



**ESRC Centre on Migration, Policy and Society**

**Working Paper No. 65,  
University of Oxford, 2008**

**Towards an EU Blue Card? The  
delegation of National High Skilled  
Immigration Policies to the EU level**

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WP-08-65

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## **Towards an EU Blue Card? The Delegation of National High-Skilled Immigration Policies to the EU Level<sup>1</sup>**

**Abstract:** This paper examines the implementation of the proposed European Union (EU) Blue Card by the European Commission. The Commission voted on the Directive on the conditions of entry and residence for high-skilled third-country nationals in October 2008. Delegation to the EU level may provide a coherent and centralised framework for managing legal migration. It could make the EU more competitive by encouraging efficient recruitment and offering attractive conditions to high-skilled immigrants. However, member states vary in their openness to HSI due to different institutional constraints and coalitions among actors. In order to compare HSI legislation across countries, a High-Skilled Immigration Index (HSII) is constructed. The goal is to analyse the openness of national policies towards high-skilled immigrants. This index is composed of six sub-categories and assigns overall scores to HSI programmes of twenty countries. Besides policy openness, other factors that vary among member states also come into play, creating difficulties for reaching an agreement on the EU Blue Card. Different national labour market needs exist, which have made some EU member states reluctant to cede their responsibility to regulate labour market access and to grant rights to immigrants based on EU-figures and expectations. Even if member states have managed to agree on an EU policy, it will be based only on a least-common-denominator.

**Key words:** Blue Card, delegation, European Union, high-skilled immigration policies, level of governance.

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<sup>1</sup> I would like to thank William Hynes, Tony Messina and Ali Rogers for helpful comments and the ESRC for financial contribution. An earlier version of this paper was presented at the ISA Conference, San Francisco, March 2008.

## **Introduction**

With the increasing competition for the 'best and brightest', state actors are under pressure to act through immigration reforms. A number of governments have implemented 'high-skilled-immigrant-friendly' policies, but regional communities, such as the European Union, have also recently become active in this domain. According to Franco Frattini, the Justice Commissioner, the EU receives only 5 percent of skilled labour, while more than half go to the US. The EU Blue Card is an attempt of the EU to compete mainly Australia, Canada and the United States in a 'global war for talent'. The proposal for a Directive on the admission of high-skilled immigrants (i.e. EU Blue Card) seeks to establish more attractive entry and residence conditions for third-country nationals to take up highly qualified employment in EU member states.

Delegation to the EU level may provide a coherent and centralised framework for managing legal migration. It could make the EU more competitive by encouraging efficient recruitment and offering attractive conditions to high-skilled immigrants. However, member states vary in their openness towards high-skilled immigration and hence reaching an agreement on the EU Blue Card is difficult. Different labour market conditions and needs exist across countries and thus many EU member countries are reluctant to cede their responsibility to regulate labour market access and to grant rights to immigrants based on EU-figures and expectations. Since sectoral groups have contrasting HSI preferences at the national level, this cost-benefit analysis is transplanted to the EU level. Even if member states agreed on a harmonised EU policy, the policy will likely be based on a least-common-denominator.

The paper will proceed in the following way: Part II will provide an overview of the EU Blue Card. Part III will discuss the national framework and propose a number of differences between member states, whereas Part IV will analyse the EU proposal in more detail by considering the responses of member states and the agreed version of the proposal. Finally, Part V will conclude and provide some suggestion for further research.

## **Overview of the EU Blue Card**

The EU Blue Card seeks to create a single application procedure for non-EU workers to reside and work within the EU, and to establish a common set of rights for workers in member states. To be eligible for the EU Blue Card, applicants need to show a recognised diploma and have at least three years of professional experience. Under the 2007 proposal,

the Blue Card is valid for up to two years and renewable. It allows holders and families to live, work and travel in the EU. The applicant must have a one-year EU job contract with a salary of three times the minimum wage. Permanent residency is automatic after five years (BBC 2007). The application procedure is expected to take less than three months.

Commission President José Manuel Barroso underlined that:

Labour migration into Europe boosts our competitiveness and therefore our economic growth. It also helps tackle demographic problems resulting from our ageing population. This is particularly the case for highly skilled labour. With today's proposal for an EU Blue Card we send a clear signal: highly skilled migrants are welcome in the EU! We are also proposing to give a clear set of rights to all third country nationals who legally reside in the EU. This will protect EU citizens from unfair competition in the labour market and promote the integration of migrants into our societies. (EC 2007a)

Vice-President Franco Frattini, the Commissioner responsible for Freedom, Security and Justice, stated that Europe's international strength would be determined by its ability to attract high-skilled immigrants. "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 2007a).

However, the proposal does not create the right of admission. The scheme is entirely demand-driven, respecting the principle of Community preference and member states' jurisdiction to decide on the numbers of persons admitted. In particular, member states applying the transitional arrangements that limit the free movement of workers from the new member states should respect the Acts of Accession terms and continue to give preferences to workers of the EU-8 and EU-2 over third-country nationals (EC 2007c). The proposed common system is flexible and centred around a number of key points. It introduced a fast-track procedure, based on common criteria (EC 2007a).

The proposal is presented according to the December 2005 Commission Communication, Policy Plan on Legal Migration (COM(2005)669) on the adoption of five legislative proposals for the period from 2007 to 2009. This selective approach was endorsed by the European Council in December 2006, inviting the Commission to present these proposals as part of the comprehensive EU Migration Policy. Furthermore, in response to the request by the European Parliament in its October opinion on the Policy Plan on Legal Migration, the Commission will launch a study to examine future labour needs in Europe (EC 2007b).

The Directive's aim is to provide member states and EU companies with additional means to recruit, retain and better allocate (and re-allocate) the needed workers. The Commission intends to increase the competitiveness of the EU economy by increasing the contribution by legal immigrants (EC 2007c). The EU, with 1.72 percent third-country highly qualified workers of the total of the employed population, lags behind the other main immigration countries, such as Australia (9.9%), Canada (7.3%), USA (3.2%) and Switzerland (5.3%). These figures highlight the difficulty for the EU in attracting and in certain cases, valorising these immigrant workers. According to the European Commission, if the economic situation in the EU continued to improve, the EU would have an increased need for high-skilled workers. It is time for the EU to act if it wants to benefit from its advantages (EC 2007c).

