http://www.djei.ie/labour/workpermits/labourmarketneedstest.htm> 2012-03-11. FÁS is part of a European Commission network called EURES (European Employment Services) that links the databases of European Public Employment Services.

<http://www.fas.ie/en/Job+Seeker/Working+and+Training+Abroad/Recruiting+from+Europe.htm> 2012-03-11.

<sup>79</sup> [http://www.citizensinformation.ie/en/employment/migrant\\_workers/employment\\_permits/green\\_card\\_permits.html](http://www.citizensinformation.ie/en/employment/migrant_workers/employment_permits/green_card_permits.html)

**Tool B2: 0 pts.** None of the information mentions the possibility of any type of appeals process.

**Tool B3: 1 pt.** Since a work permit guarantees “full employment rights,” it can be said that all migrant workers receive protection equivalent to Irish citizens within the job market. However, there appears to be no specific protection scheme or legislation for seasonal workers, which means that a partial misfit exists. The fact that Ireland makes it very difficult for seasonal workers to receive work permits in the first place suggests that such a scheme would be unnecessary.

**Vision B1: 0 pts.** A scheme to limit the number of irregular workers in Ireland has existed, but was abandoned in 2009.

## 7.4. Labour Immigration Germany

### 7.4.1. Description Germany

The general rule for Germany is that you cannot receive a work permit unless you have a “residence title” (i.e. a visa or residence permit).<sup>80</sup> The residence title, which with the exception of a small number of countries must be obtained before entry into the country, must also specify that a work permit is connected with the residence title. A visa application is subject to the approval of the “local aliens authority” of the intended place of residence and the local labour office.

The general information on the application procedure does not indicate that any difference is made with respect to the background of a prospective non-EU migrant worker. By linking my way to the International Placement Services platform,<sup>81</sup> I receive access to the simple interactive “migration check.” This “provides a first orientation as to whether you will be able to obtain a work permit in Germany.”<sup>82</sup> To discover whether chances differ depending on background, I first click that I am “a citizen of [a non-EU or EEA country].” Choosing to check on the chances for a highly skilled worker, I then click that “I have a university degree.” Next I click that my education was not received in Germany. From here, I have a final choice. If I click that I am not a “physician, engineer or expert,” I am told that “It is basically possible to grant you a work permit.” If I click that I am one of these categories, I am informed that “A work permit may be granted to you upon presentation of a specific employment contract.”

Returning to the beginning of the migration check platform, I click instead that I have no university education. Clicking that I am “not a specialist for information and communication technology, nor a specialist for nursing or geriatric nursing” (i.e. a seasonal worker), I am informed that “It is basically not possible to grant you a work permit.”

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<sup>80</sup> <http://www.auswaertiges-amt.de/EN/Infoservice/FAQ/VisumFuerD/10-Arbeitsvisum.html?nn=479790> 2012-04-17.

<sup>81</sup> [http://www.arbeitsagentur.de/nn\\_572438/Navigation/Dienststellen/besondere-Dst/ZAV/arbeiten-in-deutschland/EN/English-Nav.html](http://www.arbeitsagentur.de/nn_572438/Navigation/Dienststellen/besondere-Dst/ZAV/arbeiten-in-deutschland/EN/English-Nav.html) 2012-05-04.

<sup>82</sup> [http://www.arbeitsagentur.de/nn\\_620330/EN/zentraler-Content/Arbeiten/migration-check/ZAV-AMZ-Startseite-EN.html](http://www.arbeitsagentur.de/nn_620330/EN/zentraler-Content/Arbeiten/migration-check/ZAV-AMZ-Startseite-EN.html) 2012-05-04.

### 7.4.2. Summary Germany

**Tool A1: 0 pts.** Despite rather rigorous searching for information on this, I was not able to find any.

**Tool A2: 2 pts.** For highly skilled workers (which Tool A2 pertains to), the application procedure is quite simple.

**Vision A1: 0 pts.** No information found.

**Vision A2: 0 pts.** No information found.

**Tool B1: 0 pts.** According to the available information, Germany does not, as a rule, admit seasonal or unskilled workers.

