Chapter 1

Introduction

1.1 Context

The policy idea of facilitating circular migration entered the European Union's agenda more than a decade ago¹ as part of a worldwide buzz among international organisations that it could provide a 'triple win solution' that would benefit all: the countries of origin and destination as well as the migrant workers themselves.² It became clear that the European Commission wanted to foster this type of migration in such a way as to allow some degree of legal mobility for migrants back and forth between two countries.³ For Member States, this 'triple win solution' would provide a tool that resonates with their reluctance to open more channels for legal migration, permanent settlement, and pathways to naturalisation, and it would also reduce any irregular overstaying.⁴ Since circular migration is allegedly of temporary nature, states would be able to satisfy their labour market needs⁵ and at the same time disengage from the integration challenges associated with permanent migration.⁶

In similar vein, countries of origin would supposedly benefit from the social and economic development that circular migration is claimed to facilitate through a steady flow of remittances,⁷ skills and knowledge transfers, as well as brain circulation thus mitigating the negative effects of a brain drain.⁸ Lastly, the advocates of circular migration claimed that it could potentially bring advantages for the migrant workers because, amongst other things, this type of migration is emerging as a

¹European Commission (2005), p. 7.

²European Commission (2005), p. 25; Newland et al. (2008), p. 2.

³European Commission (2007), p. 8.

⁴Vankova (2016), p. 332.

⁵Zimmerman (2014), p. 2.

⁶Vankova (2016), p. 333.

⁷Hugo (2009); Constant and Zimmerman (2011).

⁸European Commission (2005), p. 7; Zimmerman (2014), p. 3.

natural preference for many migrants, especially when they are encouraged to circulate as a result of flexible policy frameworks.⁹

Many scholars have contested this new ‘triple win solution’ and its alleged positive outcomes for migrant workers, arguing that one could see it is a revival of the guest-working schemes associated with the circulation of ‘labour units’¹⁰ rather than free choice in the migration decision.¹¹ Judging by policy developments in recent years, one can see that there is little enthusiasm among governments for creating rights-based labour migration schemes; obstacles to accessing long-term residence and family reunification are still a reality for many migrant workers, especially those engaged in low-skilled occupations.¹² Furthermore, as Wickramasekara has argued, the claim that circular migration is a ‘natural preference’ for many migrants is unsubstantiated.¹³ Even though crossing borders to live elsewhere is becoming a lifestyle of its own,¹⁴ this trend very often concerns highly skilled ‘global citizens’ for whom special regimes are designed and does not necessarily entail circularity.

Against the backdrop of the 2015 ‘European refugee and migrant crisis’, several organisations have argued that more legal channels into the EU must be made available¹⁵ and some have stressed that stock needs to be taken of the pathways for legal mobility that are already in existence.¹⁶ More than 10 years after the European Commission began promoting the facilitation of circular migration, there is no clear answer as to whether this type of migration has the potential to provide a legal pathway for migrants into the EU as part of a rights-based policy solution that is beneficial for the migrant worker.¹⁷

Thus far, much of the literature on circular migration within the context of the EU has focused on conceptualising what is meant by the term¹⁸ and discussing the

⁹ Hugo (2013), p. 3; Newland et al. (2008).

¹⁰ Castles and Ozkul (2014); Skeldon (2012); Wickramasekara (2011); Schneider and Wiesbrock (2011).

¹¹ Vankova (2016), p. 333.

¹² Ibid.

¹³ Wickramasekara (2011), pp. 21–3.

¹⁴ Faist et al. (2013), p. 7.

¹⁵ See for instance Jackson (2015).

¹⁶ See for instance Collett et al. (2016).

¹⁷ Vankova (2016), p. 333.

¹⁸ The Euro-Mediterranean Consortium for Applied Research on International Migration (CARIM), which was managed by the Robert Schuman Centre for Advanced Studies of the European University Institute, Italy, produced research examining the demographic, legal, and socio-political aspects of circular migration in the Euro-Mediterranean context for the European Commission. See for instance Fargues (2008). Moreover, the CARIM East project covered explanatory notes that examined the demographic, legal, and socio-political aspects of circular migration between Eastern Europe and the European Union and within the post-Soviet space. Available at: <http://www.carim-east.eu/database/legal-module/?ls=4&ind=exnocom&lang=> last (accessed 25 Sept 2017).

critical issues related to this type of migration,¹⁹ as well as analysing the existing patterns between the EU and its neighbours,²⁰ rather than discussing the implementation of the EU’s circular migration approach and its consequences for migrant workers.²¹ Little is known about the ways in which the existing supranational and national structures and the normative frameworks they create influence the possibility for migrants to circulate within and across transnational spaces. At the same time, however, the current policy turn to circular migration policies is largely driven by the relatively recent recognition of the importance of migrant transnational practices.²² As Vertovec has emphasised, the study of transnational migration would benefit from examining how transnational social structures and practices have emerged in the light of opportunity structures – such as visa, residency, citizenship, pension, and health care provisions – in both the sending and receiving states and how they influence migrants’ own desires and strategies to conduct their transnational lives.²³

This study aims to contribute to filling this gap by assessing the implementation of EU policies and legal instruments designed to foster circular migration and, additionally, how they affect migrant workers’ rights in the context of circularity. The study focuses geographically on the Eastern neighbourhood, which comprises countries in Central and Eastern Europe (CEE) attracting migrant workers from the former Soviet Union republics. This region is an interesting case for research because it is understudied both in terms of issues related to legislation and policy of these new countries of immigration as well as in terms of implementation of the EU’s circular migration approach at the national level. Furthermore, the CEE comprises both EU and non-EU countries and is characterised by an increasing cross-border migration after the latest EU enlargement.