The EU Blue Card provides for a "one-stop-shop" system for third-country nationals who would like to live in a member state for work purposes. It applies a single application procedure, therefore simplifying, shortening and accelerating the procedure for both the employer and the immigrant. However, when handling the application for high-skilled employment, certain safeguards are guaranteed (EC 2007b). It makes member states indicate in all other existing residence permits issued for other purposes (e.g. family reunification, asylum, study) whether the third-country national is permitted to work. This will enable the authorities to control if a third-country national is working legally by looking at his/her residence permit (EC 2007b).

The directive is supposed to grant legally working third-country nationals basic socio-economic rights on equal basis to its nationals. Equal treatment with nationals of a member state would apply to all third-country workers legally residing and not yet holding long-term resident status. It would include working conditions (including pay and dismissal), health and safety at the workplace, education, vocational training, recognition of qualifications, social security (including health care), export of pensions once they are paid, access to goods and services (including procedures for housing) and tax benefits (EC 2007b).

By introducing a single application procedure and a single permit, the proposed Directive would simplify admission procedures for the purpose of work and would contribute to a better migration control. Granting a common set of work related rights - among them equal treatment in pay and other working conditions - to lawfully residing third-country workers would not only reduce the rights gap and protect them from exploitation, but it would also protect EU citizens from cheap labour. In addition, the proposal would create a level playing field across the EU for all third-country nationals residing and working legally (EC 2007b).

The European Commission highlights that EU enterprises have increasing difficulties in filling current job vacancies, especially for high-skilled workers. The EU is witnessing employment growth of 3 percent per year in high-education sectors (1% in other sectors), a change in the occupational structure in favour of highly-skilled non-manual workers and, for these workers, high employment rates are coupled with low unemployment rates (83.2% against 4.8%). The scarcity of internal resources - also due to limited mobility of EU citizens and to mismatches between educational and professional choices and labour market needs - has already led ten member states to set up specific schemes to attract high-skilled immigrants, while many others are considering it (EC 2007c).

The proposed Directive intends to support member states' and EU companies' efforts to fill gaps in their labour markets that cannot be filled by high-skilled EU nationals. In a market with increasingly international competition for these workers, Europe can only succeed in attracting 'the best and the brightest' if it speaks with one voice. To do so, the proposal will set up a harmonised procedure, lay down common residence conditions and facilitate mobility throughout the EU. Therefore, potential immigrants will not have to face 27 different systems, but will know, easily, the conditions to be satisfied in order to be admitted in any member state. So called 'less attractive' member states could also benefit from the attention given to the EU Blue Card and skills it will bring to member states due to a higher visibility of the EU as a whole. The 'advertising' value of the EU Blue Card will contribute to its success. In order to further enhance and support the match between demand and supply of high-skilled labour, the Commission will analyse how to set up a database of Blue Card holders and a skill-matching database, in cooperation with the EURES system (EC 2007c).

Since labour market needs differ across member states, the proposed common system combines harmonisation with flexibility in the following ways:

- 1) A fast track procedure for the admission of high-skilled third-country workers based on common criteria: a work contract, professional qualification and a minimum salary level which has to be at least three times the level of existing minimum wages at national level.
- 2) A specific scheme for 'young professionals' has been built in.

3) Workers admitted under these schemes will receive a special residence and work permit, called the 'EU Blue Card', giving them a series of socio-economic rights and favourable conditions for family reunification.

4) Access to the labour market in the member state is subject to a restriction for an initial period of two years.

5) Holders of an 'EU Blue Card' can move to a second member state for high-skilled work under certain conditions (notably, a work contract) after two years of legal residence in the first member state.

6) In order not to penalise geographically mobile workers, they are allowed to add up periods of residence in different member states to obtain long-term EC residence (EC 2007c).

The growing importance of a knowledge-based economy, the structural economic change and the growth of service sector, the delocalization of labour intensive production, the outflows of EU nationals all lead to the conclusion that it will remain a significant challenge for EU development to attract and better use high-skilled workers from third countries (EC 2007d: 2). Improving labour market efficiency, preventing skills shortages and offsetting regional imbalances could be achieved through job and geographical mobility (EC 2007d: 2).

A common, flexible instrument on high-skilled immigration providing for attractive entry and residence conditions and encouraging job and geographical mobility linked to concrete needs of the EU labour market 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 2007d: 2). In this context, the Hague Programme of 4-5 November 2004 clearly recognised that EU businesses are more and more dealing with increasing labour shortages, thus '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' (EC 2007d: 3).

However, the definition of high-skilled immigrants and the availability of data vary across member states. As the admission of high-skilled workers will continue to depend on actual labour market gaps and member states will maintain full competence concerning the number

of high-skilled immigrants admitted to the EU, the benefits from this proposal will depend from several factors: the future developments of the EU economy and especially of its high-skilled sectors, the reception capacities of the member states, the educational and professional choices of the EU citizens (EC 2007d: 3).

All member states have special schemes in place that cover specific categories of high-skilled third-country nationals, but only ten go beyond scientists, artists, intra-corporate transferees, university professors etc (EC 2007d: 3). The considerable differences in the definition and admission criteria for high-skilled workers limit their mobility throughout the EU, affecting the efficient re-allocation of human resources already legally resident and hindering the overcoming of regional imbalances. The length and complexity of admission procedures could play a fundamental role in limiting EU attraction (EC 2007d: 4).

### ***Common Problems in Member States***

Whereas individual member states solely focus on their own country and problems, the EU considers the global picture - or at least the EU situation on the whole. For example, member states face common problems in various areas, such as falling birth rates and an ageing population. Eurostat projections indicate that in the EU “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” (EC 2005: 4). This will have serious repercussions on the number of employed people in the EU25, as “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 [...]”. The decline in the total population is expected by 2025 and in the working age population by 2011 (EC 2005: 4). Some member states (e.g. Germany, Hungary, Italy, Latvia) have already experienced a decline in the working age population, while it would happen later in others (i.e. Ireland from 2035). These demographic trends would not affect all member states to the same degree, but they were trends that should be addressed in a coordinated and effective way (EC 2005: 4-5). In the short to mid-term, labour immigration can contribute to providing a solution to this demographic evolution and will prove crucial to satisfying current and future labour market needs, thus ensuring economic sustainability and growth (EC 2005: 4-5).

