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EU Blue Card: a promising tool among labour migration policies? A comparative analysis of selected countries

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Abstract

In 2007 the Commission proposed a Directive aimed exclusively at third-country nationals moving to Europe for the purpose of highly qualified employment that would set up a harmonized entry procedure, lay down common residence conditions and facilitate mobility through Europe. The Directive, named Blue Card, was meant to make Europe more attractive for highly qualified migrants by offering a fast-track entry procedure and social benefits in the EU. The Commission, despite the reluctance of Member States, managed to push through the Directive, which was finally approved in 2009. In the first three years since the Blue Card first entered into force in the majority of Member States in 2012, no more than 30,352 cards have been issued, of which about 26,200 by a single Member State. Why? Through a detailed analysis of the conditions set by the Directive and their comparison with the ones posed by the national labour migration schemes - in particular in Germany, Sweden and the Netherlands -, this paper aims to demonstrate that the causes of failure are not to search in the Blue Card instrument *per se*, but rather in the ways this has been implemented in the single Member States.

Keywords: European Blue Card, labour migration, third-country migrants, labour shortage, high-skilled migrants, European economic competitiveness, free movement of labour, harmonization, knowledge economy, reallocation of workers, single market, sovereignty, shared competences.

JEL code: K37, J20, J23, J31, J61, J88

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1. Introduction

Labour migration has become inevitable in a European Union without frontiers. The free movement of workers is not only necessary but also essential in an open economy in order to guarantee a better allocation of resources within the EU, which is of paramount importance in a European context of population ageing and birth rates declining. The free movement of labour is one of the fundamental freedoms granted to European citizens: Europe needs to expand this right to third-country migrants legally working in one Member State if it wants, on the one hand, to increase its attractiveness with respect to highly qualified migrants and on the other hand, to be a promoter of equality of rights, as enshrined in the Treaty and the Charter. A Commission proposal in 2007 was intended to pursue these aims by creating a level-playing field at the EU level to facilitate and harmonize the admission of highly qualified third-country nationals and by promoting their efficient (re-)allocation on the EU labour market. The Blue Card proposal was exclusively aimed at third-country nationals with high qualifications already in possession of a job contract for a highly skilled and highly paid profession by a European employer.

The scheme is based on the rationale that the EU is stronger when it works together and that an EU-wide single labour market would make the EU more attractive instead of 28 separate labour markets; however, European institutions' ambitions to create harmonized and coherent labour migration policies in order to increase the EU's appeal to skilled third-country nationals came up against Member States' reluctance to cede responsibility for labour market access regulation. The Blue Card is kind of a puzzle: while challenges facing Member States in terms of labour shortages and ageing population are similar, their response to a harmonized highly skilled immigration policy varies considerably. Their national self-interests and their reluctance to cede sovereignty on migration matters, coupled with their fear of an overwhelming wave of (low-skilled) migrants flowing into Europe, led to an almost insignificant European migration scheme to attract highly skilled migrants that represents the limit to further integration: instead of representing a signal to highly skilled migrants and a factor of competition for the EU, the Blue Card demonstrates the difficulties to greater integration and the reluctance of Member States to cede more responsibility to the EU level.

Light will be shed on these matters by firstly assessing the enthusiasm of the Commission in its struggle to push the Blue Card proposal through, the reasons for the low support on the part of national governments and the surprising final approval for a considerably watered-down version of what should have been a European-wide harmonized approach to labour migration. The main body of this study is concerned with a comparative analysis of the European Directive weighed against the national approaches to third-country labour migration of three sample Member States, looking notably at the number of national permits and Blue Cards granted, entry conditions and rights granted by each scheme.

2. Motives behind the Commission proposal

The main arguments in favour of such a scheme are of different types: a business argument, since there is need for highly skilled migrants to fill in the shortages experienced in Europe; a demographic argument, since the ageing population would make it difficult to sustain economic growth in Europe; a competition argument, since European countries are lagging behind most other OECD countries when it comes to attracting highly skilled migrants; and an inclusion argument, since Europe needed to build a more dynamic knowledge-based economy and contribute to an inclusive economic growth in the run up to 2020, as stated in the Lisbon Strategy.

a. The business argument

The business argument was sustained by the lack of skills, competencies and knowledge experienced in many Member States that cannot be provided by the domestic workforce in the short run, nor generated quickly enough since changes in the domestic education and training system operate on long timescales (*Migrationsverket/EMN* 2013: 9). “Although immigration can make an important contribution to labour force growth, its role in counterbalancing the effects of population ageing will depend on the capacity of countries to match labour needs to migrants’ characteristics. In this regard, more needs to be done to better use migrants’ skills and to adapt labour migration management systems to employers’ needs” (OECD/EU 2014: 15). Labour migration is the only area where policies can have a direct influence on the composition of migrant flows by selecting migrants based on educational level. Although the privilege was given to highly qualified workers, it was acknowledged that the needs of the EU market covered “all levels of skills and qualifications” (EC 2007e: 8) and that the proposed instrument targeted at this single category should be “part of a comprehensive package of measures addressing different areas of action” (*ibid*).

b. The demographic argument

As for the second reason mentioned, the Commission recognized in its proposal for the Blue Card that the size of the working age population “will decrease by 48 million by 2050 and that dependency ratio is set to double and reach 51% by 2050” (EC 2007e: 8, EC 2006: 5), while “the share of population of working age in the total population is expected to decrease strongly, from 67.2% in 2004 to 56.7% in 2050, a fall of 52 million” (EC 2005a: 4). It acknowledged moreover that the attraction of more immigrants would be one (complementary) measure to compensate these trends: “population growth until 2025 will be mainly due to net migration, since total deaths will outnumber total births from 2010. The effect of net migration will no longer outweigh the natural decrease after 2025” (*ibid*); moreover, the growing importance of the knowledge economy, the structural economic change with a significant growth of the service sector, the delocalisation of labour intensive production and the outflow of EU nationals (EC 2007e: 17) make it necessary for European development purposes to target efforts at highly skilled migrants. The focus on the highly skilled is also a consequence of the labour and skills shortages estimated at that time: in several Member States employers claimed difficulties in filling vacant positions particularly in engineering, information technology, pharmaceuticals, healthcare

and education sectors (*ibid*: 10). The growing demand for highly skilled migrants in the EU market was sustained by statistics: “between 1999 and 2004, in the EU15 the share of highly skilled workers coming from third countries as compared to total number of employed increased at an average annual growth rate of 4.8%. In the same period, the share of EU nationals employed in highly skilled occupations increased at an average annual growth rate of 0.8%” (*ibid*).

c. The competition argument

At the time of its first proposal (2005) the amount of migrants - and in particular the “best and the brightest” - attracted towards the EU was considerably outnumbered by the migrants choosing US, Australia or Canada as their final destination of migration. “We are attractive to many. But we are not good enough at attracting highly skilled people” was the remark of Commission President José Manuel Barroso while presenting the new European approach on legal migration in 2007 (Barroso 2007). As data from the Commission showed, the EU was lagging behind all main immigration countries: while highly qualified third-country nationals in the whole EU represented only 1.72% of the total of the employed population, these were much more represented in Australia (9.9%), Canada (7.3%) and the US (3.2%) (EC 2007c: 1). With the proposal for a European-wide approach, policymakers sought to increase the attractiveness of the EU vis-à-vis traditional settlement countries, providing a coherent and centralized framework for managing labour migration. EC President Barroso underlined that “With today’s proposal for an EU Blue Card we send a clear signal: highly skilled migrants are welcome in the EU!” (EC 2007b), while Justice Commissioner Franco Frattini was even more explicit in his statement: “Europe’s ability to attract highly skilled migrants is a measure of its international strength. We want Europe to become at least as attractive as favourite migration destinations such as Australia, Canada and the USA. We have to make highly skilled workers change their perception of Europe’s labour market governed as they are by inconsistent admission procedures” (EC 2007b).

In the case of the European Union, a series of factors undermined its attractiveness in the “global war of talent”, summarized in the words of EC President Barroso at the Press Conference presenting the new initiative:

“Firstly, they [high-skilled workers] face 27 different and sometimes conflicting admission procedures in the EU. Secondly, national immigration policies lack a cross-border dimension. Once in a Member State, highly qualified workers have great difficulty moving to other Member States for work purposes. This also hinders a more efficient use of this labour force for the benefit of growth and jobs in Europe. Finally, there is a “rights-gap” between legal immigrants and EU citizens. This is incompatible with our value of equal treatment. It hampers integration and social cohesion.”

(Barroso 2007)

Harmonization would make the EU a more attractive destination for the highly skilled by offering a common larger labour market and increasing leverage. “Europe can only succeed in attracting the best and the brightest if it speaks with one voice” (EC 2007c: 3), so that potential immigrants would not have to face 28 different systems any more, but could already reckon on (at least) similar admission procedures as well as conditions for residence.

