

# The EU Blue Card: preferences, policies, and negotiations between Member States

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## Abstract

In May 2009, the European Union (EU) approved the 'Council Directive on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment' (the Blue Card Directive). This Directive sought to make the EU internationally more competitive, but Member States were reluctant to cede responsibility for labour market access regulation. Building on liberal intergovernmentalism and a two-level game framework, the article argues that since different national high-skilled immigration policies (demonstrated through a constructed index on States' openness to high-skilled immigration) have been transferred to EU level, they have created variations in Member States' positions on the Blue Card in a two-level game. This divergence among Member States helps to explain the less ambitious outcome of the Blue Card Directive, despite general support by Member States on the establishment of common rules for high-skilled immigrants. The final version does not make much of a difference since it is mainly an advertising tool. Through an empirical example of the Blue Card case study, the article helps to better understand how important national preferences remain for European policies.

**Keywords:** Blue Card, European Union, governance, high-skilled immigration, index

## 1. Introduction

Ongoing debates in the European integration literature examine the area of immigration at the European Union (EU) level. Some authors point to the considerable progress made in intra-EU migration due to the role of EU institutions or spill-over (e.g. Haas 1958; Dahlberg 1968), but others stress the self-interest of Member States and their reluctance to give up sovereignty over this important, but sensitive matter. This has led to a slow and contested process for EU migration policy (see Geddes 2000; Guiraudon 2000; Givens and Luedtke 2005; Messina 2007; Boswell and Geddes 2011; Luedtke 2011).

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Each migration category has a distinct rationale for delegation to EU level, for example burden-sharing might be beneficial in asylum policy due to negative externalities (Thielemann 2003; Hatton 2004). However, such benefits of EU integration are not necessarily visible in labour immigration. Therefore, policy diversity can coexist with ever more pressure for harmonisation (e.g. Lavenex 2001; Carmel 2012).

Countries are confronted with increasing international competition for the 'best and brightest'. This pressing situation is often compared to a belligerent and competitive environment, described as a 'battle for brains', a 'global battle for talent', or a 'global war for talent' (Collett 2008, 2009; Boeri et al. 2012). As a result, several countries have implemented 'high-skilled immigrant friendly' policies, although significant policy differences exist. High-skilled immigrants<sup>1</sup> are meant to fill labour market shortages, deal with demographic challenges, or raise human capital in the respective country. But can individual EU Member States compete with front-runners, such as Australia, Canada, and the USA in a 'global war for talent'?<sup>2</sup> Since introducing specific policies some decades ago, some of these countries have been able to attract considerable numbers of high-skilled immigrants.

Otherwise, would it not make sense for Member States to delegate policy-making to the EU in order to increase leverage, send a clear message, and offer a large labour market, for example? This was the idea behind the recent 'Council Directive 2009/50/EC on the conditions of entry and residence of third-country nationals for the purposes of highly qualified employment' (hereafter referred to as the Blue Card Directive or simply the Directive), which seeks to establish more attractive entry and residence conditions for work in EU Member States (Council 2009). The Blue Card Directive is a good choice for an analysis of delegated policy-making to EU level because high-skilled immigration is considered the least controversial among the four migration categories presented in the 2005 Policy Plan on Legal Migration (Commission 2005b). So we would expect general agreement at the EU level from Member States as they face similar challenges of labour shortages and ageing populations (at least, according to some general trends).<sup>3</sup> While Member States supported overall the recruitment of high-skilled immigrants and the establishment of common rules (Commission 2007d), why was the EU not able to follow through with the proposed Blue Card measures?

The article argues that, due to considerable diversity in national high-skilled immigration policies (demonstrated by a constructed index on States' openness to high-skilled immigration), agreement among Member States on specific measures beyond a minimum framework has been difficult. In a two-level game, different national high-skilled immigration policy preferences have been transferred to EU level, and have created variations in Member States' positions on the Blue Card at the bargaining stage. The divergence in national positions explains the less ambitious outcome of the final Directive—Member States retain the right to determine the entry of third-country nationals—and the Blue Card does not lead to a harmonised immigration policy.

Building on the literature on liberal intergovernmentalism and two-level games, the article helps us to analyse preferences of key Member States in order to better understand how varying national preferences relate to negotiations of European policies. The Blue Card case study draws on an analysis of legislation, primary and secondary literature, and elite interviews with national policy-makers and labour market representatives (conducted

2007–10). The article proceeds in the following way: Section 2 provides an overview of the theoretical framework on high-skilled immigration. Section 3 analyses EU-level developments of labour immigration policy. Section 4 discusses the main points of the Blue Card, the different policies of selected Member States (measured by a constructed index), and how these have affected EU-level preferences. The final section offers some conclusions and suggestions for further research.

## 2. National preferences, two-level games and high-skilled immigration policy

There are many debates in the literature about the interaction between EU and national policy-making. Do EU institutions evolve as a set of new norms and practices in a bottom-up process (e.g. [Moravcsik 1998](#)) or do they affect national systems of governance in a top-down process ([Börzel and Risse 2000](#); [Héritier et al. 2001](#); [Börzel 2002](#))? Rather than playing the two approaches against each other, an emerging literature on multi-level governance includes both bottom-up and top-down processes (e.g. [Marks and Hooghe 2004](#)). In this regard, it is worthwhile considering the literature on two-level games regarding national policies and international cooperation, which is similarly developed through the logic of liberal intergovernmentalism at the European level and applied to (labour) immigration policy (see [Meyers 2002, 2004](#); [Lame 2007](#); [Kraft-Kasack and Shisheva 2008](#); [Menz 2009, 2011](#)). It is important to analyse national structures and preferences in order to better understand EU-level policies.