However, according to Collett (2008), there are also a number of shortfalls of the Blue Card:



a) To alleviate the fears of some member states, the European Justice Commissioner said that “this is not an open doors policy” because “if a given member-state needs engineers or doctors, it has to decide how many, and then I will provide a state with a common procedure” (BBC 2007). Each member state will maintain the right to determine the number of immigrant workers that can be admitted into the domestic labour market through the Blue Card. It is uncertain how the coordination between national quotas in place and the Blue Card regulations will work in order to achieve effective means. The proposal contains a number of protections, raising the question of how much value-added the Blue Card brings to EU labour markets and the applicants. This is not harmonisation per se (Collett 2008).

b) The Blue Card would also not deal with the problem of qualification and skills recognition, which is based on the Bologna Process for EU member states, but does not apply to third-country nationals (Collett 2008).

c) Even if the EU implemented this Blue Card, the rate of success was unclear. Surveys of high-skilled immigrants in different sectors showed that immigration policies were not their main concern. Instead, other pull factors played an important role: high salary, career advancement or chance to work with leaders in the field (Collett 2008). For instance, a greater number of immigrants could come to the UK, Ireland or Germany, rather than to Italy or Spain, for reasons such as language, higher wages and working opportunities.

A European solution could offer greater visibility, predictability and transparency than 27 different national systems (Weizsaecker 2006: 3). The EU member states will vote on the proposed directive, yet, they all have different interests in the Blue Card with some winners and some losers. In addition, delegating responsibility to the EU level will be a difficult step as some member states are concerned about losing their sovereignty in migration issues. The final version of the proposal will likely be based on a least-common denominator. The next section will consider the national context in more detail.

## **National Framework**

Divergence between advanced industrial countries’ high-skilled immigration policies continues, even where national governments display converging policy pressures for a more

open HSI policy in order to fill labour market shortages at the high-skill end. A universal trend toward greater HSI liberalisation is visible. However, both the pace and the depth of this process vary. No consistent HSI position of left and right parties exists cross-nationally because different coalitions between groups of high-skilled labour, low-skilled labour and capital take place. I have argued elsewhere that coalition-building between actors with varying HSI preferences, mediated by labour market organisation and the electoral system, determined cross-national variations in HSI policy outputs (e.g. Cerna 2009). For instance, institutions such as unions or professionals associations are interested in the representation of high-skilled native workers and gain influence in the policy-making process in some countries, while political parties consider the representation of high-skilled workers important in other countries. Capital, e.g. employers' associations and businesses, plays a more influential role in some countries, but are more restricted in their power in others (often through tripartite policy-making). And low-skilled workers are represented to different degrees as well. These three actors can form different coalitions in order to achieve their desired outcome, which then varies across countries. That is why some countries are more open towards high-skilled immigrants than others. I will not go over this argument in more detail in this paper, but will provide an empirical contribution in this section.

### ***Differences across Countries***

The fact that OECD countries all have a favourable attitude towards temporary workers does not mean that their legislation is identical. Quite the reverse; there is great diversity depending on the country in the conditions imposed on the employment of foreign temporary workers. (SOPEMI 1997: 21)

Even though noticeable differences in countries' HSI policies exist, little comparative work has been done to systematically categorize and measure them. As a result, it is necessary to examine countries' HSI in more detail and to disaggregate policies on the terms and conditions attached. This section's aim is to explain the methodology of constructing an HSI index. The goal of the High-Skilled Immigration Index (HSII) is to analyse the openness of national high-skilled immigration policies and admission mechanisms. It ranks countries in terms of the degree of openness in HSI policies. Openness is associated with competitiveness, whereas restrictiveness is linked with admission control. The index considers admission policies (i.e. "policies on paper") and is not preoccupied with policy implementation or policy outcomes.

Admission policies can be designed to match the interest of different groups: businesses, native workers or immigrants. For instance, more restrictive policies might offer protection for native workers, but they might decrease countries' ability to attract a large number of high-skilled immigrants, which is the main interest of businesses. In a limited way, the proposed index tries to consider the interests of all three groups by examining the admission mechanisms of high-skilled immigrants, the protection of native workers and the benefits offered to immigrants upon entry.

Due to the cross-national inconsistency in the definition of high-skilled immigrants, further analysis will apply the following definition. HSI will include high-skilled experts, specialised technicians, researchers, physicians and keyworkers, and encompass internationally exposed, competitive sectors, such as IT, engineering, life sciences, physical sciences or medicine. In the health care field, only some countries count nurses among high-skilled workers, so this analysis will exclude them. Nonetheless, restricting the definition to Science and Technology (S&T) sectors omits other categories with high-skilled immigrants, such as teachers, businessmen or managers. Less admission regulation exists for the immigration of businessmen and managers as they are considered to be part of global economy and often constitute temporary intra-company transfers. On the other hand, Science & Technology sectors are associated with research & development (R&D) and productivity growth and lead to more debate on immigration control.

### ***HSI Index***

The index builds on the analysis of Lindsay Lowell (2005) who constructed an index for both temporary and permanent high-skilled immigration programmes in twelve countries in 2004. The HSII expands the scope by including additional countries (20 in total) for an updated year (2007). Nonetheless, it includes only six categories instead of Lowell's seven due to the lack of information. The index has three dimensions: time, categories for HSI policy and countries. It contains the traditional settlement countries (Australia, Canada, New Zealand, USA), West European countries, often with guest-worker or colonial history (Austria, Belgium, Denmark, Finland, France, Germany, the Netherlands, Norway, Sweden, Switzerland and the UK), new immigration countries (Ireland, Italy, Portugal, Spain) and one Asian country (Japan). These advanced industrial countries are chosen to represent different migration histories and experiences, as well as different levels of involvement of interest groups in policy-making. The index thus includes fourteen EU member states and six other

countries (Australia, Canada, Japan, New Zealand, Switzerland and the USA), for comparison reasons in the 'global war for talent'.

Other research on categorising policies exists, such as the Parliament of the Commonwealth of Australia's Joint Standing Committee on Migration (2004), Christian (2000), Lowell (2005), McLaughlan & Salt (2002), as well as some SOPEMI reports (mainly 1997 & 1998). In addition, a few authors have analysed temporary foreign worker programmes (for both high- and low-skilled immigrants). Examples include Castles (2006), Martin (2003) and Martin & Ruhs (2006). They present different criteria and sub-categories for a certain number of countries in specific years. Lindsay Lowell (2005) has provided a review of this literature. While these works do not always correspond in categories and years, they provide a cross-section for at least a limited number of countries. However, both an index and a ranking of policies are missing, except for Lowell's work.

