

## The EU Blue Card – is there a need for a more comprehensive approach?

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In his Political Guidelines, the Commission president Jean Claude Juncker stated that he aims for a “new European policy on legal migration.” One of the key initiatives is the review of the Blue Card for attracting highly skilled migrants. More recently, the Commission reaffirmed this objective in the European Agenda on Migration (COM(2015) 240 final). In elaborating the guidelines for the incoming five years (2015–2020), the overall priority set by the European Council (2014/C 240/05) is the consistent transposition, the effective implementation, and the consolidation of the legal instruments in place, while at the same time developing new strategies “to maximize the opportunities of legal migration.” Given this political mandate, and the new co-legislative role of the Parliament since 2009, it is reasonable to expect new initiatives in the area of labour migration.

### Attracting talent: justification for a common approach on skilled labour migration

EU labour migration policy is fragmented into several directives covering different types of migrants, i.e. highly skilled, seasonal workers and Intra-Corporate Transferees, plus a horizontal directive covering procedural issues and a set of rights for migrants. The reasons for such fragmentation are political and due to Member States’ reluctance to cede sovereignty to the EU level in this policy field. After the failure of the 2001 Proposal for a Directive on all economic migrants (COM (2001/C 332 E/08) 127 final), and the consequent public consultations, different stakeholders’ preferences had to be accommodated. The Commission opted for a partitioned approach to labour migration to overcome political deadlock (Roos 2013, Menz 2015). The objectives of an EU labour migration policy are broader than those achievable by just addressing the immigration of highly skilled workers; yet, attracting highly qualified workers was a politically feasible way to address at least some of the goals.

Three objectives can be traced back to the 2005 Commission Policy Plan on Legal Migration: the first is to address the decline in working age population and the increasing old-age dependency ratio. The issue came up as early as 2003, (Commission 2003) but it is still up-to-date, as recent studies show (for instance,

**T**his Policy Brief reviews the implementation of the EU Blue Card (BC) Directive in Member States and offers some suggestions on how to improve its potential. Firstly, it traces back the origin of the current partitioned approach in labour migration and the objectives that an EU labour migration policy should achieve according to the Commission. Secondly, it reports on the content of the directive and its implementation in Member States. Thirdly, there is an analysis of the weaknesses of the directive in terms of numbers of BCs issued and harmonization achieved. Finally, recommendations are put forward on how to improve EU labour migration policy.

OECD\EU 2014). The second objective is to meet current and future labour demand. European economies already experience shortages in some sectors, for instance IT, health sector, and engineering (EMN 2011, Cedefop 2010). The third objective is linked to the goal of building a more dynamic knowledge-based economy. Several studies have shown the positive impact of highly skilled workers mobility on knowledge diffusion and overall economic competitiveness (Duncan 2012, Chiswick 2011, OECD 2008). In this vein, the Commission identified attracting highly qualified

workers as a mean to foster economic growth. The added value of European action in the area of highly qualified migrants is apparent: by presenting the EU as a common labour market and destination for immigrants with one set of admission rules, rather than 28 different ones, Member States are expected to be more successful in attracting the much wanted highly skilled workers.

To meet these objectives, in May 2009, the Council, still functioning at that time under the unanimity rule, approved the BC Directive. The UK, Ireland and Denmark opted out; to date, the other Member States, many with considerable delay, have transposed the Directive into national legislation. The Commission presented the first report evaluating the Directive's implementation in May 2014 (COM (2014) 154 final).

### The content and implementation of the Directive

The BC Directive regulates the entry and residence conditions of highly qualified workers that have at least a one-year job offer in a Member State. Compared to other immigration directives, it grants a particularly favourable set of rights for long-term residency and immediate family reunification. During the negotiations, Member States agreed on a broad leeway in deciding how to enact particular provisions. As a consequence, the implementation of the Directive has been very divergent.

First of all, highly skilled workers can be categorized differently by Member States. A highly skilled worker is defined as a person holding a higher professional qualification (from a post-secondary higher education programme lasting at least three years). However, the national legislation may also include a person with at least five years of professional experience in a relevant sector. Currently, the majority of EU countries require a formal qualification, while 10 Member States consider the experience derogation. The scheme is demand-based. Accordingly, a job offer by an employer determines admission. The minimum salary threshold to qualify as highly skilled lies at 1.5 times the average gross annual salary in the state. For workers particularly in need in the technical, administrative and managerial area there is the possibility to lower the salary threshold to 1.2 times the national average. In the transposition, some Member States made reference to the average gross annual, monthly salary, or minimum wage. According to the Commission Report, as many as 10 Member States have incorrectly transposed the salary threshold provision, although to a different extent: some states require a salary threshold only slightly under the Directive's limit, like Portugal and Slovenia; others impose a threshold considerably below, like Italy and Malta.