Liberal intergovernmentalism builds upon the notion of two-stage bargaining (see [Putnam 1988](#)): governments first define a set of national interests then bargain in an effort to achieve these interests and satisfy domestic constituents (such as interest groups or public opinion). The liberal intergovernmentalism theory is based on three factors: assumption of rational state behaviour, a liberal theory of national preference formation, and an intergovernmentalist analysis of interstate negotiation ([Moravcsik 1993](#)). ‘A domestic preference formation process identifies the potential benefits of policy co-ordination perceived by national governments (demand), while a process of interstate strategic interaction defines the possible political responses of the EU political system to pressures from those governments (supply)’ ([Moravcsik 1993](#): 481).<sup>4</sup> The parsimonious liberal intergovernmentalism theory, with its focus on States as the main rational actors, works well for policy areas where political control remains at the national level and unanimity rule (until recently in labour immigration) dominates ([Moravcsik and Schimmelfennig 2009](#)).

Liberal intergovernmentalism, however, has several weaknesses (see [Wincott 1995](#); [Forster 1998](#)). It applies best to policy domains with certain and well-defined social preferences and concentrated costs and benefits (e.g. agriculture and trade, but not immigration) ([Moravcsik and Schimmelfennig 2009](#): 76). Liberal intergovernmentalism does not accord a prominent role to ideology, public opinion, party politics, and EU institutions which can change the preferences of actors (e.g. [Pollack 2001](#); [Hooghe and Marks 2009](#)). As we will see later, liberal intergovernmentalism does not sufficiently elucidate the politics behind immigration reforms. But the liberal intergovernmentalism theory was

not originally devised for analysing preference formation for EU directives and the area of immigration (Mayer 2008; Moravcsik and Nicolaidis 1999).

While the focus of liberal intergovernmentalism has been on economic preferences, political aspects of immigration are also significant, creating considerable tensions between actors and policy choices (Guiraudon and Joppke 2001). Even though high-skilled immigration is supposed to be the least controversial migration category, the delegation of these decisions to EU institutions cannot escape the concern of citizens and national policy-makers. Börzel and Risse (2009) suggest that the liberal intergovernmentalism framework could accommodate politicization (or high salience) for policy domains such as migration, though EU bargains would be harder to achieve due to a smaller win-set.

Another criticism is proposed by Guiraudon (2000), who argues that it is misleading to consider (as liberal intergovernmentalism does) that domestic actors come to the international bargaining table representing aggregated domestic interests. Instead, certain actors 'bypass the process of interest aggregation by mobilising in international venues' (Guiraudon 2000: 268). Guiraudon's venue-shopping framework explains how governments have circumvented more restrictive migration control by selecting suitable arenas which allowed them to 'avoid judicial constraints, eliminate adversaries and enlist much-needed co-operating parties' (Guiraudon 2000: 261). Following this logic, we would expect national policy-makers to pick appropriate venues (either at national or EU level) to achieve desired policy outputs, in this case a more open policy towards high-skilled third-country nationals.

Despite general support among Member States for common rules towards high-skilled immigrants, why could the EU not follow through with specific Blue Card measures in later stages? Existing literature on the Blue Card analyses the benefits and disadvantages of the Directive, but it only hints at Member States' preferences (Guild 2007; Cerna 2008, 2010a; Peers 2009; Gümüs 2010; Wiesbrock and Herzog 2010; van Riemsdijk 2012). Therefore, this article seeks to provide a more systematic framework which highlights national high-skilled immigration preferences and discusses how they have affected EU-level bargaining in a two-level game.

National governments are influenced by powerful societal groups (e.g. interest groups, voters, political parties), who tend to mobilise more either to great benefit or cost of policy (Moravcsik 1993). Freeman (1995, 2006) has specified particular national policy dynamics that can emerge in labour migration—by focusing on the concentrated or diffuse costs and benefits of a policy for interest groups (e.g. unions, employers' associations). In the case of high-skilled immigration, actors (such as high-skilled labour, low-skilled labour, and capital) who can benefit (lose) will build coalitions for a more open (restrictive) policy (Cerna 2009).<sup>5</sup> Since coalitions between actors, intermediated by institutions (such as unions, employers' associations, and political parties) vary across countries, some are more open to high-skilled immigrants than others. This policy diversity (illustrated by the constructed index on States' openness to high-skilled immigration) is transferred to EU level where it makes cooperation more difficult. As Moravcsik (1993: 492) argues, 'the more divergent national policies are to begin with, the greater the costs of co-operation'.

Even if Member States have agreed on the Blue Card, the final outcome of the Directive is based on the lowest common denominator.<sup>6</sup> 'The original idea was considerably watered

down both in the subsequent Commission proposal and in the negotiations between the member states' (Parkes and Angenendt 2010: 3, also von Weizsäcker 2008; Collett 2009).<sup>7</sup> Control of high-skilled immigration remains with Member States, and legal immigration is to 'take account of the priorities, needs and reception capacities determined by each member state' (Council 2008a: 4). The final version provides only a minimum framework concerning the admission of high-skilled immigrants, with common definitions of criteria to qualify for the Blue Card, but leaves important decisions to the discretion of Member States.

Based on 'goodness of fit' arguments (see Börzel and Risse 2000; Börzel 2002), we might expect Member States with an open high-skilled immigration policy to support the Blue Card in order to transfer their national version to EU level and reduce costs in the transition phase, and those with a restrictive policy to oppose it. But this is not necessarily the case and, as the empirical section will show, Member States' preferences for the Blue Card have played out differently. The main question is how much added-value Member States consider the Blue Card to have. In other words, when is the Blue Card perceived to have more benefits than costs?

The framework assumes that EU-level agreements depend on the interests of Member States and are the product of bargaining between them, determining the pace and scope of the process. I expect Member States with a restrictive high-skilled immigration policy (also with no specific or unsuccessful policy) to favour the Blue Card because they see it as an (additional) policy to attract high-skilled immigrants. Those with an open (and/or successful) policy I expect to oppose the Blue Card since they prefer their national policy (more flexible in responding to changing labour market needs and thus more attractive) and do not see the added value of the Blue Card. Other reasons have also been presented, such as equality, sovereignty, and national politics—though the analysis can be boiled down to whether the Blue Card is seen as value added or not (in terms of economic, political, or social benefits). After first providing a summary of EU's developments in immigration policy, the proposed assumptions are examined in more detail.