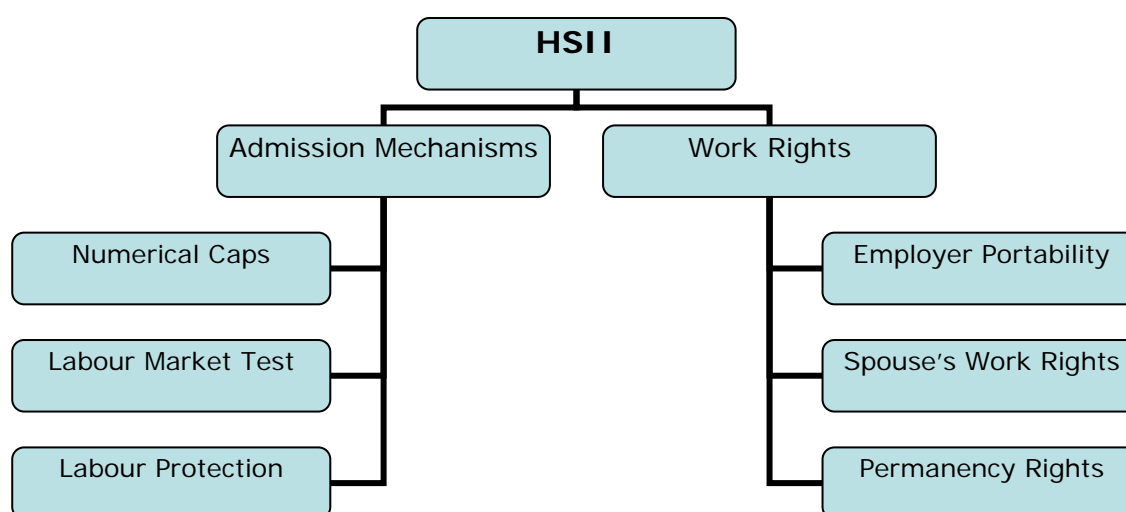
Countries do not employ the same legislative mechanism to regulate the employment of temporary labour migrants. Some enact general legislation and rely on secondary instruments such as regulations or circulars to define the various categories, while other countries provide for a wide range of possible situations in their legislation (SOPEMI 1997: 186). Therefore, this analysis of HSI policies will encompass both primary legislation (e.g. laws, ordinances) and secondary instruments (e.g. regulations, circulars). In contrast to Lowell's (2005) research, this ranking concentrates solely on temporary HSI programmes/policies whose common goal is to fill labour market shortages. The time-limited work permits are found across all countries, even if they are primarily employed by European countries that are still hesitant to recruit permanent immigrants. In addition, this ranking does not go as far as evaluating policies in terms of HSI outcomes, i.e. immigrant flows. The HSII looks at the mechanisms (quotas, economically oriented work permit fees and employer-demand) and the rights of high-skilled immigrants (family reunification, duration and renewability of work permit, change from temporary to permanent residence).

The HSII ranks twenty countries and twenty-four different programmes in July 2007. The assigned scores are based on available information about HSI legislation and are primarily compiled through desk research. *SOPEMI Annual Reports on Migration* and the earlier *Continuous Reporting System on Migration* have been used to grasp major policy changes. Categories are supplemented by detailed readings of national immigration legislation and policy descriptions on national websites (such as Ministry of Labour, Work Permit etc). A country's score is a more important indicator than its rank for the openness of policies

towards high-skilled immigrants. A rank can change easily when new countries enter the index or others are taken out.

The HSII is built on technical and theoretical work done for other indices, including the United Nations Development Programme's Human Development Index (HDI), Freedom House's political and civil rights variables, Transparency International's Corruption Perception Index and Center for Global Development's Commitment to Development Index (CDI). To ensure some consistency of assigning categorical scores, Lowell's (2005) work was followed and most of the index sub-categories were adopted. Besides reasons of consistency, the chosen categories capture well the different sub-fields of HSI legislation. Nonetheless, some of the assigned scores differ from Lowell, which has to do with changes in policies since the year when the Lowell ranking was conducted, but also with this more detailed scoring scale. Figure 1 displays the six chosen categories and groups them into two subheadings.<sup>2</sup>

Figure 1: Sub-categories of HSII

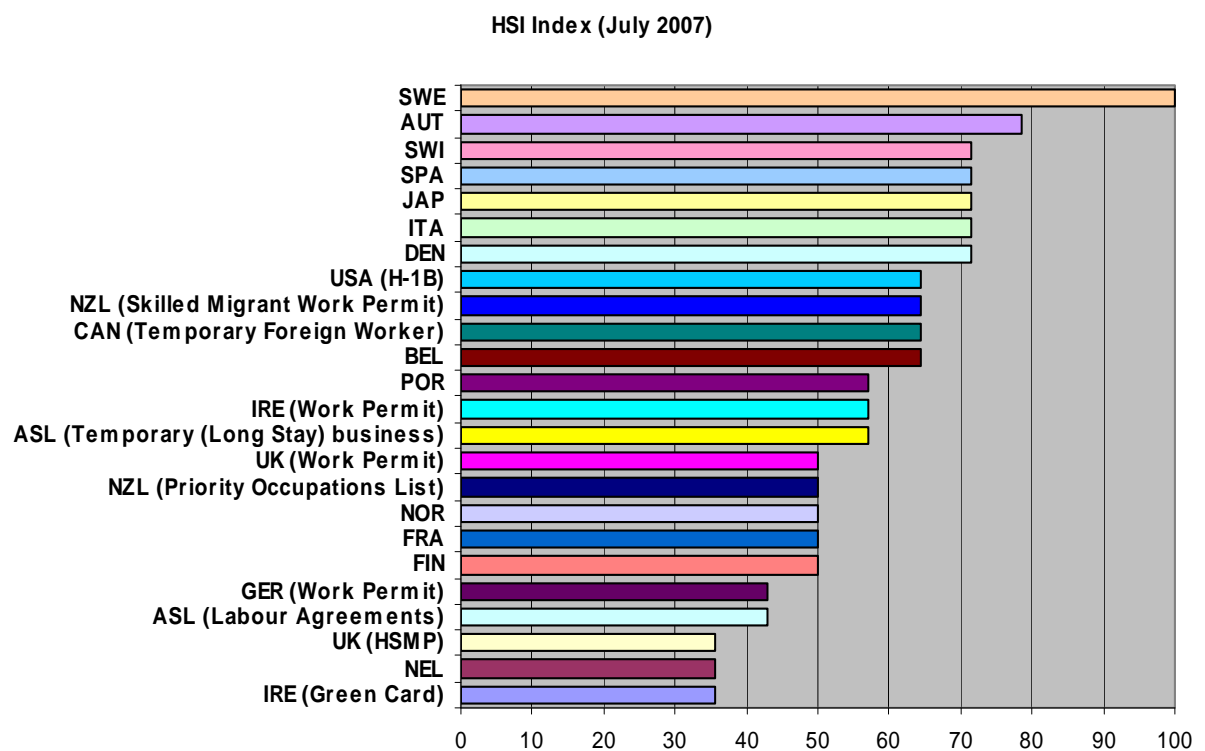


The HSI index is meant to measure the openness of countries towards high-skilled immigrants. It is composed of six categories, and scores are assigned to each of them from 0 to 3. It operates on equal weighting principle, which means that any two policy changes in a particular country that have an equal effect on the openness of policies have an equal effect on the HSI index. For example, one point change in 'numerical caps' has the same effect on