As Member States may apply more favourable provisions or even run national

parallel programmes to attract highly skilled migrants, they may decide to apply more restrictive clauses. A cap may be set in order to limit the number of applications: 8 Member States transposed this possibility, and currently Cyprus has a quota of 0. National legislation may also foresee carrying out the labour market test to verify the availability of a European citizen for the job. The majority of Member States have transposed this option.

The section in the Directive about rights has fewer discretionary clauses. With regard to mobility within the labour market, any employment change requires authorization during the first two years; afterwards Member States may decide to grant free access to highly qualified employment. To access the long-term residency status after 5 years, the BC holder may benefit from longer periods of absence than non-highly qualified migrants, and may cumulate the time spent in different EU countries. Finally, with regard to mobility, the BC holder may apply to work in another Member State after 18 months.

### The effectiveness of the Directive

Since one objective of the Directive was to increase the number of highly skilled workers, (COM (2007) 637 final) one simple way to measure its success is to assess how many BCs were issued. However, the causal impact of immigration policy on the actual movement of people is not easy to identify. In general,

GEO/DECISIO	BC			NP			tot 2013
	2012	2013	BC (2013-12)	2012	2013	NP (2013-12)	
Belgium	0	5	5	95	73	-22	78
Bulgaria	15	14	-1	0	0	0	14
Czech Rep	62	72	10	69	69	0	141
Germany	2,584	11,580	8,996	210	11	-199	11,591
Estonia	16	12	-4	0	0	0	12
Greece	0	0	0	0	0	0	0
Spain	461	313	-148	1,136	1,368	232	1,681
France	126	371	245	3,037	2,667	-370	3,038
Croatia	:	10	:	565			575
Italy	6	87	81	1,695	1,543	-152	1,630
Cyprus	0	0	0	600	385	-215	385
Latvia	17	10	-7	106	82	-24	92
Lithuania	:	26	:	0	0	0	26
Luxembourg	183	236	53	21	0	-21	236
Hungary	1	4	3	0	0	0	4
Malta	0	4	4	0	0	0	4
Netherlands	1	3	2	5,514	7,046	1,532	7,049
Austria	124	108	-16	1,158	1,228	70	1,336
Poland	2	16	14	206	387	181	403
Portugal	2	4	2	313	767	454	771
Romania	46	71	25	0	0	0	71
Slovenia	9	3	-6	0	0	0	3
Slovakia	7	8	1	0	0	0	8
Finland	2	5	3	749	971	222	976
Sweden	0	2	2	4,751	4,666	-85	4,668
tot	3664	12964		19660	21828	2168	

Figure 1. BC vis-à-vis national programmes (NP), 2012-2013. Eurostat data

migration laws are only one factor among many determining the migrant's decision on country of destination (Boeri et al. 2012). Therefore, I suggest to compare the number of BCs and national permits for highly qualified workers. Theoretically, three observations are possible. First, many more national permits are issued than BCs. This means that the Member State is somehow attractive, but the BC is not. In this case, the BC has not been effective in achieving its goal of creating an attractive scheme. Moreover, if Member States themselves may put in place a more attractive scheme, the rationale of the BC is also undermined, as it would be redundant compared to national initiatives. Second, the number of BCs and national permits issued are similar. This means that they are either equivalent or that they target different categories of migrants. Third, the number of BCs is much higher than national permits. This shows that the BC introduced an attractive policy for immigration of highly skilled workers.

According to EUROSTAT data, the number of BCs issued remains low, and, in the majority of Member States, permits issued under national programmes for highly qualified workers exceed the BCs. A considerable exception is Germany, where the BCs were mainly conversions from other permits. As a positive aspect for assessing the success of the Directive, 7 countries, mainly from Eastern Europe, did not issue national permits for highly skilled before the implementation, but did start to issue BCs. Another indicator for its relative success is the increase in the BCs issued in 15 countries in 2013 compared to 2012. In 6 cases (BE, DE, FR, IT, LU, SE), this happened while the national permits were decreasing. However, 4 Member States (ES, NL, PL, PT, FI) seem to favour the national route: national permits increased, while BCs decreased, or increased to very limited extent. Overall, among those states that have a considerable (more than 1000) inflow of highly skilled migrants (DE, ES, FR, IT, NL, AT, SE), only in Germany is the number of BCs higher than the number of national permits in 2013. This means that so far the BC has shown only a very limited success.