1.2 Understanding the Term ‘Circular Migration’

1.2.1 *Definitions of Circular Migration*

In order to assess circular migration policies, it is important to first define what is meant by this term. Previous literature review of this topic demonstrates that ‘circular migration’ was first referred to in the academic literature on urbanisation, rural

¹⁹ Castles (2006); Castles and Ozkul (2014); Vertovec (2007); Pastore (2008); Skeldon (2012).

²⁰ Triandafyllidou (2013b).

²¹ Carrera and i Sagrera (2009); Angenendt (2007).

²² Vertovec (2007), p. 3.

²³ Vertovec (2003), pp. 653–4.

development, and internal migration in developing countries²⁴ in the late 1960s and early 1970s as a spontaneous pattern of mobility.²⁵ Zelynski defined circulation in the context of migration as ‘a great variety of movements usually short term, repetitive and cyclical in nature but all having in common the lack of any declared intention of a permanent or long lasting change of residence’.²⁶ Later, the concept’s introduction into the international policy-making discourse marked a shift in the use and understanding of circular migration – from a pattern of spontaneous movement to a potential migration policy tool.²⁷

Hitherto, however, neither academics nor policy researchers have been able to arrive at one universally accepted definition of the notion of circular migration. It was not until the first Global Forum on Migration and Development in 2007 that a working definition was provided at the international level: ‘Circular Migration is the fluid movement of people between countries, including temporary or more permanent movement which, when it occurs voluntarily and is linked to the labour needs of countries of origin and destination, can be beneficial to all involved’.²⁸ This definition, developed by the Migration Policy Institute (MPI), recognised that circular migration can take different forms and that it could be either temporary or permanent. It also included an aspirational policy element related to ‘mutual benefit and voluntariness’.²⁹

Skeldon further argues that circular migration is a subset of return and temporary migration, where the migrant ‘engages in a regular and repetitive series of outward and return movements between an origin and a destination or destinations’, and is ‘free’ to return at any time.³⁰ The author emphasises that circular migration is repetitive, regular, and involves more than one return. However, his key point is that circular migration occurs at its best when individuals are entitled to free movement across international boundaries and when it is in line with the idea of ‘voluntariness’ that has been developed by Newland et al.³¹

Furthermore, according to Skeldon, it is contradictory to talk about managing circular migration because this will turn it into a temporary migration programme.³² In other words, facilitating spontaneous circular migration that already occurs is a more successful policy option than managing migration by placing restrictions on

²⁴ Prothero and Chapman (1985), pp. 1–26; Newland (2009), p. 5.

²⁵ Vankova (2016), p. 334.

²⁶ Zelynski (1971), pp. 225–6.

²⁷ Vankova (2016), p. 334.

²⁸ Newland and Agunias (2007), p. 4.

²⁹ Newland (2009), p. 7.

³⁰ Skeldon (2012), pp. 46–7.

³¹ Newland et al. (2008), p. 7.

³² Skeldon (2012), p. 53.

labour and human rights, length of stay, or change of employer. As demonstrated above, this is a distinctive feature in the definitions that have been given by some scholars and policymakers.³³ Cassarino is equally critical in this regard, arguing that circular migration programs build upon past temporary schemes aiming to manage labour migration, whose adoption is linked to new ‘security-driven safeguards’.³⁴ These authors believe that the concept of managed circular migration does not differ greatly from the old guest-working models that were developed after World War II that emphasised restrictions and security in order to manage migration. For instance, according to the German model, which was notable for both its scale and its administrative framework, guest workers were to be used as ‘temporary labour units’³⁵ to be returned when no longer needed by employers.³⁶ This allowed employers to have full control over the worker’s status, from recruitment to deportation.

Hugo, who was among the first scholars to start using the term, stresses the elements of repetition and regularity in his definition: ‘circular migration refers to repeated migration experiences between an origin and destination involving more than one migration and return’.³⁷ He argues that circular migration is best understood as an occurring and spontaneous migration pattern that should be facilitated and encouraged through policy measures by both destination countries and countries of origin; moreover, where permanent settlement occurred, it would not hinder circulation in the long term.³⁸ Such is the policy example from Sweden, which built on the idea of facilitating circulation of settled migrants back to their countries of origin in order to promote development as part of its migration policy.³⁹

Many authors have also emphasised the economic characteristics of circular migration along with the element of repetition and temporariness.⁴⁰ Fargues takes a rather normative approach and underlines the essential policy ingredients: circular migration is characterised as ‘temporary, renewable, circulatory, legal, respectful of

³³ See also Triandafyllidou (2013a), p. 5.