<sup>2</sup> More information on scoring is presented in Appendix A. The justification for the category selection is not included due to the usual constraints. However, it is available from the author upon request.

the overall scores as one point change in 'spouse's work rights'. Points are assigned from 3 (= highly restrictive), 2 (= moderately restrictive), 1 (= minimally restrictive) to 0 (= highly open). For a few countries, different programmes within a country are scored separately. All policies are ranked on the same criteria. In the end, the individual points for the six categories are added and converted into an index, where the most restrictive country receives a value of 100. The higher the overall score, the more HSI restrictive is the country.

Figure 2: HSI index<sup>3</sup>



### *Disaggregation of HSII into Two Categories: Admission and Rights*

It is possible to disaggregate the index into two categories (admission mechanisms and work rights). This is interesting since the EU Commission has proposed two directives at the same time: one on admission mechanisms and a second one on work rights. The admission mechanisms part consists of the following categories: numerical caps, labour market test and labour market protections. The government's aim is to balance between attracting high-

<sup>3</sup> Australia (ASL), Austria (AUT), Belgium (BEL), Canada (CAN), Denmark (DEN), Finland (FIN), France (FRA), Germany (GER), Ireland (IRE), Italy (ITA), Japan (JAP), the Netherlands (NEL), New Zealand (NZL), Norway (NOR), Portugal (POR), Spain (SPA), Sweden (SWE), Switzerland (SWI), the United Kingdom (UK) and the United States (USA).

skilled immigrants and protecting native workers. Admissions mechanisms are designed to match labour supply with demand. The work rights part includes the following: employer portability, spouse’s work rights and permanency rights. These rights measure the extent of benefits granted to immigrants. The inclusion of this category is justified on the grounds that advanced industrial countries are competing for the ‘best and brightest’ and thus have to offer them an attractive package. Whereas countries try to restrict the admission of low-skilled labour, their goal is to attract high-skilled immigrants by offering them good conditions, such as permanent settlement, family reunification or spouse’s right to work. These two categories fall into the numbers versus rights debate (see, for example, Martin & Ruhs 2006). Phil Martin and Martin Ruhs conclude that “as a result, qualified migrants are able to choose among competing destinations, and their choice of destination is likely to depend on both expected earnings and expected rights in destination areas” (2006: 7-8).

Figure 3: Index by Admission Mechanisms

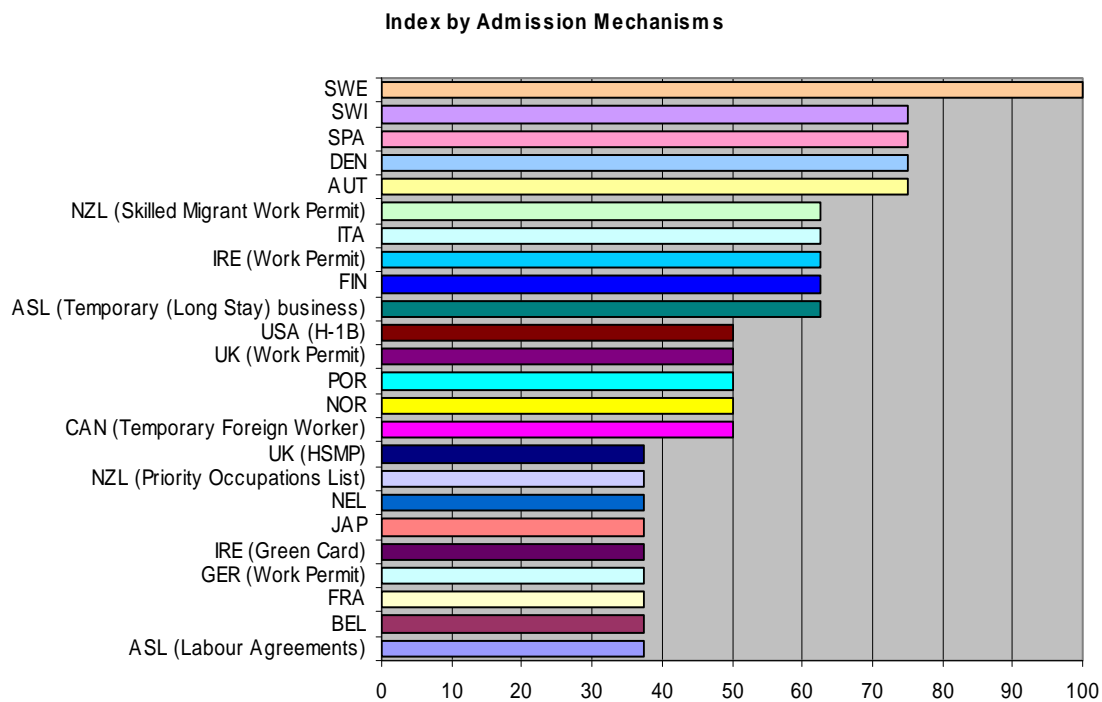
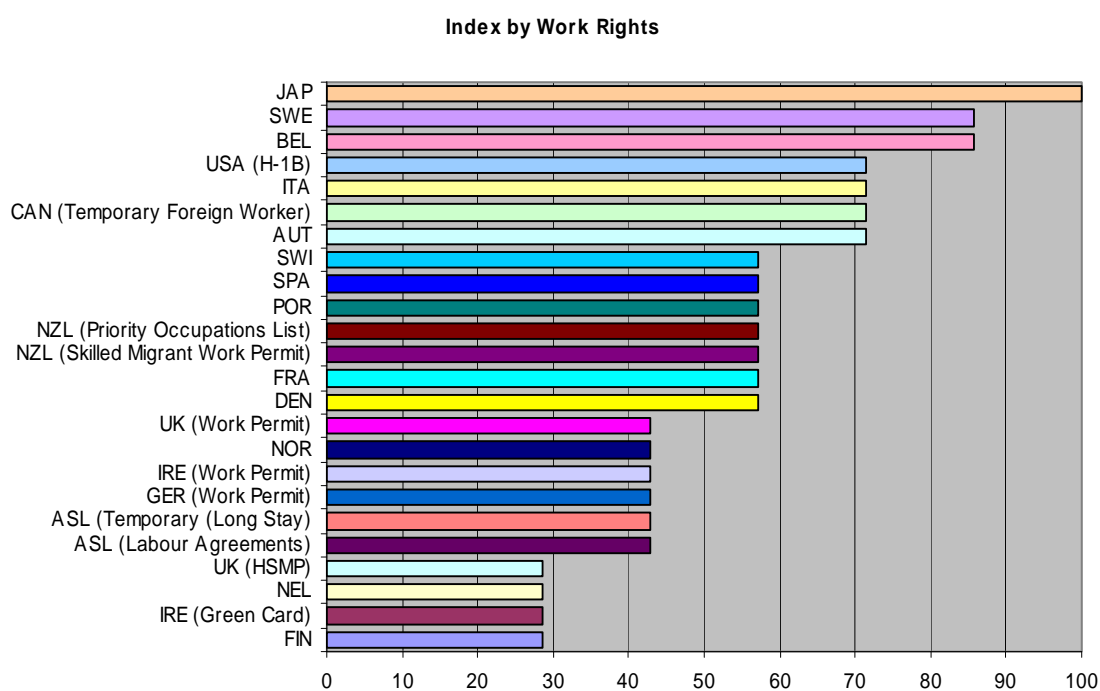