### 3. EU-level developments

The Blue Card Directive is not the only attempt to harmonise immigration at the EU level. The 1974 action programme in favour of migrant workers and their families was the first step towards a common position on migration (Huysmans 2000: 755). More significant attempts date from the 1980s (e.g. the Single European Act) to 1990s (e.g. the Dublin and Schengen agreements, the Maastricht Treaty). Immigration policy was limited to asylum and transit visas, placed in the third pillar of Justice and Home Affairs.<sup>8</sup> While the Amsterdam Treaty expanded the area of immigration in the first pillar (e.g. external border controls, immigration, and asylum), Member States ensured that decisions had to be taken unanimously in the European Council, even after the five transitory years (until the Lisbon Treaty).

The 1999 Tampere Summit introduced a five-year mandate to harmonise immigration policies and recognised demographic and sectoral labour market needs (Schain 2009). The 2000 Lisbon European Council Summit launched the Lisbon strategy—the EU's goal was

to become the most competitive and dynamic knowledge-based economy in the world. At this Summit, the Commission proposed the implementation of an open method of co-ordination to 'advance their levels of national policy experimentation and co-ordination through a non-binding yet common governance mechanism' (Caviedes 2004: 289). This flexible policy was aimed at particular areas, including high-skilled immigration. Yet the Council did not adopt the suggestion because Member States were cautious about more policy-making at the EU level.<sup>9</sup>

In similar vein, the Commission (2001) proposed a horizontal 'Directive on the conditions of entry and residence of third-country nationals for the purpose of paid employment and self-employed economic activities'. This EU measure sought to introduce a set of common conditions for a joint residence and work permit. While the text focused on different labour immigration categories, it mentioned that the 'Community should reinforce its competitiveness to recruit and attract' third-country nationals due to labour shortages in certain skilled sectors (Commission 2001: 22; Zaletel 2006).

Despite positive opinions by other European institutions, the Council discussed only a first reading of the text. Since Austria and Germany opposed the proposal on the grounds that there was no legal basis for this instrument (Council 2003), the Commission withdrew the proposal in March 2006 (Commission 2007d).<sup>10</sup> Member States were concerned about EU enlargement and the influx of low-skilled workers from new EU Member States, the undercutting of wages of domestic workers and the effects of an EU policy on new proposed immigration laws (Menz 2011).

Building on Tampere and Lisbon, the 2004 Hague Programme recognised that EU businesses were increasingly dealing with labour shortages, thus legal immigration would help to boost the European knowledge-based economy (Commission 2007d). In December 2005, the Commission presented a Green Card according to the 'Policy Plan on Legal Migration' on the adoption of four legislative proposals (for high-skilled immigrants, intra-company transferees, seasonal workers, and trainees) from 2007 to 2009 (Commission 2005b). 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 (Commission 2007b).

The EU decided to start with a common policy on high-skilled immigrants because consultations on the 2005 'Green Paper on an EU approach to managing economic migration' indicated general support among Member States for common rules regarding the admission of key categories such as high-skilled immigrants, characterised as 'good' and 'harmless' (Commission 2005a, 2007d; Guild 2007; Council 2008d; Luedtke 2011: 19). A small number of high-skilled immigrants is less likely to be linked with a negative feeling of changed cultural identity in the native population than is the case with general immigration (Money and Falstrom 2006). High-skilled immigrants have higher earnings and tax payments, are less reliant on social benefits, and are likely to be fluent in the receiving country's language, which eases their integration. Member States favoured a sectoral approach which would offer a flexible EU-level instrument to attract high-skilled immigrants, considered key for EU's competitiveness (Commission 2007d: 4). The expectation was that the Blue Card should be adopted more easily than other migration directives. However, as we will see, this turned out not to be the case.

## 4. The EU Blue Card Directive

Before the Lisbon Treaty entered into force in December 2009, immigration policy at the EU level was under unanimity rule.<sup>11</sup> All Member States had to agree on the Blue Card Directive, the European Parliament only issued an opinion, and the European Economic and Social Committee, as well as the Committee of the Regions were consulted. The role of the EU and the Commission is considered weak in areas such as labour immigration (Carrera and Guild 2008).

The 2007 proposal, greatly debated in national governments, received overall support at the Council meeting on 24–25 July 2008. The European Justice and Home Affairs Ministers were largely in favour of the complementary nature of the Blue Card to national schemes for admitting high-skilled immigrants (thus modifying the 2007 proposal which implied a more exclusive nature of the Blue Card), but disagreed on particular criteria (Council 2008b). A French Presidency compromise was then supported by all delegations during a meeting on 25–26 September 2008 (Council 2008c; Goldirova 2008). On 4 November 2008, members of the European Parliament in the Civil Liberties Committee gave their vote on the Klamt report (named after Member of European Parliament Ewa Klamt) on the Blue Card (Parliament 2008). The report specified several propositions, such as a definition of the highly qualified, the salary threshold (1.7 times the annual gross salary), and the possibility of rejecting an application for brain-drain concerns. After postponing the vote that had been scheduled for 13 October 2008 for procedural reasons, the EU Parliament supported the agreement on 21 November 2008 (EurActiv 2008).<sup>12</sup>

The EU Council approved the Blue Card Directive on 25 May 2009 (Council 2009). It entered into force on 19 June 2009. Member States had two years to transpose the Directive, though some were still lagging behind at the time of writing. The Directive also included provisions for monitoring Blue Card holder flows in each Member State. From 2014, the Commission will have to report on the application to the European Parliament and the Council (Council 2009).