³⁴ Cassarino (2013), p. 23.

³⁵ Martin and Miller (1980), p. 316.

³⁶ Huhn (2011), p. 24.

³⁷ Hugo (2013), p. 2.

³⁸ Ibid.

³⁹ Government Bill 2013/14:213 approved by the Riksdag on 18 June 2014 allowed permanent residence permit holders who reside outside of Sweden to keep their permits for up to 2 years provided they have notified the Swedish Migration Board. It also allows for labour migrants with temporary residence permits to spend certain periods of time outside Sweden and still be able to qualify for a permanent residence permit if they have been working in Sweden for at least 4 years of the past 7 years.

⁴⁰ Newland et al. (2008); Cassarino (2008).

the migrants right, and managed in such way as to optimise labour markets at both ends, in sending and receiving countries'.⁴¹ As to the notion of 'circulatory', the author means freedom of movement between countries of origin and destination, as per the definitions given by Skeldon and Newland et al. Fargues also emphasises the importance of migrants' rights and suggests that another important aspect of a circular migration policy could be the enhancement of skills and skill transfers.⁴²

To summarise, the general understanding of circular migration is that it entails repetitive, recurrent, and temporary cross-border movement for short or long periods of residence in a country of destination and then a return to the country of origin. It is of crucial importance to stress that authors such as Skeldon, Hugo, and Newland et al. do not perceive permanent migration or settlement as counter to circular migration. Rather, they have a broad understanding of this type of migration as a fluid movement. A good example illustrating this is the case of 'circulatory transmigration' of Chinese migrants into New Zealand over the past few decades, where migrant families circulate according to the specific needs of their members at various stages of their life cycle.⁴³

1.2.2 Circular Migration in the EU Context

In 2005, the European Commission initially defined circular migration as a spontaneous pattern: '[...] migration, in which migrants tend to go back and forth between the source country and the destination country [...]'.⁴⁴ The 2007 Commission Communication conceptualised it further as 'a form of migration that is managed in a way allowing some degree of mobility back and forth between two countries', marking a shift in the Commission's approach towards the policy idea of circular migration management. In 2010, the European Migration Network was commissioned to carry out a study on circular migration.⁴⁵ Instead of applying the definition promulgated by the Commission, it proposed its own definition: 'a repetition of legal migration by the same person between two or more countries'.⁴⁶ This

⁴¹ Fargues (2008), p. 11.

⁴² Ibid, p. 2.

⁴³ For more details see Ip (2011).

⁴⁴ European Commission (2005), Annex 5, p. 25.

⁴⁵ This study aimed 'to illustrate different policy preferences and approaches to temporary and circular migration, and to provide evidence of their characteristics, as well as to identify lessons learned, best practices and possible policy options, which could be further explored at national and EU political levels'. Thus, the EMN study also responded to 'the request from the Council, through its Council Conclusions and the Stockholm Programme, regarding further exploration and development of circular migration as an integral part of EU migration policy'. In European Migration Network (2011), p. 1.

⁴⁶ Ibid., p.14.

definition stressed that circular migration takes place through legal channels and that circularity may occur between more than two countries.

This ambivalence in defining circular migration at the EU level required data collection through interviews in order to further clarify the meaning of the term.⁴⁷ One of the interviewees in this study, who participated in the introduction of this concept in the EU’s policy agenda, shared that the concept was deliberately left broad so as to capture a wider policy context and instruments based on different Treaty articles.⁴⁸ The term ‘mobility’ was not only used to forge an explicit link to the EU visa policy but also to denote the circular ‘back and forth’ movement as well as ‘to bring in the concept of dynamics’.⁴⁹ Another interviewed official emphasised that different stakeholders would associate circular migration with something that they were familiar with, such as for example, guest working schemes and seasonal work.⁵⁰

An interviewed Council official said that, according to his personal understanding, circular migration referred to a scheme of temporary migration.⁵¹ It was mostly used as a tool to achieve ‘a status of protected people’ so that migrants could keep their work permits and use them again when they go back to the country of destination.⁵² Circular migration was also seen as an incentive against ‘illegality’. However, for the interviewee, the biggest question was whether one could control circular migration patterns, which by their very nature were spontaneous acts. He associated managed circular migration with the creation of schemes that seemed complicated and beset with problems.⁵³ Another interviewee working at an international organisation shared the view that EU policy discussions on circular migration were, indeed, focused on establishing temporary migration schemes.⁵⁴

A European Commission official confirmed that ‘[...] we want to have well-managed migration and therefore when we talk about circular migration, we have to put in a management scheme’.⁵⁵ On a personal level, however, the official believed in the model that facilitated spontaneous circular migration, even though this model could not be promoted among Member States because ‘spontaneous’ sounded like ‘uncontrolled’.⁵⁶ According to the interviewee: ‘[...] for this reason, people have preference for a more organised system, even though in reality, it hardly happens’.⁵⁷

⁴⁷ For more details on the study’s methodology see Chap. 2.