Figure 4: Index by Work Rights



### Preliminary Findings

Figure 2 shows that, overall, Sweden ranks as the most restrictive country, followed by Austria and then a group including Denmark, Italy, Japan, Spain and Switzerland. Ireland's Green Card, the Dutch work permit and UK's Highly Skilled Migrant Programme are ranked as the most open programmes for attracting high-skilled immigrants. Most countries occupy the middle field of the ranking. Among them are Canada and the USA that, despite not having the most open policies, still exhibit very successful cases for the recruitment of high-skilled immigrants. This shows that the openness of policies is not always correlated with the policy success in attracting immigrants. Other factors can play a considerable role, including the difference between 'policies on paper' and 'policies in practice'. This difference can be the result of regulation of policies, enforcement mechanisms and administrative capacity.

Yet, when we analyse the two main groups, admission mechanisms and work rights, separately, we can notice some interesting differences. In Figure 3, Sweden still appears on the top of the restrictive ranking in terms of admission mechanisms. Sweden is followed by a group including Austria, Denmark, Spain and Switzerland. The most open countries are part of a larger group that includes, for instance, Australia, Belgium, France and the UK.



However, other changes become evident for work rights (Figure 4). Japan tops the ranking as the most restrictive country in granting work permit rights to high-skilled immigrants. It is followed by Belgium and Sweden. On the other end, Finland, Ireland, the Netherlands and the UK are the most open countries. Of course, some methodological limitations of the index apply.

### *Heterogeneity*

Besides different HSI policies, member states vary in other determinants, which make an agreement on the EU Blue Card difficult. Member states are heterogeneous in terms of labour markets, immigrant inflows, sectoral shortages, data collection and political frameworks. According to John Salt and José Almeida, “Europe is not only diverse in terms of existing flows and trends, but also in the methods of registering and measuring them” (2006: 155).

Based on the EU study on the ‘Estimates on annual inflows of work permit holders in 16 EU countries’, the Blue Card could cover at least 74,300 work permit holders for EU25 (EC 2005: 27). Nonetheless, the number of professional immigrant workers has varied considerably within the EU, ranging from 160 in Lithuania to 15,800 in the UK (2002-2003) (EC 2005: 27). That said, the labour market size and population size of member states fluctuate as well.

European Commission President at that time, Romano Prodi, identified a shortage of high-skilled labour in the European Union (EU) in 2001 and urged member states to relax their strict regulations, particularly in the technology sector, which faced a shortage of up to 1.7 million qualified workers by 2003 (The Economist, 31 March 2001). Labour market shortages have remained until present and have expanded to other sectors. Nonetheless, the degree of shortages differs among the member states. Sectoral shortages are also apparent, ranging from engineering to IT and healthcare, among others. For instance, Germany is currently recruiting immigrant IT workers, engineers and doctors, whereas is predominantly interested in doctors, nurses and teachers/ professors. In 2001, BITKOM, an employers’ association for IT, communications and media sectors, claimed in 2001 that the country needed 75,000 IT specialists. Other countries are affected by labour shortages in different sectors.

Some countries consider the Blue Card as an opportunity to shift the balance among its migration types. For example, Southern European countries, as well as Sweden, currently accept more asylum-seekers (or low-skilled workers) than high-skilled workers. These countries would like to attract more the 'productive' and politically less contested type of migrants. Other countries are protecting their native high-skilled workers and pointing to high unemployment rates (e.g. Germany). This makes the liberalisation of HSI more debated than in countries, such as the UK. The next section will examine whether these variations in different determinants play out in the member states' responses.

## **National Responses to EU's Blue Card Proposal**

While the European Commission presents the Blue Card proposal in an enthusiastic manner, this view is not shared by all member states. As the previous sections have shown, differences in HSI policies of EU member states exist. What might be beneficial for the whole group (i.e. EU), might not be favourable for individual actors (i.e. member states). The collective action problem comes to mind (Olson 1965). Member states who do not receive many high-skilled immigrants could benefit from the EU Blue Card. They might be less 'popular' than other ones and do not come to the migrants' mind right away when choosing a destination. The Blue Card could lead to greater visibility of the EU and opportunities offered to high-skilled immigrants.

French Prime Minister Francois Fillon said that a single immigration charter would harmonise visa and naturalisation policies in the border-free Schengen area. France supported the European Commission's proposal for an EU-wide 'blue card', inspired by the United States green card. Other countries in favour of the proposal included Spain and Italy (Work Permit 2007). Countries supporting the proposal did not currently have a specific HSI policy (or have a restrictive policy) and/or were unsuccessful in attracting high-skilled migrants, such as Spain or Sweden. For instance, "Swedish politicians now think the Blue Card system for potential migrants with marketable skills proposed by the EU may offer them an honourable way out of their dilemma" [shift from humanitarian/ refugee immigration to high-skilled immigration and make sure it gets newcomers it wants and not migrants it gets] (Engel 2008: 21).