Benefiting from a single application procedure, Blue Card holders can reside and work in an EU country for a maximum of four years and move to another Member State after eighteen months (but need to apply for a new permit). Eligible applicants have to show a recognised diploma or have at least five years' professional experience, holders can bring their families and the application procedure is expected to take less than three months.

The Directive, however, 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 number of persons admitted. Member States should consider the Acts of Accession terms and continue to give preference to workers of the EU-8<sup>13</sup> and EU-2<sup>14</sup> over third-country nationals (Commission 2007c).<sup>15</sup>

### 4.1 Main objectives

Whereas individual Member States focus on their needs, EU institutions (e.g. the Commission)<sup>16</sup> consider the global picture—or at least the EU situation. According to the EU, there are three main arguments for the Blue Card: (1) businesses require economic migrants to fulfil their recruitment needs (business argument); (2) the EU is no longer

producing sufficient numbers of workers to meet its business needs (demographic argument); and (3) the current high-skilled regime has failed since the high skilled go to Canada and the USA, rather than to the EU (competition argument) (Commission 2007a; Guild 2007: 3).

First, labour shortages, traditionally linked to low-skilled jobs, are increasingly appearing in high-skilled sectors, such as information technology, engineering, and health care. In 2007, European Commission President Manuel Barroso claimed that European economies depended on a skilled and mobile labour force and needed 'a European approach to legal immigration if we want to be serious in becoming the most competitive, knowledge-based society in the world' (Barroso 2007). Based on Commission estimates, labour shortages will peak by 2050 when 25 million Europeans are expected to retire from work and one-third of the population will be over sixty-five years of age (Commission 2007d). This has prompted the EU to look for high-skilled migrants beyond its borders.

Second, 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' (Commission 2005b: 4). This will have serious repercussions on the number of employed people in the EU, as 'the share of population of working age [...] in the total population is expected to decrease strongly, from 67.2 per cent in 2004 to 56.7 per cent in 2050, a fall of 52 million' (Commission 2005b: 4). These demographic trends do not affect all Member States to the same degree (Commission 2005b). One response has been to raise the retirement age, though this has often led to widespread opposition (e.g. France) and will not provide a sufficient remedy.

Third, the Commission seeks to increase the competitiveness of the EU's economy through the contribution of legal immigrants but it has been difficult to attract high-skilled immigrants.<sup>17</sup> The EU, with 1.7 per cent third-country high-skilled workers of the total of the employed population, is behind countries such as Australia (9.9 per cent), Canada (7.3 per cent), the USA (3.2 per cent), and Switzerland (5.3 per cent) (Commission 2007c).<sup>18</sup> One reason for the Blue Card was to create a 'level-playing field' in order to 'eliminate competition between member states which might result from national immigration schemes'—this would weaken the attraction of the EU (Commission 2003: 16; Kocharov 2011: 19–20).<sup>19</sup>

Europe needs to speak with one voice if it seeks to attract 'the best and brightest'. 'Less attractive' Member States (e.g. small non-English speaking destinations) could benefit from the EU's higher visibility and the 'advertisement' added value of the Blue Card (von Weizsäcker 2006; Commission 2007c, e: 44). The Blue Card thus provides a 'one-stop-shop' system for non-EU workers in a Member State, which can simplify, shorten, and accelerate the process for employers and immigrants (Commission 2007b). But Boswell and Geddes (2011: 94) are sceptical about a one-size-fits-all approach because most Member States have 'their own complicated set of legislation and programmes in place to regulate the entry and employment of non-nationals and can see little added value in granting a greater role to the EU'.

While the Commission has portrayed the Blue Card in a positive light (as the first legislation in the development of a common economic immigration policy), Member States are not necessarily interested in a level-playing field since they compete with each other and prefer rather to rely on their own high-skilled immigration policies. However,



when the Blue Card was proposed, only a few Member States had policies that surpassed categories of scientists, artists, intra-corporate transferees, and university professors,<sup>20</sup> and others were planning to implement ‘high-skilled immigrant friendly’ policies, so they may have considered the Blue Card to have some added value. The next section analyses differences among Member States’ policies.

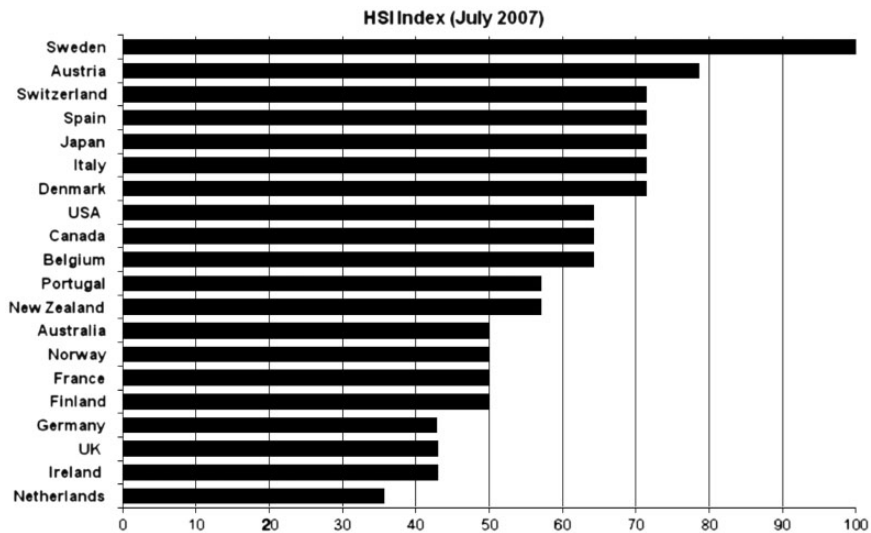
## 4.2 Measuring differences in national high-skilled immigration policies

The degree and the composition of labour shortages, demographic trends, and political systems vary among Member States (Salt and Almeida 2006). Based on an EU study, the Blue Card could cover at least 74,300 work-permit holders for EU-25 (Commission 2005b: 27). Member States have different national interests in the Blue Card, which makes an EU-level agreement difficult (as the liberal intergovernmentalism framework would assume). This variation is demonstrated through national high-skilled immigration policies and affects EU-level negotiations. So far, the article has argued that it was difficult to reach an agreement on the Blue Card proposal beyond a minimum framework due to differences in national high-skilled immigration policies. To offer support for this argument, it is important to show empirically that Member States’ policies are in reality so diverse. As mentioned before, the liberal intergovernmentalism theory predicts that co-operation will be more costly the more divergent the national policies.