⁴⁸ Interview # 29 with European Commission official, Belgium, May 2017, Annex I.

⁴⁹ Interview # 29 with European Commission official, Belgium, May 2017, Annex I.

⁵⁰ Interview # 11 with European Commission official, Belgium, May 2013, Annex I.

⁵¹ Interview # 8 with EU Council official, Belgium, February 2013, Annex I.

⁵² Interview # 8 with EU Council official, Belgium, February 2013, Annex I.

⁵³ Interview # 8 with EU Council official, Belgium, February 2013, Annex I.

⁵⁴ Interview # 28 with representative of international organisation, Austria, March 2017, Annex I.

⁵⁵ Interview # 9 with European Commission official, Belgium, March 2013, Annex I.

⁵⁶ Interview # 9 with European Commission official, Belgium, March 2013, Annex I.

⁵⁷ Interview # 9 with European Commission official, Belgium, March 2013 Annex I.

One of the interviewed academics underlined that this was a concept ‘especially established to look nice on paper: it allows the policy makers to show the voters that it is something that it is manageable, so it is a tool.’⁵⁸ If you have a tool, it means that you can manage a phenomenon’. According to this interviewee, there were Member States such as Germany, Austria, the Netherlands, and France where one could not ‘tell the voters that you are going to have temporary migration scheme, but when they were given this beautiful package of circular migration, they adopted it and moved it up on the European agenda’.⁵⁹ In addition, this academic noted, it was also developed to attract funding from the donors: ‘the donors would never give money for temporary migration schemes but it is a different thing for circular migration. In the end, it is exactly the same’.⁶⁰

As this section demonstrates, there is no uniform understanding of the policy concept of circular migration in the EU context either. The understanding of this notion by EU actors differs in terms of the approach to managing this type of migration – by establishing temporary schemes or facilitating spontaneous patterns – as well as concerning the aims of these measures and the spectrum of mobility – between two or more countries. This poses a conceptual challenge and for the purposes of this study requires the adoption of a working definition that would guide the assessment of the implementation of the EU’s approach to circular migration. In order to do that, one needs to further distinguish circular migration from other types of migration and also look into the different patterns of circular migration.

1.2.3 Towards a Working Definition of Circular Migration

Typologies of patterns of circular migration naturally vary depending on each author’s approach to defining circular migration. Newland et al., for instance, outline three patterns of circular migration, differentiating between the character of the movement and the level of the migrant’s skills: seasonal; non-seasonal and low-wage; and, mobility of professionals, knowledge workers, and transnational entrepreneurs.⁶¹ In his research on circular migration in the Euro-Mediterranean area, Cassarino provides an alternative typology of circular migration patterns, which are shaped by the migrant’s mobility strategy (migrant’s agency) as well as by changing circumstances and structural factors such as state migration and border policies.⁶² According to this typology, patterns of circular migration can be hindered, embedded, and regulated.

⁵⁸ Interview # 12 with academic, Italy, May 2013, Annex I.

⁵⁹ Interview # 12 with academic, Italy, May 2013, Annex I.

⁶⁰ Interview # 12 with academic, Italy, May 2013, Annex I.

⁶¹ Newland et al. (2008), p. 3.

⁶² Cassarino (2008), pp. 2–7.

Both typologies capture the intrinsic characteristics of circular migration which can only demonstrate the variety of circular movements if they are examined together. Patterns of circular migration can be differentiated based on the seasonality (or not) of the movement, migrants’ skill levels, and whether the circular migration pattern is regulated or embedded (non-regulated). The only category that does not fit within this joint model is the hindered pattern, which as Wickramasekara stresses, is not a separate category.⁶³ The hindered pattern does not actually describe a different type of movement, but rather it presents the factors that could drive circular movement to an end – and which are applicable to both embedded and regulated types. Only by joining the two typologies can one arrive at a variety of circular patterns that, in turn, give a better picture of the diversity that is redolent of circular migration.

Nevertheless, as Skeldon underlines, ‘the identification of a constant, clearly identifiable form of migration that can be called “circular” is problematic’, especially across borders.⁶⁴ The author believes that circular movements are prone to change their duration and composition over time.⁶⁵ Therefore, another fact that poses additional challenges to the conceptualisation of circular migration is the difficulty of separating it from other forms of migration, such as temporary and return migration.⁶⁶ Furthermore, ‘leakage’, as Skeldon refers to permanent settlement in the country of destination, is an inherent characteristic of circular migration.⁶⁷ Despite these challenges, and for the sake of clarity when arriving at a working definition for this study, it is important to attempt to distinguish between the typical features of circular migration and other types of migration and, furthermore, to demonstrate how they relate to each other.