**Tool B2: 0 pts.** No complaints mechanism appears to exist.

**Tool B3: 0 pts.** There is no information available on rights for foreign workers, regardless of skill level.

**Vision B1: 0 pts.** The information does not address limitation of irregular workers.

## 7.5. Labour Immigration Lithuania

### 7.5.1. Description Lithuania

A work permit for Lithuania is issued by the Lithuanian Labour Exchange. A separate work permit is not required for an individual who has been given permanent residency. There are three types of work permits: Employees of foreign companies who temporarily conduct work in the country, trainee or internship permits, and regular employment by a Lithuanian employer, the latter comprising the two groups I am studying in this thesis. The requirements for obtaining a work permit are clearly listed and consist of nine documents. These include a proof of education or similar training, proof that the education or training has been assessed by a relevant Lithuanian institution if the type of work is under a form of regulation, documented work experience, and a certificate from the employer informing about the need to employ a foreigner, dismissals from the company in the last six months, confirmation that the company does not have a history of administrative faults (i.e. has paid its taxes and other administrative costs), and a summary of the employee's expected pay, including estimated taxes. The Employment contract must also be sent in to and approved by the local labour exchange office within two months of the issue of the work permit. The page also includes information of the maximum time allowed for authorities to issue a permit (provided all relevant documents are available). This time depends somewhat depending on the type of work permit, but the longest time allowed is 20 days for a regular work permit. However, if the permit concerns "high qualification employees," the maximum time is only ten days.<sup>83</sup>

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<sup>83</sup> <http://www.ldb.lt/en/Information/Services/Pages/Placementofforeigners.aspx> 2012-04-18.

### 7.5.2. Summary Lithuania

**Tool A1: 0 pts.** The rights of work permit holders and their family members are not described in the available information, despite extensive searches.

**Tool A2: 2 pts.** The criteria are clearly listed, and there is a maximum waiting time, which is also shortened for highly qualified workers, which accords with the Blue Card directive.

**Vision A1: 1 pt.** Strengthening (EU) competitiveness is mentioned as a part of the overall labour policy on the information page of the Ministry of Social Security and Labour.<sup>84</sup>

**Vision A2: 0 pts.** Ethical recruitment standards are not addressed in the available information.

**Tool B1: 2 pts.** The fast-track procedure is clearly described in the information.

**Tool B2: 1 pt.** There is plenty of information on how a work permit may be revoked, but none on to whom such decisions may be appealed. The Ministry on Social Security and Labour does explain the procedure for situations when labour agreements are not followed, so the misfit is only partial.

**Tool B3: 2 pts.** This is satisfied in full of employment contracts by the obligatory check by the labour exchange and the explanations of procedure when these are not followed.

**Vision B1:0 pts.** There is no information available on limiting irregular workers.

## 7.6. Labour Immigration France

### 7.6.1. Description France

The document “You are a foreign National. You want to come and work in France”<sup>85</sup> states that “France wishes to improve the organisation of professional immigration by making it easier for you to access selected professions.” The information—by a large margin the clearest and most informative of all five countries—divides the requirement and rights descriptions into six categories of professions. For my study I look at category 5 for seasonal workers, and both categories 4 (high executives and 6 (“scientific” permit) for highly skilled workers.

All foreign nationals must undergo a medical examination, regardless of the type of work permit. Also, all have to provide an “endorsed employment contract,” or a hosting agreement in the case of researchers, with their application. For most categories, including the high level executive and seasonal worker, the employer is required to carry out “the formalities with the OFII” (the France Immigration and Integration Office). One of these formalities is to “provide evidence of its failed search for an applicant on the labour market in France (attestation from the Employment Hub for example).”<sup>86</sup> Some occupations are exempt from this requirement,

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<sup>85</sup> [http://www.immigration.gouv.fr/spip.php?page=dossiers\\_det\\_imm&numrubrique=286&numarticle=1827](http://www.immigration.gouv.fr/spip.php?page=dossiers_det_imm&numrubrique=286&numarticle=1827) 2012-05-02.

<sup>86</sup> <http://www.immigration-professionnelle.gouv.fr/en/economic-operators/sheet/employees> 2012-05-07.

but neither seasonal nor highly skilled occupations are included on this list (if my French doesn't fail me).<sup>87</sup>

Scientific researchers may be joined by their families, who are given a temporary residence permit without the right to work. Family members of high-level executives whose monthly salary exceeds 4.472 Euros are entitled to a visitor's residence permit which also entitles the spouse to work, provided the spouse's salary exceeds 2.000 Euros per month. This contrasts with seasonal workers whose family members are not given residence permits.

Both categories of highly skilled workers receive the same health benefits as French employees. No information can be found regarding health benefits or other types of welfare for seasonal workers, so I shall have to assume that this is not satisfied for this category.