Since little comparative work has been done to systematically categorise and measure national high-skilled immigration policy differences (for exceptions, see Lowell 2005; Ruhs 2011), it is necessary to examine countries’ policies in more detail and to disaggregate them on the terms and conditions attached. The constructed index measures States’ openness to high-skilled immigration. The degree of high-skilled immigration competitiveness between countries depends on how liberalised policy and how restrictive admission controls are. The extent of national policy differences has an impact on Member States’ preferences for the EU Blue Card.

The twenty-country index contains fourteen EU Member States and six other countries (Australia, Canada, Japan, New Zealand, Switzerland, and the USA). These are chosen to represent different migration histories and experiences (i.e. traditional settlement countries; West European countries with guest-worker/colonial history; new immigration countries), and levels of (economic) interest groups’ involvement in policy-making (determined by data on union density, centralisation/coordination of unions, and employers’ associations, the integration of these interest groups into policy-making).

The analysis of policies encompasses primary legislation (e.g. laws, ordinances) and secondary instruments (e.g. regulations, circulars). The ranking concentrates on temporary high-skilled immigration policies whose common goal is to fill labour-market shortages. The index, composed of six categories on admission mechanisms and work-permit rights (see Supplementary data),<sup>21</sup> ranks countries in July 2007, a few months before the Blue Card proposal. The assigned scores are based on available information about legislation and were primarily compiled through desk research.<sup>22</sup> A country’s score is a more important indicator than its rank for high-skilled immigration policy openness since a rank can easily shift when policy changes take place, especially in the wake of the 2008 economic crisis.



**Figure 1.** Index of states' openness to high-skilled immigration.

Points are assigned from 3 (= highly restrictive), 2 (= moderately restrictive), 1 (= minimally restrictive) to 0 (= highly open). The index operates on an equal weighting principle, which means that any two policy changes in a particular country that have an equal effect on policy openness have an equal effect on the index. 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 restrictive is the country to high-skilled immigrants.

Figure 1 shows that, in 2007, Sweden ranked as the most restrictive country, followed by Austria and then a group including Denmark, Italy, Japan, Spain, and Switzerland.<sup>23</sup> The Netherlands, Ireland, and the UK had the most open policy for attracting high-skilled immigrants.<sup>24</sup> The majority of countries occupied the middle field of the ranking. Among them were Canada and the USA; these, despite not having the most open policies, still exhibited successful (in absolute numbers of high-skilled immigrants and/or reaching targets/policy objectives) cases for high-skilled immigrant recruitment. Other factors can play a role, such as the difference between policies 'on paper' and 'in practice', resulting from policy regulations, enforcement mechanisms, and administrative capacity. Some methodological limitations of the index apply.

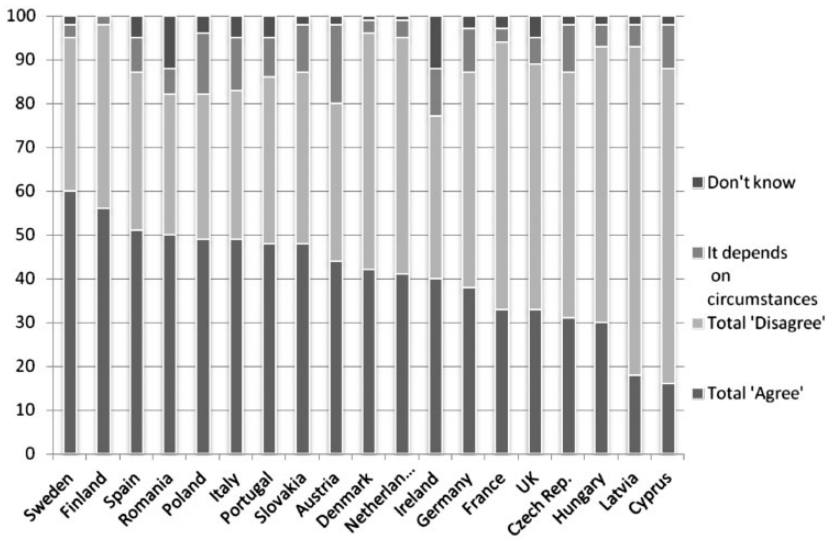
Measuring policy openness has become a significant challenge in comparative migration research; hence the presented index could make an important contribution to the field. By offering clear criteria of measurement, the index can be extended and built upon for future analyses of policy changes. It is also useful for quantitative testing of the impact of migration policies on migration flows, and thus may be of interest to scholars in political science, public policy, and economics.

### 4.3 Member States' preferences regarding high-skilled immigration and the Blue Card

How do policy preferences vary? A Transatlantic Trends poll shows that most respondents favour admitting high-skilled immigrants (62 per cent). But again, considerable country variation exists, with the highest support in Spain and Germany (both 69 per cent) and the lowest in the UK and France (56 and 54 per cent, respectively) (*Transatlantic Trends 2011*: 17). For a more comprehensive analysis of EU Member States, Fig. 2 is presented below. The Eurobarometer question does not specify the skill level of third-country nationals, but 'new technologies and health care' should require high-skilled or at least skilled immigrants. Of course, there is often a gap between public opinion and governmental policy (see *Cornelius et al. 1994*).