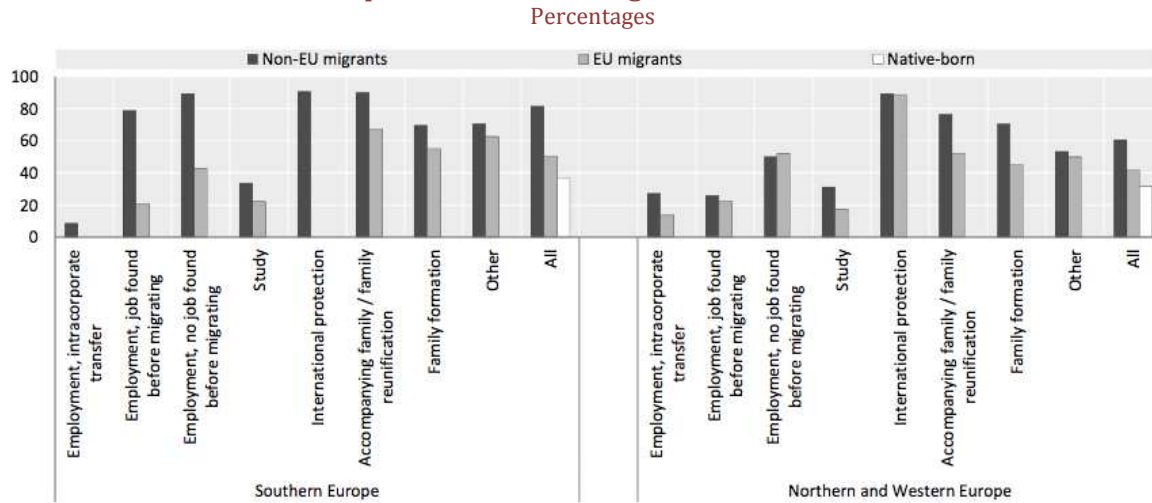
This assumes great relevance in the light of the importance that the quality of the opportunity offered plays in pulling migrants to a country (Collett 2008: 4). It is not enough to simply allow highly skilled third-country nationals to enter the country and facilitate their admission procedures: a fundamental factor is their willingness to move and their choice where to move (Chaloff/Lamaître 2009: 28), so that policies aimed at attracting them or enhancing the attractiveness of the country are at least as important. “Countries with high reward to skill attract a disproportionate share of more educated migrants” (Grogger and Hanson 2008: 1): the OECD confirms that “skill-related wage differences are the main factor” explaining the sorting of immigrants (OECD/EU 2014: 159). Other elements taken into consideration when analysing the options where to emigrate are language, salary level, possibility of professional advancement, likelihood of extension and permanent residence, quality of life, business culture, historical ties, existing communities, rights granted to family members regarding the access to the labour market in particular. While the Blue Card has the potential to enhance the rights granted to the migrant and to his family as well as to facilitate the conditions for residence, it has no influence on many of the factors mentioned above, therefore its success will naturally be limited.

d. The inclusion argument

The Blue Card was meant to represent equally a safeguard for EU citizens from cheap labour as well as “ensuring a more secure legal status for third-country workers already residing in Member States” (EC 2007d): the two objectives go hand in hand since granting legally working third-country nationals basic socio-economic rights on an equal footing with native workers prevents employers looking for cheap labour abroad and thus protects domestic workers.

On the way towards an improvement of the status of already present migrants, an important step would be to “release the full skills potential of immigrants” (OECD 2014: 35). Over-qualification and skills loss are phenomena that Europe cannot afford in the global competition for “the best and the brightest”. The Commission pointed out that in a scenario of intense labour and skills shortages “the possibility of mobilising the unused employment potential of lawfully residing third-country nationals should be the first measure to be taken” (EC 2007e: 12): the employment rate for highly qualified migrants was merely 66.7% in 2004 against 83.3% for EU nationals, while the unemployment rate was three times higher (*ibid*). In the same period, the over-qualification rates of migrants compared to the ones of natives suggested equally a situation of unused skills potential.

Figure 1 Overqualification rates of recent immigrants by reason for migration and of native born persons of the same age distribution, 2008



Note: A worker is deemed to be overqualified if holding a tertiary degree and working in a job classified as medium or low skilled (ISCO 4-9)

Source: OECD/EU (2014: 360)

The Blue Card would ensure a better reallocation of the workforce across the EU and provide a level-playing field in a context of intra-national competition between Member States for the best talents.

3. Negotiations

In 2007, while negotiations on an EU-level approach to labour migration following the American model were carried out, Craig Barrett, chairman of the American computer chip company Intel Corp., claimed: “The European Union took a step recently that the U.S. Congress can't seem to muster the courage to take. By proposing a simple change in immigration policy, EU politicians served notice that they are serious about competing with the United States and Asia to attract the world's top talents to live, work and innovate in Europe. With Congress gridlocked on immigration, it's clear that the next Silicon Valley will not be in the United States” (Barrett 2007). Will it be in Europe? That was the rationale (and the ambition) behind the 2007 European Commission “Proposal for a Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment” (EC 2007a).

The Commission tends to portray the Directive in a positive light, as the first step in the development of a common economic migration policy, but the “struggle” between the EU and national governments over the respective competences in the area of labour migration started as early as 1974, when the Commission, following a Council social action plan (Council 1974), drew up an action programme aimed at migrant workers “who are nationals of Member States or third countries” (EC 1974). It was labelled as the first important token that the Community presented for the integration of third-country nationals (Eisele 2013). However, the Council in its resolution did not follow the guidelines of the

Commission, which had to wait ten years before its guidelines for a Community policy on migration (EC 1985) were finally approved.

Further steps were made by the means of the Dublin and Schengen agreements, the Amsterdam Treaty and the 2009 Lisbon Treaty that abolished the unanimity rule in the area of immigration. The European Council in Tampere in 1999 recognized the “need for approximation of national legislation on the conditions for admission and residence of third-country nationals, based on a shared assessment of the economic and demographic developments within the Union” (Parliament 1999). The Hague Programme of 4-5 November 2004, building on the Tampere conclusions, further stressed that “legal migration will play an important role in enhancing the knowledge-based economy in Europe, in advancing economic development and thus contributing to the implementation of the Lisbon Strategy” (Council 2004: 10).

In a similar vein, the Policy Plan on Legal Migration was presented in 2005 (EC 2005a), following consultations around the policy plan the “Green Paper on an EU approach to managing economic migration” (EC 2005b) was launched in January of the same year. The Plan promotes a sectoral approach and sets out a package of proposals including a framework directive to define a common set of basic rights and four more specific directives (Eisele 2010): although their scope ranged from low to highly skilled workers, the EU found it reasonable to start with the proposal for a European Green Card (renamed Blue Card in 2007 with reference to the European flag after the suggestion from the think tank Bruegel), with the hope that other steps would follow soon. The belief was widespread that general support among Member States for common rules concerning the access of the best qualified migrants existed and that consequently the Blue Card would have been adopted without difficulties. High-skilled migrants are considered beneficial for the society and the national economy at large, since they have higher income and consequently contribute higher tax payments, they rely less on social benefits, integrate more easily, increase the competitiveness of the country and give a contribution to the knowledge-based economy, to mention some of the reasons. Nevertheless, it took 19 months of negotiations to reach a consensus after the Blue Card was presented at a press conference in 2007 in Strasbourg by Commissioner Franco Frattini and President José Manuel Barroso, and then successively in an official proposal (EC 2007a).

Since this Directive was negotiated before the entry into force of the Treaty of Lisbon, it still needed unanimity in the Council to be approved, and this led to even longer negotiations and many “may-clauses” and references to national legislation in the text of the Directive. Negotiations were made even longer and more complicated by the eight Member States that joined the EU in 2004, which at the time still experienced transitional restrictions on free movement of their national workers on the European territory: they found it paradoxical that their country nationals were still excluded from the free movement of workers and also from the scope of the Proposal while third-country nationals could enjoy labour migration to all EU Member States (Guild 2007: 2).

The general stated aim of the Blue Card Proposal was to make the EU an attractive destination for third-country nationals while allowing Member States to maintain control over the access to their labour markets. The original idea had

to be significantly watered down during the negotiations with the Member States, worried about losing too much sovereignty in such a hot-button area. The original harmonization had to be considerably revised, such as the proposed five-year long work permit (lowered to four years, thus insufficient to obtain the right to a long-term residence status, which requires five years of residence) or the proposed special provision for young professionals, which never saw light. In particular, the initial idea was to create an instrument that would replace the national migration schemes targeted at the highly skilled already in place in the single countries. However, in order to gain the support of the Member States, reluctant to give over the exclusive competence in this area to the EU, the exclusive nature of the Blue Card had to be downsized to a mere complementary function, keeping in place the previous national policies.

While negotiations for a European approach were carried out, Member States were expected to broadly agree as “there are a number of striking similarities in the challenges confronting European states: demand for skills in a knowledge-based economy, ageing population, strains on welfare provisions and public anxieties about the impact of immigration” (Boswell and Geddes 2011: 81). However, it is true that these are only general trends and Member States have different national interests and saw more or less added value in the proposed Blue Card depending on the already existing provisions in their national labour migration schemes. For this reason, the final outcome of the Directive was based on the lowest common denominator, leaving the power in the hands of the Member States to adapt the policy to their national interests and to their already existing national legislations. As a result of Member States’ reluctance to cede sovereignty in this policy field, European labour migration is highly partitioned and fragmented into several directives managing different types of migrants.

On 4 November 2008 the Blue Card proposal was approved by the MEPs (Parliament 2008b), who however promptly introduced a particular proposition against the possible consequences of brain drain, such as the possibility of rejecting an application on this basis, and also in general more leeway for Member States (Parliament 2008a). Finally the Directive was approved on 25 May 2009 by the Council (Council 2009) and entered into force on 19 June of the same year. The Commission launched infringement proceedings first against 20 Member States for delay in the transposition of the EU Directive into national legislation. Out of these, 6 Member States failed to meet the new deadline as well and received letters of formal notice from the Commission: Germany, Italy, Malta, Poland, Portugal and Sweden.

Denmark, UK and Ireland opted out of the Directive and are neither bound to it nor subject to its application.

4. The Directive: final version

The highly contested proposal of the Commission on a common European approach to highly qualified labour migration (EC 2007a) has been subject to major amendments by the Parliament (2008a) and in-depth deliberations in the Council, which led to an extremely flexible and discretionary instrument setting merely minimum standards, leaving Member States great room for manoeuvre through many “may clauses”.