Circular vs. Permanent Migration Permanent migration involves migration to another country for long-term or permanent settlement. This type of migration, however, does not exclude circularity. Circular migration can ‘leak’ into permanent migration and resume again at some point since there are long-term or permanently settled migrants who engage in circularity to their county of destination. In order to illustrate the blurred line between these types of migration, scholars have coined the terms ‘intermittent circulars’⁶⁸ and ‘circular transmigrants’ in an attempt to distinguish the varying trajectories and experiences of engagement that could span a lifetime and should be seen as holistic circular migration projects.⁶⁹ Actually, more and more scholars consider that in the age of globalisation, which provides for so much accessible communication and transport, this naturally means that ‘all migration is to some extent circular’.⁷⁰

⁶³ Wickramasekara (2011), p. 10.

⁶⁴ Skeldon (2012), p. 55.

⁶⁵ Ibid.

⁶⁶ Vankova (2016), p. 335.

⁶⁷ Skeldon (2012), p. 53.

⁶⁸ See Triandafyllidou (2013a).

⁶⁹ See Górný (2017).

⁷⁰ Pastore (2008), p. 3.

Circular vs. Temporary Migration The terms temporary and circular migration are frequently used interchangeably⁷¹ in policy circles. It is, therefore, important to note salient differences. The main distinction between these two types of migration is that temporary migration ‘involves a one-time only temporary stay and eventual return which closes the migration cycle’⁷² whereas circular migration involves recurrent temporary movements after the initial return. In line with that premise, Newland et al. argue that ‘circular migration is distinct from temporary migration in that circular migration denotes a migrant’s continuous engagement in both home and adopted countries’.⁷³ Therefore, circular migration is also seen as being closely connected to transnationalism, featuring migration as well as return to the country of origin.⁷⁴ For instance, a study of Moroccan immigrants in the Netherlands demonstrates that their integration in the host country does not lead to less engagement with their country of origin.⁷⁵ They continue to remit as well as transfer skills and knowledge (including through return visits) when they have the capacity to do so and exhibit higher levels of attachment to their country of origin.

Furthermore, both terms relate to temporary movement and stay, thus raising the following question: how long is temporary? According to the working definition given by the EURA-NET project that focuses on the impact of temporary migration, this type of movement can last between 3 months and up to 5 years.⁷⁶ The variations in the range of ‘human mobility experiences’ within this spectrum depend on the different categories of migrants.⁷⁷ For instance, persons who stay in the EU for a period shorter than 3 months are involved in short-term circularity, whereas at the other end of the spectrum – migrants spending more than 5 years outside their home country – are considered to be long-term residents settled more permanently abroad.⁷⁸ Hence, temporary migration excludes any permanent stays.

In contrast to those temporary migration stays that do not last for more than 5 years, the circular migration cycle has no formal beginning or end. It could begin for less than 3 months in the case of seasonal migration or continue after 5-year-long periods, when a third-country national qualifies for a long-term residence status, and even last until the person becomes eligible for naturalisation and is granted citizenship. Therefore, circular migration can encompass both temporary and longer-term stays. The distinctive feature is that circular migrants spend significant periods of their lives in both their countries of origin and destination.⁷⁹

⁷¹ Or as Triandafyllidou notes in a ‘slash fashion “temporary/circular”’. In Triandafyllidou (2013a), p. 4.

⁷² European Migration Network (2011), p. 21.

⁷³ Newland et al. (2008), p. 2.

⁷⁴ Triandafyllidou (2013a), p. 5; Vertovec (2007), pp. 2–3.

⁷⁵ Bilgili (2014), p. 183.

⁷⁶ Carrera et al. (2014), p. 18.

⁷⁷ Aksakal and Schmidt-Verkerk (2015), p. 5.

⁷⁸ Ibid.

⁷⁹ Hugo (2013), p. 2.

Circular vs. Return Migration Usually the term ‘return migration’ refers to a one-off movement back to the country of origin. Nevertheless, as was the case with the example of permanent migration, return does not exclude circularity. There are migrants who live abroad and permanently return to their countries of origin, but there are also migrants who return temporarily and continue to circulate. Thus, the main difference with circular migration is that one-off return migration closes the migratory cycle and circular migration ‘implies more than just a single out-and-return movement’.⁸⁰

Circular vs. Labour Migration Circular migration occurs primarily for economic reasons such as higher wages, economic survival, and better working conditions, and can thus be considered as being predominantly labour migration.⁸¹ As mentioned above, circular migrants can have different skill levels and work in a variety of different sectors. Moreover, it is important to distinguish it from cross-border commuting as another type of economic circulation that is not considered circular migration. Commuting involves a return to the country of origin within the same day or within the working week and therefore does not involve long stays abroad.