The OFII website provides very extensive information both on requirements and procedures. It seems clear that the application process is highly streamlined for all categories of workers. This website also offers accounts on general objectives of French immigration policy, which means that France provides indications on whether the 'visions' of the EU directives are included in the national policy. Both (national) competitiveness and ethical recruitment are addressed: "...in receiving foreign nationals with values which **promote dynamism and job creation within the national employment market**, the aim was also to **preserve the interests of the country of origin** and contribute to their development."<sup>88</sup>

#### 7.6.2. Summary France

**Tool A1: 2 pts.:** Both access to welfare and family reunification issues are covered for highly skilled workers

**Tool A2: 2 pts.:** There is a general fast-track procedure, named "one-stop office procedure," with the admission criteria of the EU directive as a guideline.

**Vision A1 1 pts.:** National competitiveness is stated as an objective of the immigration policy, but not EU competitiveness. Partial misfit.

**Vision A2 2 pts.:** Ethical recruitment standards are addressed (see above).

**Tool B1 2 pts.:** The same general fast-track procedure applies to seasonal workers as for the other categories.

**Tool B2: 0 pts.:** There is no mention of a complaints mechanism seasonal workers and third parties.

**Tool B3: 1 pts.:** The fact that employment contracts must be presented as a part of the application procedure offers protection for seasonal workers limit exploitation from employers. It is only implicitly expressed, however, so there is a partial misfit.

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<sup>87</sup> [http://www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/arrete\\_du\\_11-08-2011.pdf](http://www.immigration-professionnelle.gouv.fr/sites/default/files/fckupload/arrete_du_11-08-2011.pdf) 2012-05-07.

<sup>88</sup> <http://www.immigration-professionnelle.gouv.fr/en/objectives-of-the-new-policy> 2012-05-07.



**Vision B1: 0 pts.:** There is no information on limitation of irregular workers.

## 8. Results

### 8.1. A Discourse of Differentiation

This thesis addresses two research questions. The first concerns whether the EU creates a discourse of differentiation between migrant workers based on the background and intended type of work of the individual worker. I approached my analysis based on the assumption that this was so, and the information provided confirms my assumption that a differential discourse is clearly a part of the ongoing development of EU migrant work policy. This is a part of the expressed future strategy of the EU with respect to migrant workers. This differentiation is also connected to the objective of creating a ‘smoother’ and more efficient application process, with the stated intention of creating a harmonized policy that embraces all the member countries. In other words, an overarching goal is that EU countries should provide exactly the same application process.

Providing an efficient and harmonized application process is naturally in the interest of both parties. Work permit applicants receive equal treatment regardless of which EU country is involved. This makes the EU an attractive job market for third-nation working migrants regardless of background. It is also noteworthy that the goal of a fast-track procedure is an overarching goal for both groups of applicants, although the highly-skilled workers are provided with a ‘fast lane.’

Question marks arise around access to welfare systems as well as possibilities for family members to join workers. Here the differentiation appears greater, as both access to the welfare system and family reunification are more clearly expressed for highly skilled workers. Access to the welfare system also appears to be left to the discretion of the individual countries.

### 8.2. Degrees of Europeanization Exposed in Discourse

On a general note, the information gathered from the individual countries appear in highly varied forms. In the selection of five countries, the supply of information can be split into two camps. France and Lithuania provide all the necessary information in one or two easily found information pages, with easy access to links where this was needed. Sweden, Ireland, and Germany, however, spread the information out across several different pages. In the case of Sweden, it is possible to stay within just one website, whereas Germany and particularly Ireland ‘force’ the information gatherer to click onto other domains. Even though the links are provided, every new domain involves more navigation and getting familiar with the new ‘site map.’

I provide a summary of the individual country observations in the table below. I call the total score for each country  $\sum D$  to indicate that it is a sum of the discourses for that country.:

Country	Tools					Visions			$\Sigma D$	E
	A1	A2	B1	B2	B3	A1	A2	B1		
Sweden	1	2	0	1	2	0	0	0	6	37,5%
Ireland	2	2	0	0	1	0	0	0	5	31,3%
Germany	0	2	0	0	0	0	0	0	2	12,5%
Lithuania	0	2	2	1	0	1	0	0	6	37,5%
France	2	2	2	0	1	1	2	0	10	62,5%

Table 1: Results summary

It is necessary when studying the results above to realize that what is being measured is not whether the EU directives have been implemented into national legislation or not. If this were so, then it would be worrisome to find that only one of the directives has been implemented in full by all the countries, and that there is a considerable lack of implementation in all other columns. However, the results display what can be described as official information for prospective work permit applicants in two specific employment categories. In a sense, it displays what the migration institution of each country has ascribed as relevant information for work permit applications, but this is only *based on* what the EU has ascribed as important information; the interpretation is up to the individual country institution.