The Directive is targeted at third-country nationals willing to move to one EU Member State for the purpose of highly qualified employment for longer than three months, and at their family members. It establishes the conditions for entry and residence, including facilitations for those willing to move within the European territory, with the aim to deliver a common fast-track and flexible procedure for the admission of highly qualified workers in order to increase the contribution of legal immigration to enhancing the competitiveness of the European economy, by facilitating and harmonizing the admission of this category of workers and by promoting their efficient allocation and re-allocation on the EU labour market (EC 2007a: 2).

Article 2 of the Directive 2009/50/EC defines the key terminology that delimits its scope to “third-country nationals” (Subs. a) moving to the EU for the purpose of “highly qualified employment” (b) meaning the employment of a person who is protected as an employee under national employment law for the purpose of exercising genuine and effective work for, or under the direction of, someone else in return for payment, and who has the required “higher professional qualifications” (g) as proven by either “higher education qualification” (h) or, when provided by national law, “five years of professional qualifications” (g). Article 3 further narrows the scope of the Directive setting out the categories of third-country nationals excluded, such as persons seeking or receiving national, international or temporary protections, researchers, posted workers and other categories.

The admission requirements are laid down in Chapter 5 of the Directive. In particular, for a person to be eligible they must be in possession of a valid work contract or a binding job offer of at least one year (Subs. a), a valid travel document (d), comprehensive sickness insurance (e), not pose a threat to public policy, public security or public health (f) and earn a salary at least 1.5 times higher the national average gross annual salary (Subs. 3), or 1.2 times for certain professions in particular need (Subs. 5).

However, the final decision on whether or not to grant a Blue Card is left to the discretion of Member States, which have the exclusive authority to determine the number of migrants they wish to admit (Art. 6), whether the application has to be submitted by the third-country national and/or by their employer (Art. 10) as well as the right to reject an application on the basis of ethical recruitment (Art. 8, Subs. 4) or their national labour market situation (Art. 8, Subs. 2): “A Member State need only set the quota at zero to frustrate the whole project” (Guild 2007: 5). The same Article 4 also enforces the so-called Community preference clause: “Member States may verify whether the concerned vacancy could not be filled by national or Community workforce, by third-country nationals lawfully resident in that Member State and already forming part of its labour market by virtue of Community or national law, or by EC long-term residents wishing to move to that Member State for highly qualified employment”.

In the first proposal for a fast-track admission scheme to attract highly skilled migrants, a specific scheme for young professionals had been envisaged (EC 2007a: 22), although later dismissed: an article was built in about specific derogations granted to third-country nationals younger than 30 years old, who

would face lower hurdles in qualifying for the Blue Card status, recognizing the need to attract young talents to Europe (Collett 2008: 2).

Chapter IV of the Directive about the rights granted comprises fewer discretionary clauses. In the expected more favourable rights of the European-wide approach vis-à-vis national migration schemes lies the greatest part of the overestimated added value of the Blue Card. The aim should be to establish rights equal to those granted to nationals of the host state in a broad range of areas covering working conditions, freedom of association, social security, education, pensions, tax benefits, access to goods and services: however, access to the labour market is restricted for the first two years, in which the individual is limited to the exercise of paid employment activities which meet the conditions for admission (Art. 12, Subs. 1 and 2). After this period, the restrictions can be retained according to the Community preference principle (Art. 12, Subs. 3 and 4). These restrictions are clearly in conflict with the Article 8 of the European Convention on the Legal Status of Migrant Workers (Council 1977), which states “a work permit issued for the first time may not as a rule bind the worker to the same employer or the same locality for a period longer than one year”. Similarly, Article 13 of the Blue Card Directive, allowing for temporary unemployment of less than 3 months without losing the right to the Blue Card, is at odds with Article 9 of the above-mentioned European Convention (Council 1977), which concedes the workers five months to find a new job. Moreover “the threat of expulsion as soon as or shortly after an individual becomes unemployed plays into the hands of unscrupulous employers as it gives the employer too strong a position in the immigration status of the individual” (Guild 2007: 6).

The right to be accompanied by family members is still regulated under Directive 2003/86/EC “on the right to family reunification” with more favourable derogations provided for in article 15 of the Blue Card Directive, such as unrestricted and immediate access to labour market without application of any integration test.

In line with the explicit need to promote the “circular” mobility of highly qualified workers between their country of origin and the host country (Preamble 21), article 16 subsection 3 allows for a period of absence from the EU territory without losing the right to permanent residence of up to 12 consecutive months and 18 months in total. Those having attained the long-term residence status are allowed to be absent for up to 24 months (Subs. 4). “However, it lies in the Member States’ discretion to restrict these more lenient rules to cases where the third-country national concerned has been absent in order to exercise an economic activity, or to perform a voluntary service, or to study in the country of origin” (Eisele 2010: 3).

Chapter V of the Directive represents its core principle which distinguishes it from the national migration approaches: after 18 months of legal residence in the Member State of entry, the Blue Card holder and their family are allowed to move to a second Member State for the purpose of highly qualified employment (Art. 18, Subs. 1), thus (partially) opening up the European single market to third-country nationals and allowing a better (re-)allocation of labour resources across the EU. However, this right is subject to the prior application process for a

new Blue Card in the second Member State and the approval from the latter (Art. 18 Subs. 2): given the wide variability of the admission conditions posed by Member States, the approval is not at all guaranteed. This provision was made necessary by the resolution of those countries determined to maintain national sovereignty over their labour markets. However, “the fact that a Blue Card is not automatically valid for the whole of the EU takes away most of the advantage of having an EU-wide scheme because it gives access to a much smaller market and fewer opportunities” (Melander 2008).

5. The Member States reaction

While the European Commission has always presented (and still presents) the Blue Card in an enthusiastic manner (see for instance EC 2007a, 2007b, 2007c as well as 2014a and 2015b), the area of migration is still too sensitive and Member States are reluctant to cede their sovereignty. The legal basis for action at European level in this area was established in Article 63 (3)(a) and (4) of the TEC (transposed in the TFEU as Article 79 (2)(a) and (b)): “the European Parliament and the Council, acting in accordance with the ordinary legislative procedure, shall adopt measures in the following areas:

(a) the conditions of entry and residence, and standards on the issue by Member States of long-term visas and residence permits, including those for the purpose of family reunification;

(b) the definition of the rights of third-country nationals residing legally in a Member State, including the conditions governing freedom of movement and of residence in other Member States”.

However, this area is placed under the principle of subsidiarity and the EU shares its competence with Member States when legislating within this field. This helps to explain why the final outcome of the Blue Card Directive is based on the lowest common denominator and leaves too much to the discretion of Member States, providing only a minimum common framework concerning some points of the admission process and some limited rights. Discretion is not problematic *per se*: it becomes problematic since a significant part of the added value of the Blue Card initiative lays precisely in the harmonization of the various national policies as a means to create a common labour market, which would be more attractive in the eyes of highly skilled migrants since it would provide them with more favourable conditions and much more room for manoeuvre. The problems with the discretionary approach were already acknowledged in the very first proposals from the Commission in 2007: “the overall impact on the microeconomic environment would be quite limited since immigrants would continue to face very different admission conditions” (EC 2007e: 32).

In the end, the definite version of the Blue Card Directive was barely a watered-down version of the original proposal, since during the long negotiations that led to the approval of the Directive in 2007 the contrasting positions of Member States had the upper hand. First of all, national governments already had at that time their own policies to manage labour migration and in particular policies targeted at highly skilled migrants: while Member States face similar challenges in terms of labour shortages and ageing population, not all countries responded

to the foreseen shortages of highly qualified workers in the same way, so that policies differ across Europe. They are built upon different definitions of highly skilled migrants, have variable scope as well as divergent conditions for entry and residence and set more or less favourable sets of rights. Therefore the added value of the Commission proposal was seen very differently across Member States. Generally speaking, countries already counting on a successful migration management scheme were reluctant towards a higher involvement of the EU in their migration affairs; the same applies to countries with open policies, since their approach is generally more flexible in responding to labour market needs and thus more attractive. On the contrary, countries without specific policies or unsuccessful in their implementation as well as those with restrictive policies were expected to see a great opportunity for their country to get more visibility in the global context and saw the European instrument as an (additional) policy to attract the highly skilled (Cerna 2014).

Even if every European country has some form of labour market need and some skills shortages, although different in size and type, these usually go along with public concern over the consequences of labour migration on the domestic workforce and the incentives for firms to invest in job training for natives and for the state to invest in the education system. “The new rules must not put additional pressure on the millions of unemployed in the EU Member States” (German Conservative MEP Manfred Weber) was only one of the remarks from MEPs about the proposal (EurActiv 2008a), coming above all from Conservative parties from Germany, Netherlands, Austria and of course Britain, Ireland and Denmark, which in fact decided later to step out of the Directive. However, most studies show that immigration has small effects on the labour outcomes of natives, such as wages, employment, unemployment and labour force participation (see for instance Longhi *et al.* 2008 and Kyriakidou 2012). Other Member States were reluctant to lose any sovereignty in migration matters or on their right to regulate labour market access: the Austrian government condemned the plan as “a centralisation too far” (BBC 2007).