Circular vs. Other Types of Migration That Are Circular in Nature It is important to differentiate circular migration from shuttle and pendular migration,⁸² which are also referred to as incomplete migration.⁸³ These types of migration emerged in the post-1989 period between the CEE countries. They possess a ‘quasi-migratory character’ and denote the movement of ‘incomplete migrants’ that does not last for more than 3 months after which they return home, having usually entered as ‘false tourists’ on a short-term visa and informally engaged in petty trade commerce or interregional trading.⁸⁴ For example, this was the strategy used predominantly by Ukrainians in Poland.⁸⁵ However, the main difference with circular migration is that this type of movement falls within the ambit of short-term mobility and involves migrants working irregularly on the basis of a tourist visa. Finally, ‘liquid’ migration⁸⁶ is a concept applied to intra-EU mobility and not easily applicable to third-country nationals facing legal barriers.⁸⁷

Circular Migration vs. Mobility Traditionally, the term ‘mobility’ in the EU context was reserved for the free movement of persons. After 2006, however, with the

⁸⁰ Skeldon (2012), p. 46.

⁸¹ Triandafyllidou (2013a), p. 12.

⁸² This was first introduced by Morokvasic (1992), pp. 31–36. See also Iglicka (2000), pp. 61–73.

⁸³ Okólski (2004), p. 44; Kaczmarczyk and Okólski (2005), pp. 18–20.

⁸⁴ Okólski (2004), p. 44. This strategy was also used in the domestic sector. See for instance, Marchetti (2013).

⁸⁵ Iglicka and Gmaj (2010).

⁸⁶ Engebensen et al. (2010).

⁸⁷ Górny (2017), p. 3.

publication of the Commission Communication ‘Global Approach to Migration one year on’,⁸⁸ the term ‘mobility’ began being used in the context of the external dimension of the EU’s migration policy as well, denoting cross-border mobility. As Mananshivili stresses ‘the boundaries of this concept have not been demarcated yet, and accordingly, its precise legal definition is so far absent at the EU level’.⁸⁹ Since this is an implementation study, the usage of both terms in the context of this book follows the EU’s usage.

Despite the conceptual challenges, this section of the book has outlined some of the key characteristics of circular migration that will form the basis of a working definition: it is legal labour migration occurring through legal channels; it is repeated migration, involving more than one outward movement and return; and it is temporary migration encompassing both temporary and long-term stays. To sum up, this study adopts the following working definition: circular migration involves legal temporary migration of economically active migrants, moving repeatedly between their countries of destination and their countries of origin.⁹⁰ This definition is left broad on purpose, following Skeldon’s understanding that a clear-cut identification of circular migration is difficult as it changes over time and is prone to leakages into permanent migration that are not considered opposite but rather interconnected types of migration.

1.3 Analytical Tools

This book takes as a starting point the rights-based benchmark framework for assessment of circular migration policies that was developed for this study.⁹¹ Previous work on this topic suggests that the key policy areas and problematic issues that need to be considered if this type of circular migration is to be facilitated are entry and re-entry conditions, work authorisation, residence status, and social security coordination.⁹² In addition, this study focuses on two policy areas that are considered secondary – entry conditions for family members and recognition of qualifications – but which could influence the willingness of migrants to engage in circular migration. They are illustrative of the diversity of issues associated with this type of migration. As already argued elsewhere, family reunification might not be an issue for a seasonal worker engaged in circular migration for less than 3 months.⁹³

⁸⁸ European Commission (2006).

⁸⁹ Neither relevant EU legal acts nor the EMN glossary entail the explanation of what might be meant under ‘mobility’. In S. Mananshivili, ‘What is EU’s understanding of Mobility?’ (unpublished note).

⁹⁰ Vankova (2016), p. 336.

⁹¹ Ibid., pp. 332–52.

⁹² Ibid., pp. 336–9.

⁹³ Vankova (2016), p. 338.

By contrast, it could become an insurmountable obstacle for a worker who embarks on a 1-year contract and wishes to bring family members along. Finally, it is important to examine the issues arising from rules on recognition of qualifications; advocates of circular migration claim that it enables ‘brain circulation and skill transfer, yet there is evidence that this is not always the case.’⁹⁴

The developed analytical framework aims to assess whether these policy areas provide a ‘win’ for the migrant worker within the context of the ‘triple win solution’ that circular migration ostensibly offers. The premises thereof are, firstly, whether the migrant has a certain degree of voluntarism and ‘free’ movement or generally a free choice in the migration decision. This condition differentiates circular migration policies from general time-bound migration policies that are redolent of the guest-worker models.⁹⁵ In other words, if policymakers want to implement effective circular migration policies, they need to design them in such a way so as to accommodate the migrants’ transnational links with both the country of origin and destination, as well as to allow the possibility for migrants to determine their own trajectory.⁹⁶ Secondly, what needs to be assessed is whether these policies adequately protect the migrant workers’ fundamental rights and rights that allow them to benefit from the circulation, such as export of social security benefits when they return home and provisions to ensure that their qualifications can be recognised.

In line with these premises, a two-level benchmark⁹⁷ framework for assessing circular migration policies has been developed.⁹⁸ On the primary level, international and European standards developed in the field of human rights, migration, labour, and social security law are identified as benchmarks in the study’s key policy areas. Only those provisions that cover the two premises of voluntarism and protection of migrants’ rights are included within the benchmark framework, meaning that they are employed as aspirational standards against which circular migration policies can be assessed.