It is interesting to note that respondents in Sweden (60 per cent), Finland (56 per cent), Spain (51 per cent), and Romania (50 per cent) are the most likely to agree with the question that the EU should encourage labour migration of third-country nationals. In contrast, respondents in Latvia (75 per cent), Cyprus (72 per cent), and Hungary (63 per cent) are the most likely to disagree, followed by France (61 per cent), the Czech Republic (56 per cent), the United Kingdom (56 per cent) and Germany (49 per cent). While the Commission enthusiastically presented the Blue Card, not all Member States shared this view.

Table 1 analyses their Blue Card preferences in the two-level game, while a typology of the main reasons and Member States' support of or opposition to the Blue Card is provided in Table 2.



**Figure 2.** When thinking about the demographic challenges ahead (e.g. ageing population) and the need for filling in labour shortages in certain sectors of EU economy (e.g. healthcare, new technologies), some people think that the EU should encourage labour migration from non-EU countries. Would you say you...?

Source: Commission 2012: 23.

Table 1. Blue Card preferences at national and EU levels, 2007

	Czech Republic	France	Germany	Spain	Sweden	UK
National level	Maintains national high-skilled immigration policy	Unsuccessful national high-skilled immigration policy	Revises national high-skilled immigration policy	Restrictive national policy	Restrictive high-skilled immigration policy	Maintains national (open) high-skilled immigration policy
EU level	Equality principle: seeks to obtain free movement in EU for own citizens	Seeks to redirect migration from family, low-skilled to high-skilled immigration	Sovereignty concerns High unemployment	Seeks to change migration categories (move away from low-skilled migration)	Pressure from employers Seeks to redirect migration from family and asylum-seekers	Sovereignty concerns
	Opposes Directive Works together with other new Member States (e.g. Slovakia)	Supports Directive Coalition with other (Southern European) Member States	Opposes Directive Coalition with neighbours (e.g. Austria)	Supports Directive Coalition with other (Southern European) Member States	Supports Directive Coalition with other Member States (e.g. Southern Europe)	Opposes Directive Coalition with Ireland (opt-out)

Source: Author's own data.

**Table 2.** Overview of selected Member States' positions on Blue Card, 2007

	Support	Opposition
Restrictive and/or unsuccessful high-skilled immigration policy	France Italy Portugal Spain Sweden	
Open and/or successful high-skilled immigration policy		Ireland UK
Sovereignty issues		Austria Denmark Germany Netherlands
Equality issues (free movement within EU)		New EU Member States (e.g. Czech Republic, Slovakia)

Source: Author's own data.

Even though not all twenty-seven Member States are examined, Table 2 indicates that support for the Blue Card varies according to Member States' self-interest, that is, whether they perceive more benefits than costs in an EU-level policy. Considerable opposition to the Blue Card existed, so it is not surprising that the final legislation was a watered-down version of the original proposal. The Commission was keen to pass the Directive, in the respect that it preferred a far less ambitious directive than no directive at all. The national and EU context impacted Member States' preferences by influencing the negotiation space for the Blue Card (i.e. the win-set).

Two important events stand out (though there are also other structural factors). First, EU enlargement created concern among some Member States that inflows of Eastern/Central European immigrants would undercut domestic workers. Member States who had admitted a large number of workers from new EU Member States (such as Ireland and the UK) were then more hesitant to open up their labour markets to third-country nationals. Second, the global economic crisis started during ongoing Blue Card negotiations. Most Member States were facing political opposition towards a more open high-skilled immigration policy and it was difficult to justify admitting more immigrants (see Cerna 2010b; Nieuwenhuysen et al. 2012). In times of heightened public attention, public opinion can influence immigration policy as politicians are interested in re-election (see Givens and Luedtke 2005). National preferences are more likely to shift after major changes in economic situations (Moravcsik 1998).

Next, the preferences, national contexts and selective responses of key Member States (namely the Czech Republic, France, Germany, Sweden, Spain, and the UK) are presented. As we will see, the liberal intergovernmentalism/two-level game framework provides a fairly good explanation for Member States' positions. Member States supported the Blue Card if benefits outweighed costs. For instance, those backing the Directive such as Southern European countries (e.g. Greece, Italy, Portugal, and Spain) as well as Sweden at that time

had a restrictive policy and/or were unsuccessful in attracting high-skilled immigrants. Some considered the Blue Card as an opportunity to shift the balance between its migration categories. They admitted more asylum-seekers, family migrants, or low-skilled rather than high-skilled workers, but at the same time wanted to attract 'highly skilled' and politically less contested migrants. For example, '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' (make sure it gets the newcomers it wants and not the migrants it gets) (Engel 2008: 21). Sweden was keen on the Blue Card and made it a focus of the 2009 Swedish EU Presidency.<sup>25</sup> Therefore, an EU policy enabled policy-makers to circumvent the national political arena and choose an appropriate venue at the EU level.

In similar vein, France, Italy, and Spain supported the Blue Card Directive (Work Permit 2007; El Dia 2008). French immigration officials considered the Blue Card more useful than their new 2007 skills and talent visa, which attracted only about 500 migrants/year despite policy targets of 2,000/year.<sup>26</sup> Due to an unsuccessful national policy, EU cooperation on high-skilled immigration policy was considered beneficial because of higher visibility at the European level. Thus, as liberal intergovernmentalism would predict, there was considerable support for the Blue Card.

Based on the framework of liberal intergovernmentalism/two-level games, Member States with open and/or successful high-skilled immigration policies were less interested in the Blue Card as the benefits were not considered to outweigh the costs. For instance, the UK already had an open high-skilled immigration policy in place and did not see any added value in the Blue Card (United Kingdom Government 2005). 'The UK is already far ahead of the EU average in attracting the brightest and best and its new points system aims at enhancing that ability even further' (Collett 2008). As the liberal intergovernmentalism framework would predict, the UK did not require EU-level cooperation on labour immigration policy since it could respond to domestic demands to fill labour shortages unilaterally (Kraft-Kasack and Shisheva 2008). Ireland displayed a similar position, pointing to its own 'very open' labour immigration policy, and questioned the added value of a common European initiative (Republic of Ireland 2005). The country was concerned about losing flexibility in the Irish labour market. In the end, the UK, Ireland, and Denmark opted out of the Blue Card and kept decision-making at the national level.