One of the major stumbling blocks to clinching the harmonization of labour migration policies was the definition of the criteria on which to base the notion of high-skilled labour: in the end, consensus emerged on using salary level as the sole criterion (EurActiv 2008b). The focus on salary reflects the lack of a common EU framework for determining qualifications earned in third countries: within Europe, an equalization system has been initiated through the Bologna Process in 1999, but this does not apply to third-country nationals (Collett 2008: 2/3). A common scheme to manage migration should go hand in hand with common rules on the recognition of qualifications: the Blue Card only created minimum common standards for admission and a minimum set of rights which must be enforced in all Member States, but the recognition of qualifications is left to the discretion of the single national governments. For this reason, an application which is accepted in one country, is not necessarily accepted by another: this undermines one of the pillars of the Blue Card, namely a harmonized set of regulations which would allow migrants to move more freely between different Member States, creating an authentic common market for third-country nationals and allowing a better allocation of labour resources EU-wide. The only provision in the Directive that could allow for derogation on this

criterion of admission, namely the possibility to consider as a sufficient condition “at least five years of relevant professional experience” (Art. 2 (g)), has not been transposed by all Member States. For the purpose of this study it will be sufficient to mention that of the three countries analysed, Germany is the only one who transposed this provision into its national legislation. “It is a serious source of regret that the Commission is proposing restrictions on mobility within the EU to accompany the card” claimed UK MEP Jean Lambert, spokesperson for the Greens on immigration (EurActiv 2008a), and Italian Socialist MEP Claudio Fava added “Limiting this mobility would signify a myopic approach, influenced by national interests and against the idea of an open, economically and competitively advanced Europe” (*ibid*).

The great differences on salary level, recognition of qualifications and labour demand raise the doubt of whether the Blue Card can offer a substantial right of mobility and that “these problems have little to do with immigration policy *per se*, but they demonstrate that European labour markets are still too different to manage fully-fledged common immigration policies and free movement. The building blocks are too weak to support any ‘heavier’ harmonization” (Collett 2009: 2). Without harmonization in other areas, mainly in the labour market, the possibilities of a harmonized migration scheme will necessarily remain limited.

The EU does not only need skilled workers: the list of hard-to-fill professions is long (Belmonte 2015: 4) and range from low skilled to high-qualified, with a particular focus on the medium-skilled workforce, whose weight increased considerably lately. The decision of the Commission to address the area piece by piece and focus first on highly-skilled migrants represented a strategy to overcome a political deadlock caused by the reluctance of Member States and their fear of an unmanageable influx of low-skilled migrants: going nowhere with its early proposal which covered all types of economic activities, the Commission considered the only way forward to be sectorally (Guild 2007). It was expected that the admission of key categories of highly skilled would have met the support of the Member States more easily, since this category is characterized as “good” and “harmless” (EC 2005b) and its integration is often perceived by the native population to pose fewer problems since they tend to be more dispersed and mix easily with the domestic population. However, a more comprehensive approach is needed, as was recognized by the Commission at the time of revising the European approach on legal migration in 2015 (EC 2015b): nevertheless not a single item on the newly proposed Agenda on Migration (EC 2015a) concerns the medium- or low-skilled workforce. The objectives of the EU labour migration strategy are broader than those achievable by just addressing one category, as already recognized by the Commission at the time of the proposal for a Blue Card: “A common, flexible instrument on immigration of highly skilled workers [...] would not in itself solve all these present and future challenges, but, *as a part of a comprehensive package of measures addressing different areas of action*, should constitute an important contribution” (EC 2007f: 1).

6. The national approaches

In this paper, three sample countries are analysed and compared: the choice of the countries is based on a previous evaluation of their results in terms of Blue Cards issued weighed against the number of national permits, in light of the

specific type of national approach to labour migration they apply. Through the present analysis, it will be assessed if countries with the same type of labour migration policy regime deploy the same pattern in terms of reception and response to the Blue Card, or if it is rather the case that the number of Blue Cards issued does not depend as much on the liberal or restrictive approach to labour migration, but rather on specific requirements and conditions posed by the national schemes. In order to provide a clearer overview of the systems of the three countries under consideration in this study, table 2 and table 3 illustrate the main labour migration policies, with a particular focus on the legal instruments targeted at the highly skilled. The first table outlines the specific provisions contained in the national schemes that regulate the admission of third-country labour migrants and of the highly qualified in particular. The second one focuses on the specific way in which the countries implemented the Blue Card Directive: it rests in particular on the provisions contained in the Directive and included in the national legislation for which the Member States were allowed big room for manoeuvre.

Table 2 Overview of the national approaches to labour migration from third countries

	Germany	Netherlands	Sweden
Reforms	2005 (<i>Zuwanderungsgesetz</i>) 2009 (<i>Arbeitsmigrationssteuerungsgesetz</i>) 2013 (<i>BeschV</i>)	2004 (1) 2013 (Modern Migration Policy)	2008
Rationale/Logic	Guarantee the supply of skilled workers in a sustainable way in order to fill the shortages and labour market needs on a permanent basis	Knowledge migration: migration as final element of labour market measures, exclusively when contributing to the Dutch knowledge society and the related international competitive position	Individual employers know their needs the best: labour immigration is exclusively driven by the recruitment needs of employers
Type of system	Selective and employers-led (one single concession to a supply-driven system)	Selective and employers-led, with some concessions to a supply-driven system	Liberal and employers-led
Quotas/Numerical limits	No	No	No
Instruments targeted at the highly qualified	<ul style="list-style-type: none"> • §18 Subs. 4 <i>AufenthG</i> • §19 <i>AufenthG</i> • Job-seeking visa (supply-based) 	<ul style="list-style-type: none"> • Highly Skilled Migrant Scheme (1) • Highly Educated Migrant Scheme (2) • Orientation Year for Graduates (3) • Pilot Project Short Stay 	No specific policies for (highly) qualified workers
Shortage occupation lists	<i>Positivliste</i> : provides exemption from LMT, without practical importance after 2012	No	Yes, restricted to possibility to apply within Sweden for those professions in shortage
Community preference safeguards LMT=Labour Market Test	LMT (§39-2 <i>AufenthG</i>) with broad exemptions (§2-§15 <i>BeschV</i>). BA ensures equal working conditions and integration perspectives.	LMT with exceptions for all highly skilled migrants	Public employment service must publish the post on EURES and controls that working conditions are in line with Swedish collective agreements

	Germany	Netherlands	Sweden
Family rights	Yes, but less favourable than the Blue Card	Yes, slightly less favourable than Blue Card	Yes, as favourable as the ones granted by the Blue Card
Specific Policies for Qualified Workers	§18 Subs. 4	No specific policies aimed at qualified workers - focus is on highly qualified. Restrictions on any other category.	No specific policy aimed at any category
Criteria: Salary threshold	§18 Subs. 4: no §19 abolished after 2012 (67,200€ in 2012, 84,600€ before 2009)	Under (1): 39,800€ under 30y 54,289€ over 30y Under (2) and (3): 28,524€	13,000SEK per month (1,400€) > ca. 16,800€ annually (minimum salary as for Swedish collective agreements)
Criteria: Educational requirements	§18 Subs. 4: at least a 2-year qualified vocational education (<i>qualifizierte Berufsausbildung</i>) §19: exceptional qualifications (restricted to only two categories after 2012)	No educational requirements for (1).	No educational requirements
Duration of initial residence/work permit	Up to three years	Duration of the employment agreement (max. 5 years)	2 years (or the period of employment), renewable
Period prior to permanent residence	§18 Subs. 4: 5 years §19: immediately granted	5 years	4 years
Additional rights	Possibility to stay abroad for a 6-month period without losing the residence right		Possibility to be unemployed for 3 months before the residence permit is revoked

Source: Author's own outline based on national legislation

Table 3 Provisions of the Blue Card Directive included in national law

	Germany	Netherlands	Sweden
Implementation	01.08.2012	20.06.2011	01.08.2013
Criteria for eligibility: salary	In relation to the annual income threshold for the general pension insurance: <ul style="list-style-type: none"> • $\frac{2}{3}$ for regular professions (48,400€ in 2014 and 2015) • 52% for shortage professions (37,752€ in 2014 and 2015) 	63,607€ in 2014	47,100 SEK per month (5,078 €) > ca. 60,936€ annually
Derogation on salary requirement for professions in need	Yes	No	No
Educational requirements HQ: highly qualified Q: qualified	HQ: recognized university degree Q: recognized professional/vocational qualifications	Higher education degree of at least three years	Higher education degree
Professional experience	Five years at least (not yet applied)	Not envisaged	Five years of relevant professional experience
Submission of application (Art. 10)	By the migrant	By either the migrant or the employer	By the migrant - only from outside national territory, as provided for by Art. 10 (4)
Labour market test (Art. 8)	No	No	No
Volumes of admission (Art. 6)	No	No	No
Provision on ethical recruitment (Art. 8)	Yes (currently not used)	No	No
Provision of Community preference (Art. 8)	No	No	Yes, working terms must at least on the same level as Swedish
Duration (Art. 7)	Four years (or the duration of the contract + three months, if less than 4 years)	Four year (or the duration of the contract + three months, if less than 4 years)	Two years (or the duration of the contract + three months, if less than 2 years)

	Germany	Netherlands	Sweden
Time limit for adopting a decision (Art. 11)	90 days	90 days	90 days
Period prior to permanent residence (Art. 16)	33 months (22 with certified German knowledge)	24 months in the NL (in total 5 uninterrupted years in the EU)	48 months in Sweden (in total 5 uninterrupted years in the EU)
Derogation on period of absence from EU (Art. 16)	Yes	Yes	No
Additional rights (not provided in the national schemes)	<p>Possibility to stay abroad for a 12 months period without losing the residence right (the same is valid for family members as well)</p> <p>Possibility to be unemployed for 3 months without losing the residence right</p> <p>Possibility to apply for a Blue Card in another MS after 18 months</p> <p>Unlimited access to labour market for family members without any test</p>	<p>Possibility to be unemployed for 3 months without losing the residence right</p> <p>Easier for family members to get a “continued residence permit”</p> <p>Possibility to stay abroad for a 12 months period (18 months in total) without losing the residence right</p>	<p>Possibility to apply for a Blue Card in another MS after 18 months</p> <p>Possibility to stay abroad for a 12 months period (18 months in total) without losing the residence right</p>

Source: Author's own outline based on national legislation

a. The Swedish liberalization

The fundamental reform of its labour migration management policy (*lagen om arbetskraftsinvandring*), which took place in December 2008 in Sweden, meant a major shift in its very approach towards third-country migrant workers.