On the secondary level, the benchmark framework includes policy instruments that can help in the implementation of these benchmarks. They are identified as being conducive to circular migration management on the basis of a literature review of the lessons that have been learned from the application of similar time-bound labour migration policies, such as the experience with guest-worker schemes as well as good practices that have been identified among the emerging new generation of circular migration programmes.⁹⁹

Each of the chapters containing analysis of the rights of migrants in the six policy areas at stake with circular migration commences with a presentation of the

⁹⁴ Hooper and Sumption (2016), pp. 20–1.

⁹⁵ Vankova (2016), p. 339.

⁹⁶ Newland et al. (2008), p. 1; Newland and Agunias (2007), p. 11.

⁹⁷ The English Oxford Dictionary defines ‘benchmark’ as ‘a standard or point of reference against which things may be compared’.

⁹⁸ Vankova (2016), pp. 339–50.

⁹⁹ Ibid.

benchmarks that are applied as analytical tools to assess existing policies. A summary of the benchmarks can also be found in Annex V.

1.4 Focus

With regard to the presented definition of circular migration and the policy issues at stake with this type of migration, this study discusses the formulation of the legal and policy instruments of EU migration policy that aim to foster circular migration or which incorporate elements of circular migration (referred to hereinafter as the EU's approach to circular migration) as well as their implementation at the national level in CEE. It focuses on the rights of migrant workers in six policy areas – namely entry and re-entry conditions, work authorisation and residence status, social security coordination, entry and residence conditions for family members, and recognition of qualifications – in order to assess whether the EU is fostering rights-based circular migration.

This book examines what has been achieved in relation to the two categories of circular labour migration that were targeted by the EU: temporary engagement of EU settled third-country nationals returning to their countries of origin and temporary opportunities for entry and re-entry for persons residing in a third country for the purposes of working in the EU.¹⁰⁰ The first category covers third-country nationals who reside in one of the Member States and who travel back and forth to their country of origin in order to engage in some form of professional activity. This category refers mainly to diaspora members who decide to circulate.

The second category incorporates those third-country nationals who reside outside of the EU but temporarily engage in a professional activity within a Member State and afterwards return to reside in their country of origin. According to the European Commission, circularity in this case is to be achieved on the basis of simplified re-entry procedures to and from the Member States where the migrants were temporarily engaged professionally.¹⁰¹ Unlike the common understanding that circular migration concerns predominantly low-educated migrants who rely on their vocational skills,¹⁰² this EU category covers a broad range of migrant categories engaged in employment, research, study, intercultural exchanges, and voluntary work. As demonstrated above, in most cases migrants engage in work-related circular migration. Therefore, this study focuses on economically-driven circular migration and excludes migration where the main purpose is study, intercultural exchange, or volunteering.

These two categories of circular migration are to be facilitated at the European level based on a two-fold approach. Firstly, the Commission planned to promote it through a legislative framework by using existing legal migration instruments and

¹⁰⁰ European Commission (2007), pp. 8–9.

¹⁰¹ Ibid.

¹⁰² Constant and Zimmerman (2011), pp. 495–515.

introducing special measures in future legislative acts. Secondly, it has been incorporated as a policy instrument within the context of the Global Approach to Migration and Mobility (GAMM), which is the overarching framework of the EU external migration and asylum policy. The European Commission has planned to facilitate the development of circular migration schemes with third countries within the framework of the GAMM. This raises the question of what kind of migrant categories this two-fold approach covers.

The first part of the EU's approach to circular migration covers the legal migration directives adopted before the circular migration concept was introduced in 2005, such as the EU Long-term Residence Directive,¹⁰³ as well as the Researchers' and Students' Directives¹⁰⁴ which were repealed and replaced by the new Students' and Researchers' Directive.¹⁰⁵ It also includes legal instruments that were adopted after 2005 and featured in the gradual development of the circular migration approach at the EU level: the Blue Card Directive,¹⁰⁷ the Seasonal Workers' Directive,¹⁰⁸ the Single Permit Directive,¹⁰⁹ and the Intra-corporate Transferee's Directive.¹¹⁰ Thus, this legal approach to circular migration encompasses the sectoral legal migration framework that has already been promulgated at the EU level and which regulates the conditions of entry and residence for different categories of immigrants, such as highly-skilled workers, seasonal workers, students and researchers, family migrants, and EU long-term residence holders. The second part of the EU's approach to circular migration, within the framework of the GAMM, does not limit the spectrum of migrant categories that can participate in circular migration schemes.

¹⁰³ Council Directive 2003/109/EC of 25 November 2003 concerning the status of third-country nationals who are long-term residents [2004] OJ L 16.

¹⁰⁴ Council Directive 2005/71/EC of 12 October 2005 on a specific procedure for admitting third-country nationals for the purposes of scientific research [2005] OJ L 289.