Countries with open and/ or successful HSI policies were less interested in the Blue Card and did not want to let the EU to become too much involved in their immigration matters (e.g. Netherlands, the UK). Some countries disputed the Blue Card on principle. Especially

ministers from new member states, such as the Czech Republic, felt that a common migration system for the high-skilled was inappropriate when transitional arrangements limiting the labour mobility of EU citizens from the new member states were still in place (Collett 2008). Other countries expressed concern that such a scheme would exacerbate the problem of brain drain from the African continent (Collett 2008).

Members of the European Parliament expressed support for the Blue Card proposal, but to a different degree. “Moreover, at a time when the EU is experiencing an ageing of its active population and a penury of skilled labour in certain key sectors, and as our key competitors worldwide (USA, Canada, Australia), are offering clear and more favourable terms to highly-skilled third country nationals, it is our duty to find a way to attract the best” (MEP Jean-Marie Cavada, ALDE, France). Overwhelming backing was also visible in Italy, at last among the Socialist group: “This is the first step in the right direction - even if it’s timid”, said Lilli Gruber (Italian socialist) (European Parliament 2007)

Some member states, however, were worried about training opportunities for their own citizens: “The new rules must not put additional pressure on the millions of unemployed in the EU member states. In addition, only member states must have the competence to decide on the size of immigration flows” (German Conservative MEP Manfred Weber) (European Parliament 2008b). Others did not consider the proposal to be as far-reaching as was necessary. “The Socialist group positively welcomes the EC proposal on the Blue Card for highly-skilled workers, but at the same time, it believes that final text should be braver. In addition to the legal channels of immigration, there should be true and effective free movement of workers on all of the European territory” (Italian Socialist MEP Claudio Fava) (European Parliament 2008a).

The Blue Card met with some resistance, particularly in Germany, where many remained sceptical of a pan-European solution to the problem. In September 2007, the idea drew fire from German Economy Minister Michael Glos, who said: “Germany could not take in large numbers of foreign workers just because it needs them at one particular moment.” Business leaders in Germany complained in recent months that shortages in skilled workers such as engineers and computer specialists could start to have a negative effect on the economy (Spiegel 2007a). The Labour Minister at that time, Franz Müntefering, commented that his first impression of the EU proposal was not a positive one. Such significant questions could not be resolved like that by Interior Ministers or the responsible EU Commissioner. Instead,

Labour Ministers from all the member states should also have the right to voice their opinions (Spiegel 2007b).

Another concern was losing sovereignty in migration matters. Member states did not want let the EU dictate who they could and could not to admit. Several politicians in the Netherlands and Germany were hostile and the Austrian government condemned the plan as “a centralisation too far” (BBC 2007). Some countries wanted their immigration policies left to their own jurisdiction - not the EU's. That sentiment prevented Britain, Ireland and Denmark from supporting the proposal, according to Time magazine. If they can't block the measure it is expected the countries will be able to opt out (McCabe 2007). “UK ministers say they are studying it, but our correspondent says they are not keen on the card, preferring to develop an Australian-style points system” (BBC 2007). The UK has started to implement a new tier system in 2008. The Blue Card could be a constraint and provide little added-value as the country is already very successful in attracting high-skilled immigrants.

European Commission President, José Manuel Barroso, highlighted that:

At the moment, most high-skilled workers go to the United States, Canada and Australia. Why? Firstly, they 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 in 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)

Barroso further emphasized that “we need a European approach to legal immigration if we want to be serious in becoming the most competitive, knowledge-based society in the world. We are confident that member states will see the benefits of our proposals and that the EU Blue Card will soon be a reality” (2007). To alleviate the concern of some member states, the European Justice Commissioner said that it was not “an open doors policy” because each member state would maintain the right to determine the number of immigrant workers that could be admitted into the native labour market through the Blue Card (BBC 2007), raising the question whether the directive would solely be based on a least-common-denominator.

### *Developments and 2008 Agreement*

The 2007 proposal was greatly debated in national governments and ministries. Some states were not willing to accept the proposal without any changes and concessions. However, despite disagreements among member states on the Blue Card proposals, EU member states seemed to have agreed on a compromise proposal. The Blue Card was endorsed by European Justice and Home Affairs Ministers during a meeting on 25-26 September 2008. “We have now reached a comprehensive agreement”, French immigration minister Brice Hortefeux said on 25 September 2008, adding that the aim was to avoid building a fortress Europe, but not open Europe unconditionally either (Goldirova 2008).

Nonetheless, the only objection came from the Czech Republic, minister Hortefeux said after the ministerial meeting, referring to Prague’s key demand of abolishing labour restrictions for eastern Europeans (Goldirova 2008). Currently, Austria, Belgium, Germany and Denmark continued to protect their markets from cheaper labour coming from the post-communist bloc. “Our citizens cannot be in a worse situation than non-EU states”, Czech minister Ivan Langer told journalists. Slovak Minister Robert Kalinak also threw his weight behind the demand (Goldirova 2008).

As described earlier, one of the problems was the definition of high-skilled labour. In the end, consensus was reached on using salary level as the sole criterion (EurActiv 2008a). Some EU countries had proposed a ratio of twice the average salary, while others that were more open to immigration were proposing 1.1 or 1.2. In the end, a compromise figure of 1.5 was agreed, with derogations to lower the pay to 1.2 times the national average for sectors with acute labour shortages (EurActiv 2008a). Some countries such as the UK, Finland and Germany, where legislation did not provide for fixed minimum salaries, were reluctant to agree to the concept. However, they received assurances that the average salary was strictly statistical and that the Blue Card would not require changes to labour legislation, diplomats explained (EurActiv 2008a).

After 18 months of working with a Blue Card in one EU state, an immigrant would be allowed to move with his family to work in another EU state, but he or she would still have to apply for a new Blue Card there within a month of arrival. This provision was required by countries which were determined to maintain national sovereignty over their labour market, such as Germany (Melander 2008b). It differed from the original proposal in 2007, calling for moving to another country after two years. The Blue Card, valid for a maximum of four

years (original 2007 proposal called for five years), would offer candidates speedier work permits and make it easier for immigrants' families to join them, find public housing and acquire long-term resident status (Melander 2008b). The Blue Card remained valid for at least three months if the immigrant lost his or her job.

Governments could refuse to issue Blue Cards citing labour market problems or if national quotas were exceeded. The new scheme would enter into force in mid-2010, an EU official said. The delay was required by new member states such as the Czech Republic, who insisted existing curbs on their citizens' working freely throughout the bloc be lifted first (Melander 2008b). The UK, Denmark and Ireland would not take part in the Blue Card scheme, a French presidency official said (Melander 2008a).