Previously, Sweden ranked as the most restrictive country in the whole OECD (Cerna 2010: 21): since 2008, the country has been pursuing an open and liberal approach driven by the recruitment needs of employers, aimed at making it easier both for employers to recruit from abroad and for foreign citizens to come to Sweden for work. The new reform was in line with the argument that “third-country nationals improve Sweden’s trade relations internationally and also that increased labour immigration will contribute in the long run to financing the welfare state and improving economic growth” (*Migrationsverket/EMN* 2010: 2). The OECD (2011: 11) labelled the Swedish approach as the “most open labour migration system among OECD countries”, in particular due to the absence of skill requirements, salary threshold and limits on the number of permits issued and their renewability.

The general approach is that individual employers know the recruitment needs of their business the best and the system relies on employer good faith to give preference first to resident workers (*ibid*: 12), faith that is sustained by the fact that recruitment from abroad entails higher costs and delays and by the role of trade unions, which verify “that the stated wages and working conditions are consistent with the prevailing collective bargaining agreement or industry standard” (*ibid*). The Swedish system does not foresee any quantitative or qualitative limit to the immigration of workers, which means that employers are free to recruit any third-country worker they need, irrespective of their nationality or qualification level, provided that the working conditions are in line with Swedish collective agreements: the Swedish system therefore stands out from the general approach taken by the majority of EU Member States, which apply selective policies on labour immigration from outside the EU/EEA and focus on the attraction of highly qualified or qualified persons (*Migrationsverket/EMN* 2013) and is the sole country in the OECD where vacancies in low-skilled occupations can permanently and quickly be filled with workers recruited from abroad without any numerical limit (OECD 2011: 67). However, the Community principle applies in Sweden as well, which implies for an employer the obligation to advertise the post for at least 10 days before employing from abroad, allowing citizens from within the EU/EEA priority to apply for the position. Interesting to note is that “employers are not required to hire or even to interview candidates responding to the announcement, nor to explain why they did not hire these candidates” (OECD 2011: 63): this implies that the labour market test in Sweden does not represent a real restriction.

The Swedish approach is also the most flexible one since it is able to quickly respond to changing realities on the labour market, leaving employers the flexibility to adjust their recruitment strategies on the base of their varying needs, which are difficult to predict by both employers and government authorities in advance, as the *Bundesagentur für Arbeit* does in Germany once a year in its *Positivliste* (shortage list).

Family rights are pretty generous, since employees are entitled to take family members with them, who are granted the same rights as the employee and provided with unrestricted access to the Swedish labour market.

The aim of this broad liberalization was not to attract more migrants to Sweden, rather to make the system more flexible in order to let in those migrants able to fulfil the needs of the Swedish labour market. As statistics show (see table 4), the liberalization of the migration approach has resulted in an increase in the number of permits granted - from 14,259 in 2008 under the old system to 18,520 in 2012 - that however does not represent a cause of concern, contrary to what was feared. While, on the one hand, the numbers of workers admitted in elementary occupations saw a sharp increase (from 9% in 2009 to 16% in 2011), due to the lifting of the ban on recruitment for lower-skilled jobs during the reform (OECD 2011: 106), on the other hand the share of permits issued for work with high qualification requirements has similarly increased from 15% in 2009 to 26% in 2012 (*Migrationsverket/EMN* 2013: 22). This demonstrates that the new liberal approach has been successful in terms of attracting highly qualified and qualified migrants, even if the policies do not focus on this group only.

**Table 4 First residence permits issued for work purposes
2008-2012**

	2008	2009	2010	2011	2012
Total numbers of permits issued for work purposes	14,259	18,978	15,273	16,455	18,520
Of which: Highly skilled workers	n/a	2,810	3,476	4,406	4,751

n/a = no data available

Source: Eurostat/Swedish Migration Board (*Migrationsverket*)

Generally, what makes Sweden attractive for migrants are the job opportunities, the rights granted to close relatives (in particular the work permit granted irrespective of any kind of prior job offer) and the generous liberal welfare system, as well as the active labour market policy, which provides for a high level of employment protection: “foreign citizens basically enjoy the same rights as Swedes when working and living in Sweden” (*Migrationsverket/EMN* 2010). It has been shown indeed (see chapter 2.c as well as Papademetriou 2013) that favourable admission procedures are not enough to recruit knowledge migrants, who often base their choice on factors other than financial ones: this makes Sweden one of the most attractive European destinations.

In conclusion, Sweden does not apply any numerical, occupational or educational restriction, nor any exclusionary verification of any actual attempt on the part of the employer to recruit locally besides the publication of the job vacancy. “The system relies in large part on the good faith of Swedish employers and the idea that there is no advantage to them of recruiting from abroad over hiring someone already in the Swedish labour market” (OECD 2011: 70).

b. Selectiviteit en restrictiviteit (selectiveness and restriction): the Dutch model

As in the Swedish system, labour migration in the Netherlands is an instrument to fight labour shortages and a partial solution to demographic problems. The strong point of difference is that in the Dutch approach, labour migration is merely the final element of labour market measures: the sole exception to an approach entirely aimed at national labour market measures is a low-threshold admission regulation for highly-skilled migrants, while “Dutch labour market policy focuses in first instance on increasing the quality and quantity of the (current and future) Dutch labour force and resolving of temporary bottlenecks in the labour market” (European Migration Network & Immigratie- en Naturalisatiedienst 2010: 15).

Leading concepts in the management of labour migration in the Netherlands are selectiveness and restriction. Selectiveness takes place through the distinction between the fast and uncomplicated admission of those migrants from whom it may be expected that they will contribute to the Dutch “knowledge economy” and those with lower qualifications - including secondary vocational education. For this last middle and lower segment of the labour market, selectiveness goes hand in hand with restriction: they need a work permit (*Twv - Tewerkstellingsvergunning*) before a residence permit can be granted and are subject to a labour market test, ensuring that there is no domestic supply of work available, who would enjoy priority for that job. On the other hand, the restrictive admission policy does not apply to those people expected to provide a positive contribution to the Dutch economy and culture, and particularly those who are in possession of a Bachelor’s or Master’s degree and will satisfy certain income requirements.

The leading principle in the management of labour migration is demand-driven, which applies in particular to the Highly Skilled Migrant Scheme (*Kennismigrantenregeling*), the main policy basis in the management of knowledge migration. This scheme entered into force in 2004, making the Netherlands one of the first Member States to modernize and liberalize policy for migrants who intend to settle in the country on regular grounds. However, this scheme concerns exclusively those migrants whose skills are required in the Netherlands, for whom the admission is made simpler, quicker and inviting: a decision on the application is given within two weeks from the submission. The salary requirements in order to be eligible for this scheme, set annually, are lower than those set by the Blue Card and also coupled with an age category: for young migrants under 30 years old the salary threshold is considerably lower. Moreover, no educational requirement is set. While the national scheme does not provide some rights that Blue Card holders, on the contrary, have, such as facilitations in the process to permanent residence or facilitated intra-EU mobility, family members are nevertheless encouraged to follow the migrant worker through a whole set of advantages granted to them.

The same conditions apply to third-country nationals who have completed a higher professional education or a university degree in the Netherlands and have found a job in a highly-skilled occupation within a year from completion of the course of studies. This scheme, termed Orientation Year for Graduates Scheme

(*Zoekjaar Afgestudeerde studenten*) is aimed at keeping graduates from Dutch universities in the country and a more advantageous salary threshold applies.

This last provision differs from the Highly Educated Migrants Scheme (*De Regeling Hoogopgeleiden*, introduced in 2009) in the period of time granted to graduates in order to look for work as highly skilled migrants - three years for the latter scheme - and the group of graduates targeted - foreigners in possession of a Master's or PhD degree at one of the top universities as listed by the Dutch government. The salary threshold is the same. With this last scheme being the single concession towards the principle of a supply-driven approach, graduates applying for this scheme are assessed through a points system on the basis of the type of education, the age and the indicators for success in the Netherlands. One of the main limitations of supply-driven labour market policies is the risk of underutilisation of skills, since migrants do not need to have a job offer upon arrival and employers tend to prefer workers with national qualifications: for this reason, the Netherlands require that job-seekers under its Highly Educated Migrant Scheme find "knowledge-migrant" jobs, making their stay contingent on finding and keeping a high-skilled job with approved employers.

In conclusion, the Dutch labour migration policy is geared towards the so-called knowledge economy, meaning a form of migration that positively contributes to the Dutch knowledge-based economy and society and the related international competitive position. Outside of the inviting and liberal policy for highly qualified migrants, only under exceptional circumstances are medium- and lower-skilled workers admitted to the Dutch labour market: labour migration management in the Netherlands is therefore considered highly restrictive.

c. An overlapping system: the German "exemptions" regime

The German labour migration system essentially evolved over time through amendments to existing legislation to circumvent the general recruitment ban, dating back to 1973, the first oil crisis and the consequent end of the "guestworker" era. Not until 2005 with the *Zuwanderungsgesetz* (Immigration Act) was it recognized that the Federal Republic had become an immigration country and a significant liberalization of the admission regime for migrant workers took place: the Immigration Act created a new decree that formed the main pillar of the labour migration scheme in Germany, the Residence Act (*Aufenthaltsgesetz* - henceforth referred to as *AufenthG*), which established that the admission of foreign employees must be "geared to the requirements of the German economy, according due consideration to the situation on the labour market and the need to combat unemployment effectively" (§18 Subs. 1 *AufenthG*). Through the Immigration Act, the permit application procedure was facilitated: the right of residence and job market admission are unified in a single authorisation procedure, replacing the dual approval procedure with a concentrated one ("One-Stop Government"). Labour migration, though, has continued to be strictly demand-driven, with the admission of third-country nationals made strictly dependent on the existence of a job offer in Germany and the compatibility of the employment with economic needs. Even if at present "Germany's policy for highly skilled migration is among the most open in the OECD", according to the OECD (2013: 15), the whole system still "presents itself as a series of exemptions from a general recruitment ban" (*ibid*) and Germany

did not experience high inflows of highly qualified migrants as happened in the Netherlands and in Sweden after their (partial in the first country and general in the latter) liberalization (Chaloff and Lemaître 2009: 28): this is partly explained by the perception of the German system as complex and overlapping. Indeed, policies managing labour migration in Germany “are oriented to various categories of labour migrants, depending on their qualification profiles”: special rules apply in particular to qualified migrants. The German system basically envisaged two options for skilled and highly skilled third-country workers: §19 *AufenthG* regulates a fast track to a permanent residence permit for the very highly skilled, while §18 *AufenthG* regulates the access of a more broadly-defined category of qualified workers in possession of at least a professional qualification of two years minimum.