Several Member States (e.g. Austria, Denmark,<sup>27</sup> Germany,<sup>28</sup> and the Netherlands) rejected the proposal on grounds of 'sovereignty' (Parkes and Angenendt 2010). Few politicians in the Netherlands (with an open high-skilled immigration policy) were hostile to the Directive and the Austrian government condemned the plan as 'a centralisation too far' (BBC 2007). In 2007, the idea drew fire from the then German Labour Minister, Franz Müntefering, who commented that such significant questions could not be resolved in that way by Interior Ministers or the responsible EU Commissioner (Spiegel 2007). As we would expect from the framework, political costs were considered greater than the benefits of the Blue Card.

However, this reason (i.e. sovereignty) could also be interpreted differently. Member States did not see benefits from the legislation when they were developing their own national policy (Collett 2008). Some (e.g. Austria and Germany) introduced/revised national high-skilled immigration legislation during Blue Card negotiations or before the transposition deadline, while others focused on how to 'better utilise the labour-market potential of

residents of immigrant origin' first (Collett 2008). For example, Germany pointed to the high national unemployment rate.<sup>29</sup> Former Labour Minister Olaf Scholz did not see the need for the Blue Card as Germany had about 3.5 million unemployed workers and could thus fill its own labour shortages. The liberalisation of high-skilled immigration became more debated: 'The new rules must not put additional pressure on the millions of unemployed in the EU member states' (German MEP Manfred Weber) (Parliament 2008). Member States were concerned about an influx of third-country national workers, and wanted to protect national labour markets and solve labour shortages domestically (Kraft-Kasack and Shisheva 2008). Tensions between political and economic preferences often played out at national level, which made a coherent position difficult.

Ministers from new Member States (e.g. the Czech Republic and Slovakia) disputed the Blue Card on an equality principle. They felt that a common high-skilled migration system was inappropriate when transitional arrangements limiting the labour mobility of EU citizens were still in place (Council 2008d). This objection can be interpreted as an interest-driven argument, which fits with the liberal intergovernmentalism framework. (Former) Czech Interior Minister Ivan Langer argued that 'we are EU members and we want the same labour rights for every EU citizen. We want to ensure that our citizens are not worse off when it comes to labour opportunities compared to foreign nationals' (Palmer 2008). The Czech Republic requested that, if it were to support the Directive, the Blue Card could only enter into force after May 2011 (Ministry of Labour 2005). The last transitional restrictions<sup>30</sup> by Germany and Austria were lifted one month before the transposition deadline of this Directive. In addition, the Czech Republic already had an innovative high-skilled immigration policy in place (Ministry of Labour 2005).

As we would expect from the liberal intergovernmentalism framework, Member States wanted to keep labour immigration policy in their own hands and only agreed on measures from which they would benefit. Their positions reflected national high-skilled immigration preferences.<sup>31</sup> The final agreement on the Blue Card differed significantly from the original proposal. The success of the Directive is thus likely to be modest—it mainly represents a procedural simplification.

## 5. Conclusions

Pro-high-skilled immigration developments have been visible at national, regional, and international levels. One notable reform was the Blue Card Directive—its objectives were to streamline processes, create a centralised decision-making arena, and offer one simple application procedure for high-skilled immigrants. Though welcomed at the EU level, it has been difficult to obtain Blue Card support of all Member States beyond a minimum framework because national high-skilled immigration policies vary considerably, demonstrated by the constructed index of openness to high-skilled immigration. These national preferences have been shifted upwards to EU level, exemplified by varying support of the Blue Card. This has led to an agreement on a lowest common denominator, with an opt-out of three Member States. The article has used the theory of liberal intergovernmentalism/two-level games to provide an explanation for different Member States' positions on specific measures of the Blue Card, despite general support for common rules for

high-skilled immigrants. It highlights the continued key role of national preferences for European policies.

Due to the failed 2001 horizontal Directive on the conditions for entry for employed and self-employed non-EU workers, the Commission proposed a less ambitious version in 2007, which left important decisions to Member States. So while it looked as if the EU was moving forward with the harmonisation of economic migration, details of the Directive reveal that the Blue Card carries symbolic importance only so far (Boswell and Geddes 2011: 96). The application of the Blue Card is likely to be limited. Even though it was publicised to mirror the American Green Card, it does not 'offer the security of residence and access to the labour market, and does not create a right of entry for a migrant worker' (Guild 2007: 4). It only provides access to one EU state at a time, not free mobility within the European single market (Melander 2008). When the EU first proposed the then-Green Card in 2007, the USA was concerned about losing the competition for 'the best and brightest' to Europe.<sup>32</sup> At that time, H-1B visas for the highly skilled were exhausted on the first day of the financial year and employers had been lobbying intensively for a cap increase.

With the global economic crisis, however, the situation has changed. The demand for H-1B visas went down significantly in 2008/9. In Europe, the Blue Card Directive was passed in May 2009, but the need for high-skilled immigrants had decreased since the first discussion in 2005 (though labour shortages in certain high-skilled sectors persisted). The economic crisis precipitated a differential response by Member States—some restricted their high-skilled immigration policies towards third-country nationals (e.g. Ireland and the UK), while others (such as Germany and Sweden) liberalised them during that time (Pastore 2012). France reduced labour shortage lists, but did not implement any other changes, whereas Italy and Spain mostly focused on restricting low- and middle-skilled immigration. The economic and political context has influenced the Blue Card preferences of Member States.