¹⁰⁵ Council Directive 2004/114/EC of 13 December 2004 on the conditions of admission of third-country nationals for the purposes of studies, pupil exchange, unremunerated training or voluntary service [2004] OJ L 375/12.

¹⁰⁶ Directive (EU) 2016/801 of the European Parliament and of the Council of 11 May 2016 on the conditions of entry and residence of third-country nationals for the purposes of research, studies, training, voluntary service, pupil exchange schemes or educational projects and au pairing [2016] OJ L 132.

¹⁰⁷ Council Directive 2009/50/EC of 25 May 2009 on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment [2009] OJ L 155/17.

¹⁰⁸ Directive 2014/36/EU of the European Parliament and of the Council of 26 February 2014 on the conditions of entry and stay of third-country nationals for the purpose of employment as seasonal workers [2014] OJ L 94.

¹⁰⁹ Directive 2011/98/EU of the European Parliament and of the Council of 13 December 2011 on a single application procedure for a single permit for third-country nationals to reside and work in the territory of a Member State and on a common set of rights for third-country workers legally residing in a Member [2011] OJ L 343.

¹¹⁰ Directive 2014/66/EU of the European Parliament and of the Council of 15 May 2014 on the conditions of entry and residence of third-country nationals in the framework of an intra-corporate transfer [2014] OJ L 157.

In order to analyse the whole spectrum of economically-active migrants who can engage in circular migration, this study focuses on migrants in both low-skilled (e.g., seasonal) and highly-skilled occupations (e.g., Blue Card holders, researchers, intra-corporate transferees). As outlined above, circular migration can also include migrants possessing a more permanent status. Indeed, the EU's approach to circular migration aims to also facilitate such migration for third-country nationals who have settled in a Member State and are willing to go back to their countries of origin. Hence, it is crucial to include EU long-term residence holders within the scope of this study. Any such analysis would be incomplete if it were to exclude the family members of third-country nationals who move between two countries for different periods since this type of migration can have an impact on the family life of the migrants. What should be kept in mind, however, is that in reality these categories are not constant and there are shifts from one form of migration status to another throughout the lives of migrants as they fall in love, reunite with families, settle, or decide to restart their engagement in circular migration. Therefore, this study also attempts to take account of these shifts in migration statuses.

To conclude, the purpose of this study is to answer the core research questions: how has the EU's approach to circular migration been implemented through its legal and policy instruments and does it provide for rights-based circularity for migrant workers in the CEE context? In order to answer that question, this study covers within its scope economically-active third-country nationals in both low- and high-skilled occupations with temporary and permanent statuses as well as their family members who are engaged in circular migration to and from the EU.

1.5 Structure

This book is organised into nine chapters. Chapter 2 presents the employed methodological framework of this interdisciplinary research. It discusses the case study selection by outlining the differences and similarities in terms of contextual factors and legal and policy issues. This chapter concludes with a focus on the data sources used and the ethical considerations at the heart of this study.

Chapters 3 and 4 place circular migration into its European legal and policy context by focusing on the process of formulation and implementation of the EU's circular migration approach respectively. Chapter 3 starts by examining the genesis of the circular migration notion in the EU's migration policy and outlines the formulation of a two-fold approach towards its facilitation at the EU level, incorporating legal migration directives as well as policy initiatives developed under the auspices of the GAMM. Chapter 4, then, brings together the legal and policy instruments developed as part of the approach at the EU level in order to assess its implementation and establish whether it provides rights-based outcomes for migrant workers according to the developed benchmark framework for analysis.

Chapters 5, 6, 7, and 8 focus on national variances of instruments conducive to circular migration as part of this implementation study on the EU's approach. Chapter 5 is an introduction to the national approaches to circular migration facilitation developed in Bulgaria and Poland, which are chosen as case studies of this book. Chapter 6 brings together the developed EU and national instruments in Bulgaria and Poland conducive to circular migration and assesses their implementation against the background of the developed benchmarks concerning entry and re-entry conditions for migrant workers. Chapter 7 focuses on EU and national instruments in the policy areas of work authorisation, residence status, and social security coordination which are considered key policy areas that need to be taken into account if this type of migration is to be facilitated. Finally, Chap. 8 assesses entry and residence conditions for family members and recognition of qualifications, which despite being secondary policy areas could still influence the willingness of migrants to engage in circular migration.

The above four chapters are based on legal analysis of national and transposed EU instruments, updated as of September 2019. In addition to this layer of legal analysis, these chapters incorporate insights into the implementation dynamics of the EU and national instruments conducive to circular migration on the basis of data collected through focus groups with migrants from Ukraine and Russia in 2016 (before the introduction of a visa-free regime with Ukraine); interviews conducted with stakeholders in the period 2013–2017; data on permits retrieved from the national administrations of the two countries chosen for case studies as of mid-2019 (where possible); and, available data in recent studies.

The book culminates with Chap. 9, which returns to the study's main research question, namely: how has the EU's approach to circular migration been implemented through its legal and policy instruments and does it provide for rights-based circularity for migrant workers in the CEE context. It concludes by proposing policy recommendations to this end.

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