The §19 *AufenthG* was modified with the transposition of the European Directive into German law on 1 August 2012. This section provides for a fast track to a permanent residence permit (*Niederlassungserlaubnis*) for exceptionally qualified labour migrants. The number of “specialists” eligible was restricted after the amendment of 2012 and includes presently only two categories: scientists with special technical knowledge and teaching and scientific personnel in prominent positions. Although the salary requirement had already been lowered in 2009 with the introduction of the Labour Migration Control Act (*Arbeitsmigrationsteuerungsgesetz*) from EUR 84,600 to EUR 63,000, it was still considerably high and provides for at least a part of the explication for the remarkably low number of permits issued in comparison with the Blue Cards: to be eligible for application, highly qualified workers were expected in 2012 to receive at least twice the earnings ceiling of the statutory health insurance scheme - EUR 66,000. A fundamental difference between the two regulations must be noted: while the Blue Card merely entitles the holder to a permanent title, although attached with a whole series of desirable rights, §19 *AufenthG* provides the highly skilled workers with a permanent settlement permit on access.

Table 5 Issuance of permits for the exceptionally qualified under §19 *AufenthG*
2006 - 2014

	2006	2007	2008	2009	2010	2011	2012	2013	2014
Permits	76	106	106	127	137	205	840	88	168

Source: OECD (2013: 71)/BAMF (2014: 20)/BAMF (2013: 13)/BAMF (2012: 14)

All in all, §18 Subs. 4 *AufenthG* is still the most important provision within the German labour migration regime. The role of the Federal Employment Agency (*Bundesagentur für Arbeit* - henceforth referred to as *BA*), which is regulated in Sections 39 to 42 of the *AufenthG*, is essential, since “A residence title which permits a foreigner to take up employment may only be granted with the approval of the Federal Employment Agency, in the absence of any provision to the contrary in statutory instruments” (§39(1)). Since priority is given to reducing existing unemployment, the *BA* generally carries out a labour market test (*Vorrangprüfung*), a safeguard for the domestic workforce, which ensures

that nobody in the domestic labour market or from another EU/EEA country is available for the posted position, prior to employing a third-country national worker. Although increasingly broad categories are exempted from the test (professions in shortage lists, graduates from recognized universities, executives and specialists, and all categories regulated under *BeschV* §2 - §15), the *BA* continues to review if whether filling the position would be a responsible decision from a labour market and integration policy perspective, and that the working conditions would be comparable to those of German workers. In any case, the prerequisite is that a concrete job offer in Germany exists. Approval from the *BA* is however not required for highly qualified jobs with a salary above the threshold for the Blue Card: this is another significant benefit of the EU instrument in comparison with the national scheme.

As it will be expanded in the next chapter, a significant portion of highly qualified third-country migrants do not enter Germany under the specific and very strict provision that is targeted at them (§19 *AufenthG*), but obtain a residence permit for qualified employment under the more “flexible” §18 Subs. 4 (BAMF/EMN 2013: 23): this reinforces the idea of a complex system, in which a wide range of overlapping criteria is applied in evaluating applicants and helps explain why, despite no numerical limit and broad exemptions to the labour market test, “permanent inflows of managed labour migration has risen recently, but relative to the other countries and to the size of the German labour market continue to be low” (OECD 2013: 15). This also offers an explanation to the unique success of the Blue Card in Germany.

7. Conditions for entry and residence under national schemes: drawing conclusions

When it comes to labour migration “admission” regimes in general, Germany and the Netherlands can be classified as restrictive - excluding their specific policies targeted at the highly skilled, which are on the contrary considerably generous - while Sweden relies on an extremely liberal approach. In particular, the safeguards on the numbers of entry, the conditions for admission, the rights granted upon arrival and the protection of the domestic workforce are the main elements that distinguish the types of “admission” regimes.

Table 6 Overview of labour migration “admission” regimes in the three countries under analysis

	Sweden	Netherlands	Germany
General approach	liberal	restrictive	restrictive
Policies targeted at highly skilled migrants	liberal	generous	generous

Source: Author’s own classification

While in the first two countries migrants need to meet certain (very strict) conditions and must either pass a labour market test or demonstrate that they are part of one of the “professions in shortage”, “the Swedish system does not foresee any quantitative or qualitative limits to the immigration of workers, with the general approach being that labour migration should be driven by the recruitment needs of employers, regardless of whether they need highly qualified, qualified, low-skilled or unskilled workers” (EMN 2013: 18). The only regulation that employers must follow is that the job offer should respect standard Swedish wages and working conditions, which must be equal to the ones offered to natives (OECD/EU 2014: 373). However, “despite the very open nature of the new migration system, there has been no massive increase in inflows, whether overall or of lesser-skilled migrants” (OECD 2011: 12). “In short even under what would appear to be rather liberal migration conditions and a flexible labour market perceived as attractive by potential immigrants, demand is not unlimited when employers have to respect local wages and working conditions” (OECD/EU 2014: 374).

8. Pick up rates: a possible explanation

From the statistics on the Blue Card, we can observe great and significant differences in the pick up rates between countries with the same labour market situation as well as the same type of “admission” migration regime for highly qualified migrants.

Table 7 Blue Cards vis-à-vis national permits issued

	Blue Cards					National schemes (high-skilled migrants only)				
	2012	2013	2014	Tot	2014-2012	2012	2013	2014	Tot	2014-2012
Belgium	0	5	19	24	19	95	73	2,484	2,652	2,389
Bulgaria	15	14	21	50	6	0	0	0	0	0
Czech Rep	62	72	104	238	42	69	69	46	184	-23
Germany	2,584	11,580	12,108	26,272	9,524	840	88	168	1,096	-672
Estonia	16	12	15	43	-1	0	0	0	0	0
Greece	0	:	:	0	:	0	0	0	0	0
Spain	461	313	39	813	-422	1,231	1,480	2,137	4,848	906
France	126	371	597	1094	471	3,037	2,667	2,561	8,265	-476
Croatia	:	10	7	17	-3*	:	565	0	565	-565*
Italy	6	87	165	258	159	1,695	1,543	1,066	4,304	-629
Cyprus	0	0	0	0	0	600	385	469	1454	-131
Latvia	17	10	32	59	15	106	82	122	310	16
Lithuania	:	26	92	118	66*	0	0	0	0	0
Luxembourg	183	236	262	681	79	21	0	0	21	-21
Hungary	1	4	5	10	4	0	0	0	0	0
Malta	0	4	2	6	2	0	0	0	0	0
Netherlands	1	3	0	4	-1	5,514	7,046	7,123	19,683	1,609
Austria	124	108	:	232	-16*	1,158	1,228	1,083	3,469	-75
Poland	2	16	46	64	44	206	387	688	1,281	482
Portugal	2	4	3	9	1	313	767	989	2,069	676
Romania	46	71	190	307	144	0	0	0	0	0
Slovenia	9	3	8	20	-1	0	0	0	0	0
Slovakia	7	8	6	21	-1	0	0	0	0	0
Finland	2	5	3	10	1	749	971	1,120	2,840	371
Sweden	0	2	0	2	0	4,751	4,666	5,012	14,429	261
Tot	3,664	12,964	13,724	4106,272	+10,060	2008,118	5418,63	4518,586	7.040,49	+11,969

**difference calculated on the base of the data available*

Source: Eurostat (migr_resbc1 and migr_resfirst), authors own calculations. For Germany, data from Eurostat integrated with data from BAMF; for Sweden, Eurostat data integrated with data from the Swedish Labour Migration Board (*Migrationsverket*)

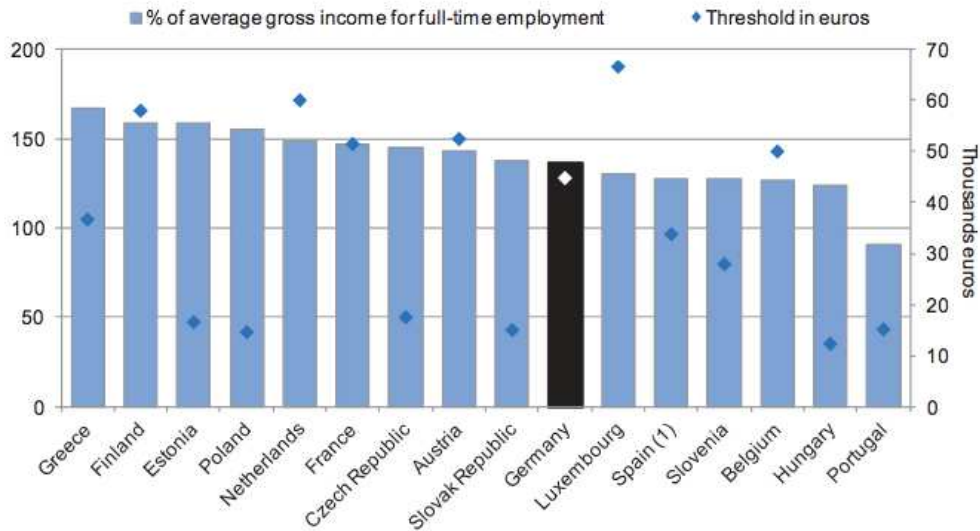
The situation in **Sweden** is clear-cut: the strikingly low number of Blue Cards depends on the fact that the liberal national approach, described above, is a far more inviting option for them. The national system does not foresee any sort of minimum requirements nor limitations, while providing migrants with rights as favourable as the ones entitled by the Blue Card, for instance the possibility to be unemployed for three months without losing the residence right or the rights granted to family members: this makes the national scheme much more attractive and uncomplicated for third-country nationals wishing to enter Sweden for work, regardless of them being highly skilled or not.