The EU Parliament was involved under the Consultation procedure on this legislative piece. Many EU Parliamentarians have voiced a fear that Europe would take the best and brightest from Africa and other parts of the developing world in a modern day 'brain drain'. Ewa Klamt (EPP-ED, guiding the measure through European Parliament) said that "we say that in areas and sectors vital to achieving the UN millennium goals - like health and education - which are vital to developing countries we must restrict ourselves from plundering their essential workers" (European Parliament 2008a). A possible compromise emerging was that EU countries could reject a Blue Card application to avoid brain drain in sectors suffering from a lack of qualified personnel in the sending countries (European Parliament 2008). Regarding the salaries to be paid to immigrants, Ms Klamt emphasised that "we have put down that it has to be 1.7 times of the gross monthly or annual average wages under national law which is different in each country" (European Parliament 2008a). On 4 November 2008, MEPs in the Civil Liberties Committee gave their vote on the Klamt report on the Blue Card (European Parliament 2008b). The vote was postponed from 13 October 2008 at the last minute for procedural reasons. On 21 November 2008, the full EU Parliament supported the agreement, while the European Council would vote on it in early 2009 (EurActiv 2008b).

Even if the Blue Card proposal was passed in the various EU bodies, the success of the scheme was debatable. Analysts said the Blue Card would not be enough to attract high-skilled staff and compete with the US Green Card because it only offered access to one EU state at a time, not free mobility within the European single market (Melander 2008b). "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”, said Jakob von Weizsaecker, from the Brussels-based Bruegel economic policy think-tank. “It is clearly a step in the right direction but I don't expect it to be a big success because if you compare it to the United States, a similar title gives access to the whole US market,” the German labour-market specialist said (Melander 2008b). The implementation and success of the Blue Card remained to be analysed in the future.

## **Conclusion**

The ‘global war for talent’ has intensified over the past years. Not only are developments at the national level visible, but reforms at the regional level are also underway, most notably in the EU. One proposed reform by the European Commission was the EU Blue Card. The proposal was agreed on by European Union envoys on 22 October 2008 and should be endorsed by EU ministers in the subsequent weeks. If approved, it would come into force in mid 2010. The EU Blue Card has been a welcomed initiative at the EU level. The objectives were to streamline processes, create a centralised decision-making arena and offer one simple application procedure and flexibility for high-skilled immigrants. These steps were all meant to improve the EU's position in the global competition for ‘the best and brightest’. It has been difficult to obtain the support of all member states as some states consider the Blue Card to be more beneficial than others. As the constructed HSI index demonstrated, HSI legislation and policies differ considerably among member states. Other factors play an important role in highlighting the differences among member states. Actors with varying interests already exist at the national level and thus this cost-benefit analysis was transplanted to the EU level. It has led to an agreement with the least-common-denominator or an opt-out of some member states.

This paper has presented an overview of the benefits and problems that the Blue Card could have. Further research should analyse the advantages and disadvantages, as well as provide an examination of the issue once EU member states have voted on the Directive in 2008. The EU Blue Card offered different topics for consideration, such as the shifting of governance from national to EU level, the increasing competition for high-skilled immigrants and migration policy-making. Overall, it proposed an opportunity for several fruitful research paths.

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## Appendix A: Definitions of Sub-Categories

1) *Numerical caps*: a high score (3 points) is given if admission numbers are fixed and small numbers permitted; declining points are given if numbers are fixed but generous; or there is an ability to periodically adjust numbers, or there are no caps at all.

- a) 3 pts: admission numbers are fixed (quota), small numbers permitted
- b) 2 pts: admission numbers fixed, but generous numbers
- c) 1 pts: admission numbers fixed, but periodically adjusted, or planned numbers announced
- d) 0 pts: no numerical caps at all

2) *Labour market test*: a high ranking score is given if there is a strong test of the labour market, i.e. a lack of available workers; declining points are given if employers need only assert good faith, or the government awards points for skills, or applicants are streamlined through pre-determined shortage occupations, or there is no test at all.

- a) 3 pts: strong labour market test (i.e. lack of available native workers), certification procedure
- b) 2 pts: employers need to assert good faith or government awards points for skills (i.e. points system), attestation procedure
- c) 1 pts: applicants streamlined through pre-determined shortage occupations (or tier system/ equivalent), no advertising necessary
- d) 0 pts: no labour market test at all

3) *Labour protection*: a high score is given if there are stringent requirements on wage setting and other protections such as no lay-off provisions etc; declining points are given if there are fewer protections or no immigrant-specific legal protection other than existing labour law.

- a) 3 pts: stringent requirements on wage setting and other protections (dismissal provisions, high minimum salary level, health/ safety provisions, working hours etc)
- b) 2 pts: fewer requirements on wage setting and other protections (e.g. smaller number of conditions than for the above category)
- c) 1 pts: minimal requirements on wage setting and other protections (e.g. no minimum remuneration)
- d) 0 pts: no immigrant-specific legal protection other than existing labour law

4) *Employer portability*: a high score is given if the foreign worker can work only for the original employer and in one place; declining points are given for the degree to which work authorization is 'portable' between employers.

- a) 3 pts: work authorisation is tied to employer, occupation/ sector and place of work
- b) 2 pts: work authorisation is tied to employer (for certain time period), but worker has to apply for a new work permit to change
- c) 1 pts: work authorisation is portable between employers in a given occupation/ sector or region
- d) 0 pts: no restrictions on employer portability (employment anywhere)

5) *Spouse's work rights*: a high score is given if the spouse is not permitted to either accompany the worker (or other dependents) or to work; declining points are given if the spouse is permitted to obtain independent working rights, or the spouse has unlimited working rights.

- a) 3 pts: spouse is not permitted to accompany worker or to work
- b) 2 pts: spouse is permitted to apply for independent working rights
- c) 1 pts: spouse has unlimited working rights after a certain time period or expedited procedure/ no labour market needs test in case spouse has to apply for independent working rights
- d) 0 pts: spouse has unlimited working rights from the start

6) *Permanency rights*: a high score is given if the temporary migrant is prohibited from transitioning to any permanent status; declining points are given if transitions are relatively possible, or there is an additional transition to naturalized citizenship.

- a) 3 pts: transition to permanent from temporary status is prohibited
- b) 2 pts: no automatic transition envisioned (i.e. need to switch programmes) or possibility to apply for permanent status exists (more than 5 years)
- c) 1 pts: transition to permanent residency is relatively possible after some years (3-5 years)
- d) 0 pts: additional transition to naturalized citizenship (or very short time period to permanent residence: less than 3 years)