It can be seen that the ‘most successful’ part of the EU directives is the fast-track procedure for highly skilled workers, which all countries have adopted in full. With respect to family reunification and access to welfare (Tool A1), the implementation is not carried through all that well; only three countries provide easily available information on this, and one of these only partially. Perhaps an explanation to this can be found in that this part of the directive (as I noted in 8.1. above) is rather loosely expressed, and left to the discretion of individual countries. It is rather remarkable, however, that the implementation rate is so low on a passed directive.

The implementation rates of tools B1, B2, and B3 are also quite low. This is more explainable, however, since the directive on which the ‘tools’ are based has not yet been passed. Here it is rather more interesting to note that some countries have already implemented the upcoming directive to some extent. At the same time, this may logically reflect that new legislation is to a certain extent normally based on already existing norms. It should not be surprising that the upcoming directive reflects established norms of some individual countries.

The two countries that have not reported back new legislation to implement the Blue Card directive—Ireland and Germany—also have the lowest overall degree of Europeanization. These are also the two countries that most clearly indicate that lower-skilled workers are unlikely to be given a work permit. In the case of Germany, ‘tool A2’ (fast track procedure for highly skilled workers) is still a part of the national information. Interestingly, the information from Ireland indicates that both ‘tools’ of the Blue Card directive are already a part of immigration practice, despite the fact that the directive is not formally implemented.

A look at the implementation rate of the visions indicate very little adoption of the EU objectives as well. Tools are adopted to a greater extent than visions (50% of tools compared with 10% of visions). So direct legislation carries greater weight than the stated objectives of the same legislation. Law has a greater effect on institutional interpretation than the social intentions behind it. This is an important result to understand the implications of providing legal norms for creating social effects; it has a greater impact on society than more general ‘visionary’ norms.

Only one category of the EU information has ‘slipped down’ to all the countries, and all countries have adopted this in full. That is the ‘tool’ that creates a fast-track procedure for highly skilled workers. Even the countries that have not officially implemented the Blue Card directive have adopted this ‘tool.’ By comparison, only two out of five countries—Lithuania and France—have adopted the corresponding procedure for seasonal workers. For seasonal workers, it can be explained by the fact that the Seasonal Workers directive has not yet been passed. All the same, there seems to be little controversy in giving highly skilled workers work permits—with or without implementation—whereas the reluctance to admit seasonal workers is quite outspoken appears great. Add to this that access to welfare is also easier for highly skilled workers, and a trend of differentiation is clear. In short: some categories of workers are more welcome than others.

With respect to the research question of determining the degree of Europeanization of individual countries through discourse analysis, it is clear that overall there is a great spread in the extent to which the individual countries’ migration institutions show that they have adopted the legislation. France and Germany stand out as relatively high and relatively low implementers respectively. These are the ‘oldest’ EU countries in the selection, so it is interesting that their respective institutions—that should be quite used to EU legislation by now—seem to interpret the directives so differently. This indicates that there is a lack of harmony in the manner in which institutions adapt and adopt new legislation. It should be said that this is just a very small study of just one type of institution and one type of legislation. It would take a much larger and broader study to determine if this is a trend that spans across all types of legislation. It is quite remarkable if harmonization of EU law is so very dependent upon the individual interpretation of individual country institutions.

## 9. Conclusions

**This paper has addressed two interrelated questions. Firstly, do the directives associated with the currently developing work migrant policy of the EU contribute to a process of differentiation based on the origins, skills, or other characteristics of work permit applicants? The discourse analysis of the two studied directives shows that they contribute to differentiate between different types of migrants. Secondly, is there a difference in how the migration departments of a selection of countries apply EU directives? The content analysis comparing the information found in official internet**

**sources indicates that the EU directives are applied differently by the relevant institutions of the selected countries.**

By identifying a discourse other than Europeanization itself, the analysis provides an alternative focus on the implementation process. The digression from the intended effect is found in the interpretative process of the migration institutions of the respective countries. Because these national institutions are so very different from each other, and because they interpret directives on the basis of their national social context, their interpretation processes are in turn so very different. As a result, the degree of Europeanization at the social level is to a great extent unpredictable in a comparison between countries.