In the **Netherlands**, while the number of Blue Cards holders compared with the number of high-skilled migrants entered under the national schemes - 4 against 19,683 between 2012 and 2014 - does not leave much scope for interpretation, a deeper analysis is necessary. En masse “the Directive does not add much to the existing national Highly Skilled Migrants Scheme” (Groen/Tesseltje 2011), which entails a lower threshold for admission, in particular a lower salary criterion and no educational requirements. Nonetheless additional rights are provided in the Blue Card Directive: the permanent residence status requires merely two years of uninterrupted residence in the Netherlands, provided that the migrant has already spent five years in total in the EU territory; periods of absence from the EU does not interrupt the period of five years required in order to obtain the permanent residence, provided that they are shorter than 12 consecutive months and 18 months in total; an orientation period of three months is granted to Blue Card holders in case of unemployment. More advantageous rights are also granted to family members, whose residence permit is valid for the same period as that of the Blue Card holder and who can apply for a *verblijfsvergunning voor voortgezet verblijf* (residence permit for continuous residence) already after two years of legal residence, in deviation to the standard five years.

In **Germany** the EU Blue Card is a far more advantageous option for highly skilled migrants willing to move to the country for work reasons. The implementation of the Blue Card in Germany is even more favourable than the provisions contained in the same Directive to such an extent that Strunden and Schubert coined the term “Blue Card Plus” to denote the particularly advantageous provisions of the German Blue Card (2012). “The amendments required by this directive [*the Blue Card Directive*] to the *AufenthG*, go beyond the provisions of the Directive introducing the EU Blue Card” (Strunden/Schubert 2012: 272), especially when the shorter residence period required for issuing a settlement permit is considered: as stated by the §19, Subs. 6 *AufenthG*, holders of a Blue Card can apply for a settlement permit (*Niederlassungserlaubnis*) after 33 months provided they keep their employment and have made the necessary contributions towards pension insurance. The necessary period is lowered to 21 months if they have certified German-language skills: this is much shorter than the standard 60-month period for other skilled labour migrants. Moreover, Blue Card holders may stay abroad without losing their residence title for up to 12 months (§51 Subs. 10 *AufenthG*) in deviation of the typical six-month limit (§51, Subs. 1 No. 7). A striking point of difference concerns also the lowering of the income thresholds: As showed by the table below, relative to other European countries, Germany does not apply a

rigid interpretation of the salary requirement set in the Blue Card Directive, which makes the German Blue Card one of the more favourable in Europe.

Figure 8 Comparison of EU Blue Card thresholds, required salary as a percentage of the average annual gross income of full-time employed 2010-12



Source: OECD (2013: 107)

Just after its introduction in August 2012, a boom of applications was experienced: it will be shown however, that the issuance of this new instrument did not lead to an additional immigration of highly qualified third-country nationals. Rather, since its introduction, the Blue Card has been issued instead of the standard residence permit regulated under national law (both under §18, Subs. 4 and §19). Further evidence for this is the surprisingly high number of national permits that have been changed into EU Blue Cards right after its introduction (1,620 persons in 2012) (BAMF/EMN 2013: 27).

The far higher number of Blue Cards issued compared to settlement permits under §19 of the *AufenthG* targeted to highly qualified workers is not surprising, due to the less strict conditions of access posed by the former (the lower income threshold in particular). In 2012, although the Blue Card Directive came into force not earlier than August that year, not less than 2,584 Blue Cards had been issued, compared to 840 settlement permits issued under §19 *AufenthG* (of which only 144 after the regulation was modified on 1 August). The numbers are even more striking in the following years (11,580 Blue Cards compared to 88 residence titles in 2013; 12,108 against 168 in 2014 - see 7 provided above).

However, we have already noted that the German labour migration system is traditionally rather complex and overlapping: before the introduction of the Blue Card, the vast majority of residence permits were issued under §18, Subs. 4 *AufenthG*, which regulates the entrance of both highly qualified and qualified migrants - according to the European definitions contained in the Blue Card Directive - equally. According to official statistics, the numbers of permits issued

in 2012 was 44,106, while the following years saw a dramatic decrease: 33,734 in 2013 and 34,630 in 2014. If we now compare these numbers with the number of Blue Cards issued since 2013 (2012 statistics are not significant enough since the Directive entered into force only in August that year), it is unsurprising to find that the number of permits issued under §18, Subs. 4 decreased roughly by the same amount of Blue Cards issued.

Table 9 Numbers of Blue Cards vis-à-vis national permits in Germany

	2012	2013	2014
Permits issued under §18 Subs. 4, <i>AufenthG</i>	44,106	33,734	34,630
Blue Cards	2,584	11,580	12,108

Source: BA, Eurostat - Author's own calculations

It must be noted, however, that a division of the permits granted under §18 Subs. 4 into qualified and highly qualified professions cannot be made, since most of the highly qualified professions do not require *BA* approval, thus are not tracked by the *BA* statistics. This being the case, we cannot claim with certainty that the interesting correspondence between the lower number of permits under national law and the number of Blue Cards issued is due to the fact that the migrants eligible to apply for the Blue Card, namely the highly qualified only, preferred to do so instead of applying for the lower beneficial national plan. However, supposing that this would be the case and that the interesting argument presented would correspond to reality, an important conclusion could be drawn on the effects of the EU instrument in analysis. Since one of the objectives of the Blue Card Directive is to increase the number of talents coming to Europe through the creation of more attractive conditions for highly qualified third-country nationals able to increase the competitiveness of Europe as a knowledge-based and inclusive economy on the global context, taking into account the observations given above it does not seem the case that the Directive fulfilled its objective: in the Netherlands and in Sweden the incredibly low numbers of Blue Cards issued is self-explanatory, while in Germany it seems rather the case that after its introduction, highly-skilled migrants - the same amount that would have come anyway through other ways - preferred to apply for the more generous European scheme than for the national one. Nevertheless, the record numbers reached in Germany represent a success, though only partial, and there is a need as well as room for improvement.

9. Potential for improvement

In its Policy Plan on Legal Migration (EC 2005a: 27) the Commission estimated that the Blue Card would cover 74,300 highly skilled migrants entering the EU every year, based on data on the annual inflow of work permits holders in 16 EU countries in the year 2003. After 3 years from its first implementation, the total

number of Blue Cards issued is not even half the number estimated per year (see table 7).

Given that the conditions posed by the Blue Card to highly qualified third-country nationals willing to move to the Netherlands and to Sweden are stricter than those posed by the respective national schemes, it seems reasonable that, in order to be successful, the European instrument would need to balance the rigidities with better prospects and more favourable rights.

A high-potential improvement lies in allowing the Blue Card holder the possibility to move to another Member State for the purpose of highly qualified work after eighteen months of legal residence in the first country of access, representing the central tenet of the scheme. At present, the right to move for the migrant and his/her family members is still conditioned by strict rules and red tape: to obtain the right to reside and work in another Member State, migrants must undergo the same application procedure again, therefore fulfilling the conditions (mainly different from one country to the other) set by the Member State in which they wish to move. The Blue Card scheme in the Netherlands as well as in any other EU country would be much more attractive if barriers to intra-EU mobility for third-country nationals were finally broken down, creating a truly common labour market throughout Europe.

Going a step further, harmonization would mean that less discretion is left to Member States to set the conditions of entry and residence under the Blue Card scheme: at present, given the broad leeway in implementation, the commonness of an EU-wide scheme is watered down to a simple commonly used label.

The Blue Card did achieve a (very) limited success. What can be termed the most significant achievement of the Blue Card initiative is the fact that it helped create a minimum set of conditions and rights for the highly skilled: even if it failed to create a common migration scheme, since it has remained in most of the cases in competition with the national strategies targeted at the same group of migrants, it led at least the national schemes to introduce more liberal and favourable provisions to attract the highly skilled. Nonetheless, as long as more favourable national policies, differing from one country to the other, remain in place, the added value of the Directive will be undermined. In this sense, another step that seems reasonable in order to increase the efficiency of the Blue Card is to give the EU scheme more exclusiveness vis-à-vis the national migration policies. Since both instruments target the same type of migrants (namely the ones able to fill highly skilled professions), national schemes do not serve simply a complementary function to the Blue Card, as defined by the Council at the time where the negotiations of the Directive were carried out (Council 2008), thus already modifying the proposal in favour of an exclusive nature of the Blue Card as defined by the Commission (2007a): at present the situation is one in which the two approaches, national and European, are competing and their conditions generally overlapping. Some experts underlined a possible “positive competition” (EC 2015c: 5) between the Blue Card and the national schemes: however, although the EU approach could have succeeded in setting minimum standards and rights for the highly skilled, it is certainly way far from a harmonized and common scheme.