The final Blue Card version does not address several shortfalls. First, each Member State maintains the right to determine the number of immigrant workers that can be admitted into the domestic labour market (BBC 2007). This is not harmonisation *per se* (Collett 2008). Second, the Blue Card does not deal with the problem of qualification and skills recognition for third-country nationals (Collett 2008). Third, the success rate of the Blue Card is unclear. Some Member States will continue to attract more high-skilled migrants than others due to wage levels, advancement opportunities, and language issues (Chaloff and Lemaitre 2009). The Blue Card does not make much of a difference—it merely represents a triumph of advertising over substantive policy-making.

Even though the Blue Card signals that the EU welcomes high-skilled migrants and is an important player in the 'global war for talent', it demonstrates that most Member States are not willing to delegate decisions on their labour market needs to EU institutions. Its failure highlights underlying weaknesses in European institutions and the limits of further integration. Among the four economic migration proposals, the first one on high-skilled immigration was supposed to be adopted most easily. But various disagreements among Member States on specific measures raise the question whether current EU proposals on intra-company transferees and seasonal workers will be passed, and if so under what conditions.



Further research should examine the benefits and challenges of the Blue Card once all participating Member States have transposed the Directive into national legislation, and data on inflows of Blue Card holders are available. The Blue Card offers several areas for consideration, such as shifting governance from national to EU level, increasing competition for high-skilled immigrants, migration policy-making, and EU integration. This article has only touched on these important and complex topics.

## Supplementary data

Supplementary data are available at *Migration Studies* online.

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## Notes

1. No universal definition of high-skilled immigration exists (Lowell 2008). The three most common definitions consider education (i.e. tertiary level), occupation (e.g. professionals, associates), and salary level (beyond a certain threshold), but can overlap (Chaloff and Lemaitre 2009).
2. Policy developments are also visible at the global level (GATS-Mode 4) (Lavenex 2006).
3. Despite different trajectories/specificities, 'there are a number of striking similarities in the challenges confronting European states: demand for skills in a knowledge-based economy, ageing populations, strains on welfare provisions and public anxieties about the impacts of immigration' (Boswell and Geddes 2011: 81).
4. At a third stage, States create/adjust institutions to secure outcomes in times of future uncertainty, i.e. to delegate or pool sovereignty (Moravcsik 1998).
5. Since actors' preferences and coalition-building are reflected in national policy outputs (discussed in Cerna 2009), the article does not elaborate on these.
6. 'A lowest common denominator outcome does not mean that final agreements perfectly reflect the preferences of the least forthcoming government—since it is generally in its interest to compromise somewhat rather than veto an agreement—but only that the range of possible agreements is decisively constrained by its preferences' (Moravcsik 1993: 501).
7. For example, the original proposal called for a harmonised policy, five-year work-permit duration, and special provisions for young professionals. In the end,

common entry criteria were set but Member States would implement their own Blue Card versions (complementing their national high-skilled immigration policies), the permit was valid up to four years (thus missing the five-year residence period for EU long-term residence status) and the young professionals provision was omitted.

8. Between the 1992 Maastricht Treaty and the 2009 Lisbon Treaty, the EU was composed of three pillars. The first Community pillar corresponded to the European Community, the European Atomic Energy Community, and the former European Coal and Steel Community. The second pillar was devoted to common foreign and security policy, while the third one was concerned with police and judicial cooperation in criminal matters (Europa 2013).
9. Caviedes 2004; Menz 2002.
10. For a comparison of 2001 and 2007 directives, see Luedtke 2011.
11. The Lisbon treaty extends qualified majority voting to other areas such as labour immigration (Commission 2010).
12. The report had a clear majority of 388 to 56, due to a pact between the European Socialist Party and the centre-right European People's Party. The large number of abstentions (124), led by the European Liberals and Green Party, indicated important disagreements (EurActiv 2008).
13. The Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Slovakia, and Slovenia.
14. Bulgaria and Romania.
15. Member States are bound by Community preferences specified in the 2003 and 2005 Acts of Accession, which offer free movement to workers from new Member States.
16. Inside the Commission, DG Justice is mainly responsible for labour migration of third-country nationals, with some help from DG Employment, Social Affairs, and Inclusion.
17. The EU experienced 3 per cent/year employment growth in high-education sectors (1 per cent in other sectors), a change in the occupational structure in favour of high-skilled workers (Commission 2007c).
18. There is great variation between the countries regarding population density, history, and public opinion on immigration.
19. Paulina Kosc made a similar point at the 'Highly Skilled Migration into the 21st Century' conference, London, 24/25 May 2012.
20. The Czech Republic, Denmark, France, Ireland, the Netherlands, and the UK had specific programmes, while high-skilled immigration was facilitated within the ordinary immigration scheme in Austria, Belgium, Bulgaria, Germany, Italy, and Portugal (IOM 2008: 79).
21. The six categories were carefully selected for the composite index. The selection is based on the appropriate relation with States' openness to high-skilled immigration, following the previous work done by Christian (2000) and Lowell (2005).
22. SOPEMI reports have been used to grasp major policy changes, supplemented by detailed readings of national immigration legislation and official websites.
23. Italy and Spain have one quota system for all skill levels.
24. UK implemented a Points Based System in 2008, but introduced a more restrictive policy in 2011; Sweden liberalised its labour immigration policy in 2008.

25. Interview, Migration Minister, Stockholm, May 2008.
26. Interview, Ministry of Immigration, Paris, February 2010.
27. Denmark had an innovative high-skilled immigration policy in place.
28. Germany had experience with (low-skilled) guest workers from the 1950s to 1960s, with resulting integration problems.
29. Interview, Ministry of the Interior, Berlin, June 2008.
30. Some restrictions apply for Bulgaria and Romania until 2014.
31. Other disagreements concerned conditions, the salary threshold, and the rights of the Blue Card holders.
32. Interview, US Chamber of Commerce, Washington DC, October 2007.

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