Another objective of the BC was to create a common EU-wide procedure for highly skilled immigrants. The BC certainly introduced a programme for highly qualified third country nationals in countries where none existed before – e.g. Romania, Cyprus, Poland – or only specific provisions for highly qualified applicants were in place – like Italy, Sweden and Belgium. Yet, if the extent of leeway in implementation is considered, Member States can reduce the commonness of the EU-wide scheme to a commonly used label.

The existence of parallel national schemes is not necessarily negative: they can play a complementary role to the BC if they target a different group of highly skilled workers. For example, national schemes could address self-employed or job-seekers, who are currently excluded from the BC. However, if they target the same group of migrants, there is overlap and competition: on the one hand,

this may lead the national schemes to include more liberal provisions and to attract more highly skilled; on the other hand, it would seriously undermine the harmonization and branding objectives of the BC. In the latter case, the BC would have succeeded in creating minimum conditions for the highly skilled, but would have failed in creating an EU programme and the very added value of the Directive would need to be redefined.

## Recommendations

The political climate for a recast of the Directive is good: in the Parliament, the European People's Party (PPE 2015) and the Alliance for Liberal and Democrats for Europe Party (ALDE 2015) explicitly support the improvement and broadening of the BC. Within the Council, Member States can be divided into four groups: those that oppose more EU initiative in migration policy; those that have an interest in making the BC more attractive, since they lacked a selective policy before implementing the Directive; those that have no direct interest in reviewing the BC since they have more competitive national schemes (like the Netherlands, Austria and Spain); and finally one Member State that has no reason for improving the BC, since it has been working well as it is (Germany). With qualified majority voting, a Commission proposal should gain the support of the third group. At the same time, the Commission should study German compliance and implementation to understand which mechanism enables the functioning of the Blue Card.

To overcome the shortcomings of the BC, several actions at different levels should be put in place: firstly, at the level of the Directive and its provisions; secondly, at the level of complementary initiatives, and finally, at a general level.

Some provisions of the BC have discouraging effects for attracting global talent. The transposition figures of the salary threshold and the lower or absent threshold in the parallel national schemes show that 1.5 times the national gross average salary is too high a threshold and too rigid as a bottom limit. It fails to take into account sectoral distinctions and the wage structure of the country. Moreover, highly qualified workers are very diverse and do not equally fit into the same regulatory framework. The salary for young workers, for example, tends to be lower than the salary of workers in senior positions, and this should be taken into account if the EU wants to attract also young professionals. Similarly, students who graduated at EU universities are highly qualified and have gained experience in Europe, and possibly of the labour market. Favourable derogations for them, in terms of salary or access to long-term residency, should be envisaged. Regarding the minimum length of the contract, the one year requirement excludes many jobs that are shorter and project-based. Furthermore, it is not apparent what the BC offers that national schemes do not. Although it is certainly true that the BC

holders can move to other Member States, no more favourable provisions derive from them already being granted a BC in one country. To obtain a BC in another country they need to undergo the admission procedure again.

At the level of complementary initiatives, improving information is pivotal. Official information should target potential applicants – who should have the option to compare their perspectives in Member States – and employers – who are often small and medium sized enterprises lacking the relevant knowledge about foreign education systems and labour markets. Involving intermediary agents, either from the public or from the private sector, can ease the process of information collection. Moreover, the services of EURES, the European Job Mobility Portal, can be made available to third country nationals. Providing EU entrance schemes for highly qualified workers certainly requires shared rules on which qualifications are considered for admission. At the moment, there is no common system for the recognition of foreign qualifications and an application may be accepted in one country but rejected in another. This undoubtedly obstructs the creation of a common labour market and impairs intra-EU mobility.

At a more general level, a more comprehensive approach of conceiving labour migration is needed. The focus on highly skilled migrants has represented a strategy to overcome the political deadlock, and in fact, the 2001 proposal for a Directive did not even make reference to highly skilled workers. The subsequent partitioning approach may be a compromise to indeed achieve a common policy (Roos 2013), but it should not come at the expense of a comprehensive migration policy covering many different types of labour migrants – high, medium, and lower skilled. The EU does not only need highly skilled workers, as the lists of hard-to-fill professions in Member States show. Unemployed local workers do not necessarily have the low and medium skills required for taking up jobs in shortage; moreover, they may not be willing to engage in some sectors that remain migrants-dominated (Triandafyllidou and Marchetti 2014). In spite of the Commission's reference to a comprehensive approach, (Press Conference for the Presentation of the Agenda on Migration – 13 May 2015) not a single item on the agenda concerns the medium skilled. This means that the common skill-based approach will remain partial and insufficient to address the labour

market needs of the European economy. Within the same objectives of tackling labour shortages and the decline of the working-age population, the possibility to widen the scope of the BC such as to also include medium-skilled migrants should be envisaged.

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