One way to overcome this deficiency of the Blue Card in the case of the Netherlands and other countries that have similar provisions would be to widen its scope, such as including other types of migrants that are not targeted by national policies, and thus clearly differentiate the scope of the national schemes from the one of the EU instrument. In this case the Blue Card would be really competitive, offering more favourable provisions not only in term of higher intra-EU mobility, but also in terms of a broader range of migrants targeted. Although the list of hard-to-fill positions in Europe includes all professional levels, as argued above, a more comprehensive approach targeting low, medium and highly skilled alike is likely to encounter the reluctance of Member States, as already happened ten years ago, when the Policy Plan on Legal Migration was first presented by the Commission, proposing the adoption of a whole series of directives targeted at a broader range of migrants.

Attracting highly skilled third-country nationals to Europe would not only have (positive) consequences for the Member States, but would also affect the third countries, which may lose their most educated and talented workers to the benefit of Europe. “We are very much aware of the need to avoid negative brain drain effects” was the remark of the Commission President at the Press Conference presenting the Blue Card initiative (Barroso 2007). The European Commission first proposed “Member States should refrain from pursuing active recruitment in developing countries in sectors suffering from lack of human resources” (EC 2007a: 17), while a possible compromise proposed by the MEPs in their considerations on the Blue Card proposal was that “EU countries may reject a Blue Card application to avoid brain-drain in sectors suffering from a lack of qualified personnel in the countries of origin” (Parliament 2008). This was the only direct safeguard transposed in the final version of the Directive (Art. 8, Subs. 4). Until now, no agreement has been established with a third country that lists professions that should not fall under the Directive on the base of ethical recruitment. While a mere six Member States have transposed the option to reject an application for the purpose of ethical recruitment (Germany is one of them), no rejection on this ground has been reported (EC 2014a: 5).

As an alternative solution, exploiting the skills of the migrants already legally residing in the EU before accepting others could have been a way to counteract brain drain. However, although the Commission pointed out that one aim of the initiative had been to “secure the legal status of already admitted third-country workers” (EC 2007a: 2), the final Directive excluded the eligibility for refugees and persons under international protection, which could have represented an important group of migrants already present on the European territory available to counterbalance the skills shortages in the EU, counteracting at the same time brain drain. The discussion exploded recently in Germany, when the Director of the Federal Employment Agency (*Bundesagentur für Arbeit*) proposed to open the Blue Card process for asylum seekers (Agence France-Press 2015): his proposal, backed by the Director of the *Institut zur Zukunft der Arbeit* (Institute on the future of labour), Klaus Zimmermann, was rejected by the Federal Ministry of the Interior (*Bundesministerium des Innern*) on 20 July 2015, fearing a misuse of the instrument and too high a number of applications (Zeit Online 2015).

10. Conclusion

The purpose of the Blue Card Directive is to make the EU more attractive to third-country highly-qualified workers and to consolidate its competitiveness in the global context as well as its economic growth. This paper states that so far the Blue Card has failed to meet its ambitions.

There are great differences in the numbers of EU Blue Cards granted: the size and economic situation of the single Member States, as well as the attractiveness of the European labour market in general, particularly after the depression following the global crisis, may be part of the explanation, but they cannot fully explain the wide variations and the disappointing low numbers. The single policy choices of the Member States when implementing the European Directive may also help to better understand the results, since every country applied and promoted the Blue Card in a different way. As it was demonstrated, the different responses to the Blue Card as well as the great variation in the number of Blue Cards granted do not depend on the type of labour migration approach pursued by the Member States. Two countries that, although considered “restrictive” in their general approach towards labour migration, apply generous admission rules in favour of highly skilled migrants, namely Germany and the Netherlands, present opposite results, with the number of Blue Cards issued in Germany being countless times bigger than that of the Netherlands - respectively 26,272 and 4. The same is true for Sweden, which presents the most open and liberal approach among the countries under analysis, but in which the number of Blue Cards issued (2 from 2012 to 2014) is not even comparable to the one in Germany, while deploying a similar pattern as the Netherlands when it comes to the particular way in which the Blue Card has been implemented within the national legislation. The variegated reaction of Member States to the European intervention in the contentious area of labour migration rather finds its explanation in the unequal added value they see in the Commission proposal depending on the already existing peculiar provisions in their national migration schemes.

A more exclusive role of the Blue Card as labour migration tool at the expenses of the single national schemes would represent a first improvement in the direction of more harmonization, which is the primary motive behind the Commission proposal, aiming at creating a real common market in the EU for third-country migrants, allowing true mobility for them within the Union. At the moment, this is hindered by the high level of discretion left to Member States, which are allowed big room for manoeuvre in the implementation of the specific provisions of the Directive. However, this was necessary in the first place in order to gain the Member States’ support needed for the Blue Card Directive to be approved. The initial proposal of the Commission had to be considerably watered down: firstly, of the comprehensive package of reforms to labour migration targeted at all levels of migrants, merely the one addressing highly skilled migration was maintained; secondly, the European instrument has to co-exist and thus necessarily compete with the untouched national schemes, since both address in many cases the same group of migrants; thirdly, the EU shares its competences on labour migration with the Member States, which especially remain responsible for determining the volume of admissions; finally, the recognition of qualifications is left in the hands of the Member States. Given the

broad differences among Member States not only in the system of recognition of qualifications, but also in salary levels, welfare systems as well as economic and labour market situation, the intra-EU mobility of Blue Card holders remains a theoretical benefit difficult to implement in practice. This undermines the central tenet of the Blue Card Directive: granting freedom of movement within the European labour market should represent the very added value of the European approach, which distinguishes it from the national approaches and should increase European attractiveness vis-à-vis other migration countries.

The large concessions that the Commission had to make to Member States in order to gain their approval on the Blue Card proposal, transforming its initial proposal to such an extent that its original purpose became difficult to identify, offer an explanation to the very first question which stands behind this paper: even if the arguments of the Commission behind the Blue Card are thoroughly valid and “Member States are relatively united in their acknowledgment of the economic and social benefits of highly qualified migrants” (Parkes and Angenendt 2010: 3), national governments are not yet ready to pool their sovereignty in the area of migration and leave their border control in the hands of the EU. For this reason, the Blue Card represents merely a common set of minimum standards instead of a harmonized labour migration scheme and has no leverage for migrants in choosing the EU as a destination of migration.

On the contrary, instead of representing a signal to high-skilled migrants and a factor of competition for the EU, the Blue Card demonstrates the difficulties to greater European integration and the reluctance of Member States to cede more responsibility to EU level. Countries are not yet willing to leave more competence to the EU in extremely sensitive and crucial areas such as border control and access to the labour market. In order to circumvent this unwelcome consequence inevitably bounded to the Blue Card, the Member States approved a version of the Directive that envisaged the necessity for migrants to undergo the same application procedure again when wishing to move to a country different from the one they first entered: this often means to be in possession of different qualifications, since the system of qualification recognition varies greatly within the Union, and to meet a different salary threshold, set independently by every Member State. This excludes any possibility of a harmonized labour migration system.

Although the failures and weak points of the Blue Card have been identified, its potential still stands out, as this paper demonstrated: to transform the history of the Blue Card into a story of success is possible and the EU cannot afford to sit and watch as other take the lead. It needs to take action, if it wants to keep pace with the traditional migration countries in the “battle for brains” and become the most dynamic knowledge-based economy in the world. Moreover, Europe needs to grant the same freedom of mobility within its territory, currently reserved to European citizens, to third-country migrant workers, if it wants to create a true common European market and allow for a better allocation of resources as well as to be a promoter of equal rights, as recognized by President Barroso: (2007) “[...] this [*“rights-gap” between legal immigrants and EU citizens*] is incompatible with our value of equal treatment”.

According to the Blue Card Directive, the Commission is expected to “report to the European Parliament and the Council on the application” and the achievements of the Blue Card (Art. 21 of the Blue Card Directive). The first “Communication on the implementation of the Directive 2009/50/EC” (EC 2014a) was published on 22 May 2014, and for the first time the Blue Card was assessed officially. The results are interesting, since the Commission continues to see the policy in an extremely positive light and, while briefly referring to “a number of deficiencies in the transposition” (EC 2014a: 10) and broadly encouraging Member States to “put it to full use” (*ibid*), no amendments are proposed.

A more decisive position on the subject was taken by Commission President Jean-Claude Juncker during his successful election campaign, where he made “a new European policy on legal migration” (Juncker 2014: 11) one of his ten priorities: “As a first step, I intend to review the “Blue Card” legislation and its unsatisfactory state of implementation” (*ibid*). Recently the Commission reaffirmed this proposition in the European Agenda on Migration (EC 2015a): while being cautious in reaffirming the exclusive competence of the Member States on the volume of admissions, it also points out the crucial role of the EU in setting a common system to attract talents who fully match the needs and future shortages that the EU at large will face in highly qualified professions in particular (*ibid*: 14), and in regulating “issues difficult to address at national level” (EC 2015d: 2). To this aim, the Agenda proposed a public consultation on the future of the Blue Card launched at the end of May 2015. Although the results are not yet available, the consultation closed on 30 September 2015 and preliminary outcomes are expected soon.

Due to the fundamental changes to the initial Commission proposal made necessary by the reluctance of Member States, in particular the great room for manoeuvre left to the latter in implementing and promoting the European Directive, we are not in a position to assess if the Blue Card would have otherwise succeeded in its objectives under different circumstances. The present study makes clear that the causes of failure are not to search in the Blue Card instrument *per se*, but rather in the ways in which it has been implemented. From this starting point, a broader study is necessary, which could start from the approach envisaged by this study and consider additional parameters, notably a higher number of countries. This would allow a more in-depth exploration of the possibilities to put into practice and exploit the added value of the Blue Card. The results of the above-mentioned public consultation will also hopefully provide for additional useful elements to complete the picture.

With more than six years passing since the Blue Card first entered into force on 19 June 2009, perhaps it is time to come back to the claims of Craig Barrett, who in 2007 said “[...] it’s clear that the next Silicon Valley will not be in the United States” (Barrett 2007): currently this is neither the case in Europe.

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