In a comparison with other studies on Europeanization, it seems that studying the information discourse of bureaucratic institution carries some merit. The economic-based approach (Perkins and Neumayer), the political culture approach (Lampinen and Uusikylä), and the legal culture approach (Börzel) all indicate one common denominator for achieving a higher rate of legal implementation: the presence of a well-working bureaucratic structure. In other words, the bureaucratic structure of a country appears to be an important factor—on the basis of these studies apparently the most important—for a country to be ‘legally Europeanised.’ These studies only take into account whether or not EU legislation has been passed on. They do not provide an indicator on what happens *after the passing*. What do the bureaucratic institutions make of the legislation? That is the question I address in my study. My results indicate that the passing of a legislation is an important factor for passing it on to bureaucratic practice (but anything else would of course be highly illogical), but they also indicate that bureaucratic institutions of different countries have very different ways of interpreting the legislation. The method I suggest is therefore important to determine if the effect of the legislation is the intended one. The other studies I have looked at only indicate if a country is Europeanised at the higher—political—level, not if it is Europeanised at the social level.

With respect to the MLG model, we can check back to the four principles of governance as expressed by Hunt and Wickham. The continuum of society is disrupted by the governance of EU directives in the form of intended norms, expressed as legislation. National institutions function as instruments of power with the task of applying the intended norms. Due to a natural resistance to change through governance, the process of applying the ‘new’ norms is resisted, to a large extent even by the very instruments intended to uphold them. As a result the legal norms created at the ‘top’ (EU) level are distorted, so that the intended harmonisation process of the EU legislation is unrecognisable even in a comparison between a handful of EU countries. This is a sign of failure from an EU perspective, and also problematic from the perspective of legal security for working migrants. At the same time, it is a sign of healthy resistance to change in a number of EU countries. From a Foucauldian perspective, the implementation process has not failed, it is merely incomplete.

What is displayed here are norms that are shaped by an institutional procedure. This procedure is dependent on the established norms within that institution, norms determined by resources, tradition, other legislation, current internal policies, national political debate etc. Whereas the majority of these established norms can be rationally explained, they

nevertheless exist, and will in many cases cause gaps between the intended and actual social effect. Assuming that the EU legislation process is a well-oiled machinery will inevitably cause frustration when social factors add grains of sand.

On an—admittedly—shallow plain, I would claim that the process of differentiating between ‘different types’ of working migrants is dependent upon values and attitudes that are imbedded in nationally determined norms, norms that are not taken into consideration in the objective expression of legislative reform. These norms are strong factors however, in the adoption and adaptation of supranational legislation into national legislation, but *even more so* in the interpretation and practical application of the legal change. The natural conclusion of this is that the harmonization of EU legislation cannot make itself dependent only on legal reforms. It must also take into account how the legislation is interpreted and applied and—if possible—start a process to harmonize these norms as well. Whether this *should* be done is a matter of politics, not of Sociology of Law.

## 10. Final Remarks

It is probably a natural human instinct to strive for some order and harmony in our tasks. Should it be deemed desirable to attain a ‘harmonization of norms’ in national institutions, a suggested first step would be to harmonize the way in which information is provided. If for example, the process of work permit applications was provided from one website covering all EU countries ‘one by one’ and using the same ‘template,’ then it would be quite easy to discover individual deviations from the original EU directive. In this manner, it would also be easy to identify where norms may differ. If this were combined with a harmonization of language (i.e. the information as well as the legal texts are provided in English or preferably all the EU languages), much would be gained for those wishing to study...well...what I have just studied.

In my method description, I have suggested a simple formula for indicating Europeanization from a discourse and content analysis approach. I acknowledge that the formula seems overly simplistic at this point, and that the results merely provide indications of Europeanization with respect to just *one* directive. For this formula to have any worth in a larger perspective, it would be necessary to research corresponding information on a great number of EU directives (preferably all of them). Only with a summary of a large number of directives would the result of such a formula be statistically useful enough to be called a *measurement* of Europeanization. I therefore take care to call the results of this study an indication. The method in itself, however, is quite time-efficient. It may have taken some time for me to do this the first time as many question marks appear in the development of the method. Once the method is established, however, the desired information is a click away with an internet connection and a trained researcher (or team of researchers) would be able to quite quickly identify the prevailing discourse of a policy and ensuing EU directive. By repeating the method with a great number of EU directives, the units of the ‘yardstick’ (returning to Falkner’s terminology) become representative enough for measurement.

To plan and conduct research on a transdisciplinary plane is akin to the experience of walking a tightrope across the Niagara Falls (At least I think so—I haven't tried it). The mind is trained to approach a question one way, at the same time there is a challenge in trying fresh theories to answer prevailing questions. The search is for a balance in the mind between embracing the new without discarding the already established. Gender theory and sociology of law share a connection to the Foucauldian concepts of power and knowledge. However, the standpoints on how these are manifested in the social are, to say the least, very different. In this paper, I have tried to suggest a gender-based approach to resolve what to me is a socio-legal issue. I hope I have managed to convey this at least to an extent.

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